

Media Rights for Organizations

Consider Before You Create, Know Before You Share

Media is an important tool for many organizations. It can:

- clarify social problems
- communicate funding needs
- be released for entertainment
- create revenue

It is important to establish a clear (and clearly communicated) policy which covers media use and media creation by organizational staff and volunteers. Lack of such policies can lead to damaged relationships and legal liabilities.

Organizational Media Policy

Media Formats

Media comes in all sorts of formats today: *Audio, Visual, Textual (including databases and software), and Physical* (like carvings and sculpture). Media items can also be called *creative works*.

Ownership generally refers to possessoryship of the physical carrier of a creative work. For example, a library may own a copy of a book or a museum may own an original studio reel from a famous band. What an owner can do with what they own is sometimes dictated by rightsholders separate from ownership.

Ownership

Rights

Rights are government granted capabilities or government enforceable limitations. Regarding media, the most famous is **copyright**. However, other kinds of rights also exist and pertain to media. These include: *Privacy Rights, Personality Rights, Neighboring Rights, Moral Rights, Special Rights of Access, The Right to be Forgotten, The Right to Adjust a Record, Sui Generis Property Rights and Rights of Acknowledgment*.

It is important to consider the media your organization *uses*, as well as the media your organization *creates*. Organizational policy should clearly indicate who becomes the rightsholder of staff and volunteer created materials. In the USA, the legal doctrine *Work-for-Hire* says that by default the organization holds the copyrights to media created by staff and volunteers (see US Copyright office Circular No.9). The law also says that copyrights apply as soon as the work is created (US Copyright office Circular No.1).

Creative works like other kinds of property can have single rightsholders or multiple rights holders. When creative works have a single rightsholder or a single managing authority, licensing and use-decisions are much easier to make than in cases of shared rights holders.

Creative works can have layers of rightsholders. Books may have the text owned by one party, illustrations by a second, and the unified work by a third. In like manner, a song's lyrics may be held by one party and the music by a second party.

In the USA, the economic privileges of copyright are automatically reserved to a creator for a limited amount of time. These privileges are exclusively given to the creator, and they provide creators the legal capabilities to benefit economically from their work as listed below (from the US Copyright office Circular No.1).

Copyright

- **Reproduce** the work in copies or phonorecords.
- Prepare **derivative** works based upon the work.
- **Distribute** copies or phonorecords of the work to the public by sale or other transfer of ownership or by rental, lease, or lending.
- **Perform the work publicly** if it is a literary, musical, dramatic, or choreographic work; a pantomime; or a motion picture or other audiovisual work.
- **Display the work publicly** if it is a literary, musical, dramatic, or choreographic work; a pantomime; or a pictorial, graphic, or sculptural work. This right also applies to the individual images of a motion picture or other audiovisual work.
- **Perform the work publicly by means of a digital audio transmission** if the work is a sound recording.
- Copyright also provides the owner of copyright the right to **authorize others to exercise these exclusive rights**, subject to certain statutory limitations.

Impact Strategy

The automatic application of copyright to creative works lends itself well to organizations who seek to further their sustainability via the selling of creative works or license revenues. However, many organizations seek to create media for broad consumption and redistribution. The goal of these organizations is often social impact.

Several tools exist to support and facilitate broad impact – curtailing some of the automatic limitations of copyright law. The most well known of these is the set of creative commons licenses.

Creative Commons licenses (see linked website) when applied to a creative work allow a copyright holder to retain copyright and irrevocably release that work in a format which curtails some of the limitations normally imposed on copyrighted works. The four clauses in the set of Creative Commons licenses impact attribution to the original author, whether a work may be sold, whether the license also must apply to derivative works, and whether derivative works are permitted.



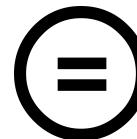
With Attribution



Non-Commercial



Share-Alike



No Derivatives

Public Domain Mark



The *Public Domain* is a conceptual space where legal ownership of copyrights no-longer exists. The exact nature of this space varies based on applicable national laws. Some works which are known to have no copyright claims on them are eligible for the Public Domain Mark.

Public Domain Dedication



Copyright holders who wish to forgo all encumbrances of copyrights and licenses can dedicate their creative works to the Public Domain with a Public Domain Dedication. The Creative Commons organization offers legal text for this designation as well.

There are ways to use copyrighted material without overt licenses. These include the legal strategies of *Fair Use*, *Implied Licenses*, and use-cases involving “orphan works”. Consult legal council to better understand your use-case and the associated risk of relying on these strategies in your organization.

Other Considerations

Further Resources and References:

1. Creative Commons License Chooser. <https://creativecommons.org/choose>
2. Lessig, Lawrence. 2004. “The Creative Commons*.” *Montana Law Review* 65 (1): 1–14. <https://scholarship.law.umt.edu/mlr/vol65/iss1/1>.
3. U.S. Copyright Office. 2019. Copyright Basics. 12/2019 ed. Circular 1. Washington, D.C: U.S. Copyright Office. <https://www.copyright.gov/circs/circ01.pdf>.
4. U.S. Copyright Office. 2012. Copyright Basics. 09/2012 ed. Circular 9. Washington, D.C: U.S. Copyright Office. <https://www.copyright.gov/circs/circ09.pdf>.
5. U.S. Copyright Office. May 2021. More on Fair Use. <https://www.copyright.gov/fair-use/more-info.html>



About the author: Hugh Paterson III has over a decade of experience working in large international nonprofit organizations. His experience includes media preservation, management, and strategic use. He researches public privacy policy and privacy law along with metadata applications for organizational operations. He has worked collaboratively to help refine organizational property policies and intellectual property preservation strategies. <https://hugh4.us>



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