

Maine State Library's Transcript of:

*"Who Owns My Stuff and How Can I Share it?
An Introduction Rights Statements for the Digital Maine Repository."*

Video produced by the Maine State Library, August 1st, 2016

Voice Over (VO): Disclaimer: This is *not* legal advice.

[Music- Open]

Peggy (P): Hi and welcome to the Maine State Library video, "Who Owns My Stuff and How Can I Share it? An Introduction to Rights Statements for the Digital Maine Repository." I'm Peggy.

Kate (K): And I'm Kate, and we're librarians at the Maine State Library and we will be your guides on the somewhat confusing, but *very* important world of Rights Statements.

P: Guides, yes! Lawyers, no! Because, Rights Statements, like Copyright, are legal terms we want to be very clear that nothing in this video is legal advice.

K: That's right, we are here to give you our thoughts on best practices in this area. There are very few absolutes in copyright, and fair use.

P: Okay, now that that formality is over, let's get started.

VO: What are rights statements?

P: Rights Statements are designed to acknowledge the person or organizations that put creative energy into making the physical work: the book, photograph, map or whatever else it is you want to digitize. There are twelve Rights Statements, but since one of them is European only the State Library repository only uses eleven.

K: You will need to select the appropriate Rights Statement for each work that you add or will be intending to add to the Maine Digital Repository.

P: Don't worry about writing them all down, we're going to explain each one to you.

K: And we will provide links to further information though out the video and in the description. Generally, these rights statements allow you to recognize that a work is: in copyright, not in copyright, or even though you did a diligent search to find information you cannot make that determination.

K: It is always possible someone may challenge the choice you make. It rarely happens and can usually be settled by a discussion between the people involved. At times the rules are unclear your decision will be based on a risk assessment. The best way to reduce that risk is by applying best practices when applying rights statements from the start.

P: And just a note of practice, remember, just because you own an object *doesn't* mean you own the digital rights to that object.

K: But don't let this discourage you! People generally are very excited and willing to see their work get a new digital life.

P: Exactly, and depending on when the work was published, it might not even be an issue. Let's take a look at our first Right Statement.

VO: In Copyright.

K: This is the most common rights statement for works published in the 20th and 21st centuries. The creator (or publisher), which could very well be you, still owns the rights to the work. You can be assigned rights to digitize it by the owner of the copyright.

P: Generally this means the digital version you create cannot be sold. It also means anyone who wants to use the work has to ask permission from the holder of the copyright.

VO: In Copyright- Educational Use Permitted. Use is limited to educational purposes only. Money cannot be made off it.

K: This means educators do not have to ask permission from the copyright holders to use the work. The copyright holder is happy to have the material used for educational purposes, but does not want money made off of the work.

VO: In Copyright-Non Commercial Use Permitted. No money can be made off the submission. Copyright holder permission should be attained in writing when possible if the submitting organization is not the copyright holder.

P: This means you own the copyright or you have permission from the owner. Anyone who wants to use the work can use it without contacting the owner, but they can't make money off of it.

VO: In Copyright- Rights-Holder(s) Unlocatable or Unidentifiable.

K: This is an orphan works statement. An "orphan work" is a copyright protected work for which rights-holders are positively indeterminate or uncontactable. Some of the names of the originators or right-holders are known, yet it is impossible to contact them, because additional details cannot be found.

P: This statement is used where you are pretty sure that the work is in copyright, but after completing your research you cannot find the rights-holder. Some common example of why may be...

K: There is no information with the work, as to who the creator was, this is common with photographs, no names no dates.

P: The creator used a false name on the work.

K: The creator had a very common name and there is no other information to narrow the search.

P: The publisher who held the copyright has gone out of business and there is no record of a successor.

K: This is just a small list. In all of these cases there is the assumption that someone holds the copyright, and you have done in-depth research to find them but you cannot. Also, when using this statement it is important to *document* the research you have done. As in the future more information might come to light that would allow you to find the copyright holder.

VO: No Copyright- United States.

K: Because the work was published before 1922 or was published by a government agency anyone can use it in any way they want. This is also frequently referred to as being in the “public domain.” There are other works that will fall in this category, we will get into how to determine this later.

VO: No Copyright- Non-Commercial Use Only, No Copyright- Contractual Restrictions, No Copyright- Other Known Legal Restrictions.

P: There are three cases when even though a work is not in copyright it still has restrictions.

Non-commercial means it was created under a public/private partnership and the private partner holds the right to make any money off of it.

Contractual Restrictions means the organization creating the digital version has an agreement with the owner about how they will use it.

Other Known Legal Reasons is used when the other two don't quite fit the bill. In all three cases you need documentation of why you are using any of these statements.

VO: Copyright Undetermined. You're positive the work is in copyright, but unable to find proof one way or another. No Known Copyright. You're sure the submission is not in copyright, but you can't find proof one way or another.

K: These are two potential orphan works statements. Copyright Undetermined should be used in the situation that after your research you are unsure whether an item is even in copyright, but based on the information you were able to find the odds are still 50/50 as to if the work is in the public domain. And, No Known Copyright should be used when you are pretty sure the item is *not* in copyright, but you cannot find enough proof to be 100% positive. Also, when using these two statement it is important to document the research you have done.

VO: Copyright Not Evaluated.

P: This is a placeholder only. It should only be used if you absolutely have to submit a work to the repository. It should be replaced with one of the other statements as soon as possible.

K: Now we are going to look at some examples of how to apply the rules.

P: Remember, that neither Kate nor I are *lawyers*, but Kate has spent an awful lot time assigning Rights Statements to objects in the Digital Maine Repository.

K: Right, so I am going to explain how the Maine State Library made its choices about rights statements.

P: Let's start with three books.

P: Oh, that's a pretty paperback, bet it's still in copyright.

K: It is. It's "Governor Baxter's Magnificent Obsession: A Documentary History of Baxter State Park 1931-2006." It was published in 2008 by, The Friends of Baxter State Park and there is a clear copyright statement on the title page.

P: But it's already in Digital Maine?

K: That's because, the Maine State Library contacted The Friends of Baxter State Park by email and after a discussion, their Board of Directors granted the library permission to put it in Digital Maine. The rights statement is In Copyright – Non-commercial Use Permitted.

P: So, if an item is in copyright you can just contact the owner to get permission.

K: That's right, many writers and publishers are more interested in sharing their work than not, the worst they can say is, "no."

P: Why did they choose Non-Commercial instead of Educational use?

K: Non-commercial is broader than Educational. For example, a blogger can use material marked Non-Commercial, but would have to obtain permission to use material marked educational.

P: Okay, that makes sense. Let's look at the next one.

P: "The Journal of Zadoc Long 1800 to 1873." Zadoc Long... Oh, I know why I know that, it's the name of the library in Buckfield. Can they give us permission to digitize it?

K: They do have some of his journals, which are not included in this volume, which we have digitized and put up on Digital Maine, let's see. So, there is a clear copyright statement from 1943. Before we could digitize this we would have to see if Caxton Printers was still in business. For now this book has the status of Copyright Not Evaluated. We would not digitize it until we can change the status to either In copyright with the appropriate restrictions or if we can't find the publisher, author or heirs we could digitize it with In Copyright –Rights-Holder(s) Unlocatable or Unidentifiable.

P: Okay, good to know. What else do we have?

K: Let's see, "Maine, My State" by the Maine Writers Research Club.

P: Wow, that looks really old. Let's see, oh clear copyright statement.

K: But if you take a close look you'll see the copyright is from 1919, which makes this book in the public domain or No Copyright – United States.

P: How do you know which date is In Copyright or not?

K: Well luckily, there is a handy flow chart. It's from, "Is It In the Public Domain? A Handbook for Evaluating the Copyright Status of a Work Created in the United States Between January 1, 1923 and December 31, 1977" created by Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley Law.

P: Is *that* in the Public Domain?

K: It's from another organization called Creative Commons. Anyone can use it, but they must let their audience know who created it in the first place.

P: It really can be so easy to get permission to use things.

K: Exactly, now, there are three basic questions that you need to answer to determine copyright status. The first question is, does the work even qualify for copyright? To figure this out the work has to fall into one of the subject matters. They are: books, periodicals, lectures and sermons, dramatic and musical compositions, maps, works of art, reproductions of works of art, drawings or plastic work of scientific or technical character, photographs, prints and pictorial illustrations, motion pictures and photoplays, prints and labels used for articles of merchandise, and sound recording.

P: These seem really broad.

K: Yes, they are on purpose. Also, these categories have changed over time as law and technology have changed.

K: The second part of the question is kind of vague. For a work to qualify for copyright it has to be an original work of authorship which is fixed in a tangible medium of expression.

P: What does *that* mean?

K: Basically, it means that a work has to be fix, it has to be record in some way be it drawn on paper, recorded on film, written out in musical notation, etc. The work also has to be both original and creative. Meaning it cannot be copied from another work and cannot be exclusively made up of facts or processes. For example, lists and tables taken from public documents are not subject to copyright, nor are basic rules to common games and sports.

VO: Was it Published?

K: Is the material generally published? Were copies made available to lots of people?

P: Generally? Lots? Those sound pretty vague. Is this one of those, "you know it when you see it" terms?

K: Not exactly, but sort of. The questions to ask are how limited was the edition and could anyone buy a copy?

P: Can you give me an examples?

K: Sure, most books are obviously published, but if you write a bunch of poetry and put it in a binder and give it to your mom and grandmother, that would not be published. On the other hand, that same poetry, if you produce printed copies and sold them at the local book store, no matter how many copies were sold, that would be considered published.

K: The third question is where it gets very technical.

VO: *When* was it published?

K: There are five periods of time with different rules.

P: Six actually, but the first one is pre 1923. Things published before 1923 are no longer in copyright with exceptions to rare to worry about now.

VO: January 1st, 1923 to December 31st, 1963.

K: Works published during this period had to have proper notice given, registered their copyright, and renewed that registration for it to still be in copyright today.

P: Proper notice, what's that?

K: Basically, it's the copyright symbol or the words "in copyright," the first year of publication and who published it on the title page or the back of the title page.

P: There are lots more columns on that chart.

K: Yes, but the differences are more in where to find the mark on different formats like photographs and CDs than what the mark is. Works in this period are in copyright if they had original mark and the registration were renewed.

P: And if it didn't have them, it's not. You can bookmark this link to search the list of renewed registrations.

K: If the work was published, remember, this only applies to generally published works. There is one more thing to consider. The duration of copyright at that time was 95 years. So, each January 1st a new year enters the public domain.

VO: January 1st, 1964 to December 31st, 1977.

K: The only difference with this period is the copyright has automatically renewed.

P: Okay, that makes sense less work for the creator.

VO: January 1st, 1978 to February 28, 1989.

K: For this time span the change is in duration of copyright not renewal or notice.

P: No notice still means it's out of copyright.

K: Yes, that changes with the next time span. Starting in 1978 works cannot go into the public domain until December 31st, 2047 or 70 years after the death of the creator, whichever is *longer*.

VO: March 1st, 1989 to December 31st, 2002.

K: Copyright works doesn't need a mark or a renewal and the work remains in copyright until December 31, 2047, or 70 years past the creator's death.

P: Good news though, these copyright holders are most likely still alive and can be contacted for permission.

VO: Since January 1st, 2003.

K: This last time period needs neither notice nor renewal, but now you have to consider the date of the creator's death. Copyright ends 70 years after the last author of the work dies.

P: What if you don't know the author because the work was "anonymous" or if it was published by a business?

K: In that case the duration of copyright is 120 years since the creation of the work or 95 year since it was published whichever is *shorter*. Also, a big change in this time period is that these rules now also apply to unpublished works.

VO: But you can still ask!

P: Don't forget that the holders of copyright can choose for themselves.

K: Just because a work is in copyright doesn't mean that you can't digitize it. It may be digitized if you have permission or if you have made a reasonable effort to find the holder of the copyright to get permission.

P: Sometimes it's very easy to get permission. Let's say you have a book written by a local history buff and published by the local historical society. Simply ask them if you can have permission. Get it in writing, have a letter or something for your files. Also, if you've got a local newspaper clipping you can ask the publisher of the local paper, if you can use it.

K: The internet is a great resource in this process. Search the copyright holder's name, put it in quotes, add more information as you get it to help reduce the number of hits.

P: Be creative about who might own rights to the publication now. Your local librarian or the librarians at the Maine State Library may be able to help you.

K: Keep a record of what you have tried. This will be *especially* important if you use Copyright Undetermined, No Known Copyright or Copyright –Rights-Holder(s) Unlocatable or Unidentifiable

P: If you need more information you can give us a call but remember we're not lawyers.

K: We look forward to all the really interesting stuff you will send us.

[Music-Credits]

[Music-Outtakes]

P: (sighs) Okay, good to know. What else do we have?

K: “My Maine, My State,” by the Maine Writers Research Club.

P: Ooh, this looks *really* old and the copyright says clearly, “1919,” so, it’s still in copyright, right?

K: Well, let’s look closer. That copyright, is from 1918, so that would be in the public domain or No Copyright-United States.

P: (sighs) How do I figure out which date is in copyright and which isn’t?

[Laughter]

VO: You guys are so cute!

[Laughter]

VO: Alright, I want you to do it one more time.

[Laughter]

P: And not stare longingly into each other’s eyes?

[Laughter]

VO: Ummm

P: Bye, bye
