

# Copy That

Transcript for “Episode 1: How do you know if something is protected by copyright?”

## Series Intro

### **Omar:**

Welcome to “Copy That,” a series of short episodes focusing on copyright. “Copy That” is brought to you by Libraries Out Loud, a podcast produced by the University at Buffalo Libraries. In each episode of “Copy That,” we’ll answer some frequently asked questions about copyright. We’ll explain how you can better exercise your rights as a creator of copyright-protected works, and what your responsibilities are as a consumer of these works. We’ll also debunk some common myths related to copyright.

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**The content of the “Copy That” podcast shorts is not a substitute for legal advice. Always consult a legal expert for copyright issues.**

## Episode 1 Intro

### **Nicole:**

My name is Nicole Thomas, UB Libraries Undergraduate Education Librarian, and I’ll be your host for this episode of “Copy That.” Joining me today is our guest, Karlen Chase, Scholarly Publishing Specialist for UB Libraries.

Today we will discuss how to determine if a creative or scholarly work is protected by copyright.

- For example, what kinds of works are protected?
- What kinds of works are not protected?
- What is public domain?

## Episode 1 Body

First, what’s the most common question you get about copyright?

### **Karlen:**

From students, or faculty and staff?

### **Nicole:**

How about across all categories?

### **Karlen:**

The most common question is: “Can I use this image in my article, thesis, dissertation, slide presentation, or publication?”

This might seem like a simple yes or no question, and sometimes it is, but the answer to almost every copyright question is, “It depends.”

**Nicole:**

So, what’s the first consideration?

**Karlen:**

Well, first, you need to back up, and determine if the work in question is protected by copyright or not.

**Nicole:**

What do you mean by “the work?”

**Karlen:**

That term comes from U.S. copyright law. A “work” can be many different things. It can be a *literary work*, such as a poem, novel, or script, a scholarly publication, a letter, or email message.

Music consists of several kinds of works: A song is not a *literary work* but a *musical work*, and it’s important to note that a recording of that song is yet another kind of work. The *musical work* is the song’s musical composition and lyrics, and the *sound recording* of that song is another work that carries separate copyright from the *musical work*.

A “work” can also be a film, video recording, audio recording—like this podcast—or even choreography, if it’s captured via notation or video. Images such as photographs, paintings, illustrations, maps... are also considered “works.”

It’s a fairly long list.

**Nicole:**

Can you explain what makes a work protected by copyright?

**Karlen:**

Yes, there are three main concepts to keep in mind for copyright protection to occur:

- First, the work must be original and involve authorship.
- Second, the work must be fixed to a tangible medium. That just means something you can perceive, so it can be paper, a vinyl record, a CD, or it can be a hard drive or server, which means the entire internet is a tangible medium.
- And third, contrary to popular belief, a work does NOT have to include a copyright symbol or be registered with the U.S. Copyright Office to be protected.

**Nicole:**

Can you walk me through an example?

**Karlen:**

Sure, I'd be happy to.

When you take a selfie of you and your friends at a party, that photograph is an original work of authorship. The photograph, or *work*, is *fixed* in the gallery of your phone or you immediately post it to Instagram, both of which are *tangible media*.

You most likely don't post that photo with a little C in a circle, and you probably don't register your copyright of that photograph with the U.S. Copyright Office.

However, as soon as you fix an original work of authorship to a tangible medium, it's protected by copyright until 70 years after the year you die.

**Nicole:**

Wow! Until now, I've never associated death with the act of taking selfies.

**Karlen:**

Death is very big in copyright. It can determine when the copyright of a work expires. And because copyright is intellectual property, it can be inherited just like physical property.

**Nicole:**

What about an image I find searching Google Images? There's no author listed, no copyright symbol, and it's free. I can save the image to my laptop and insert it in my slide presentation. How is that protected?

**Karlen:**

Well, the internet is a tangible medium, so without any solid information, you must assume the image you found on Google is protected by copyright.

**Nicole:**

Okay. What if the image is not from the United States?

**Karlen:**

Most countries have intellectual property laws, such as copyright law, and the United States has several reciprocal agreements with multiple nations that require us to respect the copyrights of works created outside the U.S.

So, unless you can confirm with 100% certainty that the image you found by searching Google is in the public domain, then you must assume the image is protected by copyright.

**Nicole:**

Thanks, Karlen.

Earlier, you mentioned that most of the questions you get from students and faculty are about images that are protected by copyright.

If that's the case, why does the question of whether something is protected by copyright matter when you're using an image?

**Karlen:**

Well, the reason it matters is that sometimes an image is not protected by copyright. This is where the public domain comes in. Works can join the public domain several ways, for instance:

- 70 years after I die, all my original works of authorship will join the public domain, meaning the copyright on my works expires at that time.
- Another way a work can enter the public domain is if the work was created by an employee of the U.S. federal government - **not** state governments. These works are automatically in the public domain. BUT not all photos, for example, that you find on a federal government website were created by a federal employee, so you can't assume everything on a .gov website is in the public domain.
- Also, if certain formalities that were once required in previous versions of U.S. copyright law were not followed, then older works join the public domain that way.
- Finally, modern creators sometimes donate their works to the public domain by designating their work with a Creative Commons Zero mark...the next few episodes of Copy That will encompass using licensed works, and one of those will be a deeper dive into Creative Commons licenses and marks.

Essentially, if the image is part of the public domain, that means it is **not** protected by copyright and you can use the image however you like—in an article, thesis, or a dissertation. Knowing this can save you time.

This first consideration, or question to ask—*Is the work I want to use protected by copyright?*—we use this consideration for every copyright question, not just images.

If, however, you determine the image is protected by copyright, you move on to the second consideration. The second consideration is a topic we'll discuss in our next episode of "Copy That."

**Nicole:**

Besides works in the public domain, then, is there anything else that is not protected by copyright? I've heard that titles are not protected. Is that true?

**Karlen:**

Yes, short phrases like titles are not protected by copyright because they're too short to be original works of **authorship**.

*Slogans* for companies can be protected by trademark, which is a separate part of intellectual property law than copyright, but titles cannot be protected by copyright. Think of how many songs and books have the same titles over the years.

Other things not protected by copyright include raw numerical data, ideas, methods, and systems. I can't tell you how many times I've heard a person say someone stole their idea or title, but those things are not copyright-protected works.

**Nicole:**

What about something like...a recipe?

**Karlen:**

Recipes are an interesting area to consider, especially in an era of food blogs and Instagram accounts. A series of instructions to cook a dish is a procedure. The typical recipe is a list of ingredients followed by a numbered list of steps. So, recipes are not protected by copyright.

However, add a photograph, and the image is protected. The text of the recipe would have to have enough to make it an original work of authorship, which goes back to what we discussed earlier about what's required for copyright to occur in the first place.

**Nicole:**

Any other areas of interest?

**Karlen:**

Common symbols, like a heart or a star, aren't protected. Things that are "useful articles" aren't protected.

For example, a lamp that has a mermaid painted on its base cannot be protected by copyright because the lamp is a useful article. But the painted mermaid itself could be protected by copyright if it's an original work of authorship fixed to a tangible medium—the lamp.

**Nicole:**

To sum up, copyright is complex, and it's important to determine if something is protected by copyright before we consider using it.

**Karlen:**

Right, it certainly can seem complicated.

If you don't know how copyright occurs, then you can't understand how to use licensed works, fair use, or seek permission for use—all the other steps that come after this first one.

[Episode 1 Outro](#)

**Nicole:**

Thanks for sharing your expertise with us today, Karlen.

We hope you enjoyed this episode of "Copy That."

In the next episode, we'll discuss using copyright-protected works that are licensed for our use through UB Libraries online resources.