

# Can I Use That In My Genealogy? What You Should Know About Copyright

## What Is Copyright?

*“Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works.”*

The paragraph above is from the U.S. Copyright Office’s Frequently Asked Questions about Copyright webpage at <http://www.copyright.gov/help/faq/>. It is a general statement as to what copyright covers here in the United States. But as they say, “the Devil is in the details,” and understanding exactly what is and isn’t covered and what you can and can’t use as a genealogist, requires quite a bit of guidance.

## What Does a Copyright Bestow to the Owner of a Work?

A copyright does not convey magical powers nor was it meant to serve as a “reward” for one’s labor in creating the work. A copyright conveys rights, such as:

- The right to reproduce the copyrighted work.
- The right to prepare derivative works based upon the copyrighted work.
- The right to publish or distribute copies of the copyrighted work to the public.
- The right to perform the work in a public arena.
- The right to display the work publicly.

Basically, when you own the copyright to a work, you can control how that work is used by yourself and others. This includes genealogy books, written family stories, even audio and video recordings.

## When to Worry about Copyright

Too often, genealogists worry about using certain published and unpublished materials during the research process to the point of impacting their progress in finding ancestors. A mantra that has helped me: “Don’t worry. Be educated.”

Don’t let the fear of using certain materials in both your research and a published or unpublished report or book keep you from breaking down brick walls or serving your genealogy clients.

## How Are You Using a Copyrighted Work?

This is the first and most important question to ask yourself: what am I going to do with the information I take from a possibly copyrighted works? If your research will remain unpublished, for the most part, your worries are few. However, if you have a blog or you are publishing a family history book, you do need to fully understand what is and isn’t allowed in terms of usage.

## Facts Can't Be Copyrighted

Birth dates, death dates, locations of events, etc. are not covered by copyright. So, as a genealogist you can copy this type of information and use it freely in your research, reports, family trees etc.

## What Works Are Copyrighted? Some Grey Areas

It is not all black and white when it comes to what is and isn't covered by copyright. Due to a myriad of changes in the US copyright laws and court rulings, assume that there are exceptions to even the most-obvious provisions.

- **Information from a gravestone visited in person in 1982.** Facts cannot be copyrighted. No permission needed.
- **Information from a gravestone from a photograph dated 1982.** An extraction of the facts from the photo cannot be copyrighted. No permission needed.
- **A photograph of a gravestone dated 1982.** Assuming the person who took the photo is still alive, permission required. Even if the photographer died in 1982, the heirs of the photographer's estate may still claim copyright.
- **An obituary published in a newspaper dated 1922.** The obituary is in the public domain and no permission is needed. The cut-off date for public domain works, in general, is 1923.
- **An obituary published in a newspaper dated 1942.** This depends on who exactly owns the work. Was it a work for hire? Was it written by a family member? Is the author still alive? Was there a copyright notice used? There are so many factors involved that more information is needed.
- **An unpublished poem or story dated 1900 written by Uncle Eustace.** Did the author die more than 70 years ago, meaning 1942 or earlier? If so, then no permission needed and the work is in the public domain. For the most part, unpublished works are protected until 70 years after the death of the author.
- **A diary dated 1900 and written by your great-grandmother.** If unpublished and your great-grandmother died prior to 1942, then no permission needed and the work is in the public domain (the same rules as unpublished works and the death date of the author apply as above). If it was published prior to 1923, then the diary is in the public domain. If it was published after 1923, it depends upon whether a copyright notice was used and if the work was registered.
- **A diary dated 1960 and written by your grandmother.** Since the diary was written in 1960 and before her death, you would need to get permission from your grandmother if she is still living. If she died after the diary was written, you still should try to get permission from her heirs due to the "70 years after the death of the author" provision mentioned above.
- **A photograph of Uncle Albert from 1900.** Photos are a tricky area when it comes to copyright which is not controlled by the owner or the subject of the photo, per se. Normally, it is the photographer – the creator of the work – and his or her heirs which control ownership of the work. And then again, it could be a

work for hire with the person being photographed (by a professional photographer, let's say) ultimately owning the work. Was the photo published? Then the provisions for published works apply. Was it unpublished? Then the "70-years after the death of the author" rules apply.

- **A photograph of Aunt Tilly from 1930.** If Aunt Tilly took the photo and she died in 1941, and the photo was never published, then yes, you should be able to use the photo without permission. But if Aunt Tilly died in 1960, see above for unpublished works and the death of the author.

## How Long Does a Copyright Last?

This is a complicated question, as complicated as determining who owns the copyright to a work. As we've seen in the section above, the many changes to US copyright law have rendered the process of determining length of copyright difficult, to say the least. You'll need to gather all the information needed such as whether a work was published or not, when the author died, whether a copyright notice was used, etc.

## The Truth about Fair Use

For purposes such as criticism, comment, news reporting, teaching, scholarship or research, you are allowed to use portions of copyrighted works. A useful summary:

*"It not only allows but encourages socially beneficial uses of copyrighted works such as teaching, learning, and scholarship. Without fair use, those beneficial uses—quoting from copyrighted works, providing multiple copies to students in class, creating new knowledge based on previously published knowledge—would be infringements. Fair use is the means for assuring a robust and vigorous exchange of copyrighted information."* -- Carrie Russell, American Library Association

Put simply: copyright is not meant to interfere with or impede scholarly research. There is no "Fair Use law" – this is one of many "copyright urban legends" and bits of misinformation about US Copyright laws. There is no "magic formula" such as only using three lines of the work, or if it is on the Internet, it is free to use, etc.

## Red Light, Green Light Test for Using Works

When you use other works for your genealogy research, basically you need to use a multi-step litmus test on your usage. I call this my "red light, green light" test:

- Is the work in the public domain, royalty-free or covered by a Creative Commons or similar license? If it is, green light and use the work! If not, see next step.
- Does your use of the work constitute fair use? If it does, green light and use the work! If it doesn't, see next step.
- Are you willing to get permission from the author to use the work or pay a licensing fee? If you are, green light and use the work based on the author or licensing guidelines! If not, don't use the work.

If after going through the test above, you still decide to use the work, you open yourself up to being served with a cease and desist notice or even a lawsuit related to your use of the copyrighted materials. I've found that until you've created your own original works and have had your copyright violated, you don't really appreciate the value of copyright.

## Copyright Myths

Here are some common assumptions that many genealogists and others make about copyright and the use of published works:

- **It's on the Internet so it must be free to use.** Not true and one of the biggest myths perpetuated about copyright. Even unpublished works not posted to the Internet are covered by copyright.
- **There's no copyright notice. Author loses and I win!** The confusion here is that some works published between specific time periods are in the public domain if a specific type of notice wasn't included. Since March 1, 1989 works do not require a copyright notice.
- **The book I'm using as a source is out of print.** "Out of print" does not mean "in the public domain." The material may still be under copyright.
- **I can ask for permission later on.** It's not like asking for forgiveness; asking for permission after usage does not absolve you of copyright infringement liability.
- **I don't need to ask permission as long as I give credit to the author.** If you only give credit for a work, at least no one can call you a plagiarist, right? You still have to ask permission in order to protect yourself from violating copyright.
- **Someone else posted the original work in a forum, a group or in a blog anonymously so I'm good to go.** The same rules about "everything on the Internet is free to use" apply even if posted anonymously. In fact, items posted with a pseudonym or *nom de plume* can still be copyrighted.
- **I'm using the work for a non-profit organization or for educational purposes so I don't have to worry about asking for permission.** Not true. Many confuse this type of use with Fair Use which depends on many factors, not just the type of organization using the work.

## General Copyright Do's and Don'ts

- **Assume everything is copyrighted.** This is the best approach and until you can prove that either the work a) is in the public domain, royalty free or covered by a special license; or b) can be used according to Fair Use provisions; or c) can be used through permission or a licensing fee, then don't use it.
- **When in doubt, research or ask.** Use the Resources below or ask the owner of the work if and how the work can be used. Ignorance is not a valid excuse.
- **Cite your sources.** Not only do source citations serve you as a genealogist and help improve the research process, for Fair Use purposes you should make clear the name of the work, the author and all pertinent details in your citation.

- **Don't fall prey to "copyright urban legends."** Misinformation abounds when it comes to copyright and especially which works can and can't be used and how. Educating yourself is protecting yourself.

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## Resources

- **Attribution: It's The Right Thing To Do**  
<http://tarletonlibrary.blogspot.com/2014/07/attribution-its-right-thing-to-do.html>
- **Compendium II of Copyright Office Practices**  
[http://www.copyrightcompendium.com/#202.02\(b\)](http://www.copyrightcompendium.com/#202.02(b))
- **Copy Right, Copy Sense**  
<http://www.pddoc.com/copyright/index.html>
- **Copyright Curiosities – The Legal Genealogist**  
<http://www.legalgenealogist.com/blog/2014/08/07/copyright-curiosities/>
- **Copyright Genie**  
<http://librarycopyright.net/resources/genie/>
- **Copyright Watch**  
<http://www.copyright-watch.org>
- **Creative Commons**  
<http://creativecommons.org>
- **Electronic Frontier Foundation – Legal Guide for Bloggers**  
<http://www.eff.org/issues/bloggers/legal/liability/IP>
- **Is It Protected By Copyright?**  
<http://librarycopyright.net/digitalslider/>
- **Mistake or Misdemeanor?**  
<http://learn.ancestry.com/LearnMore/Article.aspx?id=1557>
- **Stanford University Libraries – Copyright & Fair Use**  
<http://fairuse.stanford.edu>
- **The Copyright Quandary and Copyright Myths**  
<http://www.costcoconnection.com/connection/201304?pg=27#pg27>
- **The Practical (non-Legal) Guide to Curation and Copyrights**  
<http://blog.shareist.com/is-curated-content-a-copyright-issue/>
- **U.S. Copyright Office FAQs**  
<http://www.copyright.gov/help/faq/>