

Copyright provides copyright holders with exclusive (monopolistic) control over their works, i.e. it encases works in shackles whether the author intends this or not. Although usually described as an affirmative right, copyright is better thought of in the negative, i.e. as a set of rules on what others may *not* do. Works not covered by copyright, either because they never qualified for copyright in the first place or because the copyright has expired (or occasionally has been abandoned) are said to be in the *public domain*. These works are free for all to use as they wish.

p. 433 **19.2.4**

The supposedly monopolistic rights that copyright holders control are in fact subject to various limitations that are intended to alleviate copyright bottleneck and allow for socially desirable uses, such as the special provisions for libraries and for the blind. One of the most significant of these limitations is what in the US is called 'Fair Use', a provision that allows reasonable use of a work without requiring permission from the copyright holder when obtaining permission would pose an undue and pointless burden on the person wanting to make use of the copyrighted work without commensurate benefit for the copyright holder. A scholar writing a book review, for example, would naturally want to quote passages from the book being reviewed. To insist that the reviewer go to the trouble and expense of seeking permission for every sentence or paragraph quoted in writing the review, which may likely help promote sales of the book, makes no sense. The essence of the 'fair use' limitation, which began as a judge-made rule of common sense, is now incorporated in US copyright law (17 US Code 107): '[T]he fair use of a copyrighted work...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.' In determining whether a use is 'fair use', courts look to factors such as whether the use is commercial or not, whether the copyrighted work is factual or creative, how much of the work is being used, and the impact of the use on the potential market for the copyrighted work. These are rough measures and no guidelines are provided as to how to weigh one criterion versus another. In the final analysis, fair use is a determination that the use was reasonable under the circumstances. The practical application of the fair use doctrine is thus fraught with uncertainty, but the principle, which is that limitations on the rights of copyright holders are built into the law to encourage creativity and scholarship, remains an important component of copyright law and not an odd exception thereto.

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p. 434 Copyright has characteristics of tangible property, which is why it is referred to as 'intellectual property'.³ Among these property-like features, the most significant for our purposes is the ability to be transferred, whether by sale or rent or gift or inheritance. When one sees a book with a notice such as '© Oxford University Press 2005', it is almost always the case that the publisher acquired the copyright by transfer from the then owner, i.e. the work's author or some subsequent copyright holder. It is rarely the case that OUP or any other publisher actually wrote the books whose copyrights it holds. Moreover, given that the duration of copyright is typically a person's life plus a certain number of years (see §19.3.4 below), it follows that the copyright holder(s) is/are eventually going to be someone or some ones other than the person who created the work, such as the author's widow or widower, the author's child or children or nieces or nephews, or some charitable institution to which the author left his/her estate.

19.2.6

The initial copyright holder is the creator, namely the person who wrote the article, composed the music, painted the picture, sculpted the statue, etc. In American copyright law this person is referred to as the 'Author' regardless of the medium.