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CHAPTER

19 Copyright and Other Legal Concerns

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Abstract

Copyright and other legal concerns are enumerated in this article. Fieldworkers normally think of copyright as something that they will have to deal with later when they have returned home and are involved in writing up and publishing, and not something to worry about when they are busy in the field with data and text collection, participant observation, or controlled experiments. At one time this may have been the case, de facto if not legally. But nowadays, when people are sensitive to the reach of copyright and the protection of indigenous intellectual property rights, failure by the linguist to pay attention to copyright concerns in the field could create unpleasant complications later, cause frictions for future researchers, and even present obstacles to using one's own research materials.

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19.1 Introduction¹

Fieldworkers normally think of copyright as something that they will have to deal with later when they have returned home and are involved in writing up and publishing, and not something to worry about when they are busy in the field with data and text collection, participant observation, or controlled experiments. At one time this may have been the case, de facto if not legally. But nowadays, when people are sensitive to the reach of copyright and the protection of indigenous intellectual property rights, failure by the linguist to pay attention to copyright concerns in the field could create unpleasant complications later, cause frictions for future researchers, and even present obstacles to using one's own research materials. That is why it was deemed important for this volume to contain a chapter on copyright and related intellectual property issues.

19.2 Copyright Basics

The key to being able to appreciate the application of copyright law to field situations is to have a basic understanding of copyright law, namely what it is and how it operates. Although a full explanation of copyright could take upwards of a thousand pages, it is possible to cut through the details and boil matters down to a manageable number of essential concepts and principles. Note that for the purposes of this chapter, I shall limit myself essentially to US law, which has a special status throughout the world due to the dominant role that the US plays in the production of intellectual property, with the understanding that its principles can serve as a guide to copyright requirements and operation wherever one is working.

19.2.1

Copyright deals with intangible mental products and not with the physical objects in which they are manifested. For example, suppose you buy a hardcover book consisting of five short stories by five different authors. As the purchaser you own the book. You can lend it to a friend, sell it to a used bookstore, donate it to a public library, or put it in the shredder. You can do these things because you own the book *per se*. But you do not own the copyright; and thus you cannot photocopy the book as a whole or any of the stories in it, nor can you make an inexpensive paperback version of the book for your class, nor translate the Spanish stories in the book into English (or the English stories into Spanish), nor do a public reading of one of the stories for your book club, nor turn one of the stories into a play for your amateur theatre group. Although you own the physical object, the book, the copyright in the stories belongs to others, and without their permission, you may not do the kinds of things just mentioned. The copyright to the individual stories belongs to the individual authors (at least initially), the copyright to the introduction belongs to the compiler(s)/editor(s), and the copyright to the book as a whole, which probably has its own copyright apart from the content, belongs to the compiler(s)/editor(s) or perhaps to the publisher (see §19.3.5 below). Only they, the copyright holders, have the right to exploit the content of the book, not you, the owner of the book in your hand.

p. 432 19.2.2

Copyright covers artistic and literary creations in the broadest sense of the term, including but not limited to literature, non-fiction writing, painting, sculpture, photography, motion pictures, dance, music, and sound recordings. It does not apply to ideas, scientific principles, inventions, procedures and methods, discoveries, facts, or real world historical or current-day incidents. Natural languages are not copyrightable. As far as intellectual property is concerned, languages are not owned by the communities that speak them, and thus native speakers have no legal basis for restricting access by others to materials written in or about their languages.²

Copyright also covers the organization, manipulation, and adaptation of pre-existing materials, whether those materials are copyrighted or not. For example, a translation of a work from one language into another has copyright even if it is of an old work that itself has no copyright protection. Similarly, an anthology or collection of poems or short stories or scholarly articles can have its own copyright, independent of the copyright status of the works included. For example, if you or your field assistants collect a large number of proverbs and organize them in some coherent fashion, that collection will be covered by copyright even though the individual proverbs themselves presumably are not. What this means is that other scholars can freely make use of any or all of the proverbs for their purposes without needing your permission, although they cannot copy or (re)publish the collection as a whole.

19.2.3

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.

19.2.5

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.

If more than one author is involved, the result is a joint work, where each author has equal rights with all of the others. There may be, and often is, unequal contribution to a work—one person effectively did two-thirds of the work and the other person did one-third (or one did a half, one did a quarter, and two others each did an eighth)—but from the perspective of American copyright law, each author has equal rights. What this means is that each author, even the one with the minimal 1/8th input, has full right to use the work to its fullest, including publishing it, without needing permission from the other co-authors. What a joint author may not do on his or her own is transfer the copyright to someone else or give it up entirely, which is to say, put the work in the public domain.

The copyright laws of some countries, particularly the US, allow an employer, whether an individual or a large corporation, to stand in the shoes of a creative employee and be treated as the initial Author. In US law, this is referred to as the Work Made for Hire doctrine (often shortened to the Work for Hire doctrine), a terribly inapt and misleading term. Other countries reject this legal fiction of employer as Author, but find other ways to allow the employer to benefit from the creative activities of his/her/their employees, notably by contract or by 'shop right' type rules.⁴ Nevertheless, the essential thing to keep in mind is that the default rule everywhere is that the individual creator is the Author, and that payment in and of itself does not necessarily change that fact. For the Work for Hire rule to apply, the person whose creative product is claimed by someone else must count as a real employee, narrowly defined, and not as a freelance worker commissioned to prepare the work. Thus, if you (for example) hire someone to write an anniversary song to celebrate that occasion, for which you pay a large sum, that does not make you the Author and thus copyright holder of the song. Given the essential property nature of copyright, you of course can contract to buy the copyright to the song if the composer is willing to sell it, but that is totally independent of the Work for Hire rule. Similarly, a granting agency, such as the National Science Foundation (NSF), that provides funds for your research, including perhaps your summer salary, does not thereby become the copyright holder of your creative products. As the source of funds, NSF or any other agency can impose contractual restrictions, requirements, and conditions on what you may or may not or must do with your research materials, such as insisting that results of the research be deposited in an open-access archive; but it cannot override copyright law as such, which says that as the creative party you are the Author and thereby the initial copyright holder.

19.2.7

Copyright is divisible. One normally uses the term copyright in the singular, but in reality copyright represents a bundle of rights, such as the right to copy, distribute, display, perform, or make derivative works (such as abridgements, adaptations, or translations). Each of these rights can be controlled, exploited, or transferred separately of the others.

19.2.8

Copyright comes from national law and not from international law nor from some universal natural law. Who is the copyright holder and what rights that person has and for how long come from specific laws of specific countries. The rights that creators have are limited to what the laws of that person's country say they have: no more and no less. In these days of globalization, it may seem surprising, but there is no such thing as international copyright law *per se*. There are international treaties, the most significant being the Berne Convention,⁵ which is adhered to by over 160 countries; but although Berne sets out detailed guidelines and minimum conditions and principles that member countries are required to adhere to, it is not international law as such. All copyright actions take place within a specific country in terms of the laws of that country including its treaty obligations.

The unfortunate consequence of the above is that one cannot provide a common set of copyright rules applicable to all field linguists. A German linguist doing research in Kenya whose results are published by SOAS in London would potentially be subject to German, Kenyan, and British copyright law—and where would one find an expert on all three?—and if infringement occurred in the US, the resulting legal case would be covered by American law.⁶ However, in reality, the copyright laws in different countries are essentially the same. They are not identical, i.e. they do differ in details, but generally speaking they are similar enough and have a sufficiently common starting point such that the description of one can serve as a basis for all of the others.⁷ Thus, although my discussion of copyright issues draws primarily on US law, my intention is that it will serve the needs of scholars whatever their nationality and wherever they may be conducting their research.

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Copyright tends to be thought of first and foremost in terms of economic rights—a perception that is encouraged by the widespread use of the term ‘intellectual *property*’. However, there also exist significant non-commercial interests and concerns relating to the honor and reputation of the author or artist and the integrity ↴ of the work. These non-economic interests are referred to as ‘Moral Rights’ (see Berne Convention, Article 6bis). Unlike economic rights, which are freely transferable, moral rights are treated as an extension of the author's personality and are inalienable.

Although this chapter is grounded in US copyright law, which has only recently incorporated moral rights and only to a limited extent in the case of the visual arts (see 17 US Code 106A), there are two good reasons for including a treatment of moral rights here. The first is that this is a case where the US is out of step with the rest of the world. Most countries of the world treat moral rights as an integral part of their copyright laws—a perspective that has become part of the Berne Convention. Thus non-American scholars and American scholars working abroad need to understand what obligations moral rights entail. Second, from the point of view of professional ethics, the rights included under moral rights seem to be fundamental and to deserve adherence. Even if US copyright law does not require it, one could argue that field linguists and other scholars have an ethical duty to respect authors’ moral rights.

As with general copyright rights, the scope and specifics of moral rights vary from country to country, but generally speaking, moral rights contain two components. These are (1) the right of attribution (or paternity), and (2) the right of integrity.

The right of attribution essentially means that the creator of a work has a right to be acknowledged as its author. If, for example, a traditional poet dictates poems in his own language and the field linguist later publishes the poems or significant parts thereof in a scholarly paper on tone or rhyme or what have you, the poet has a moral right to be mentioned by name. A corollary of the right of attribution is the right not to have one's name attached to a work if one didn't actually create it, or if the work has been so changed by others owning the copyright (e.g. an editor or a translator) that association with the work would be detrimental to one's reputation and professional standing.

The right of integrity protects works from distortion, mutilation, or destruction. For example, abridgements or editorial cleansing (e.g. removing profanity or sexual references or religious criticism) that changed the essential character of a work would constitute distortions that moral rights are intended to prevent. Similarly, the right of integrity would prohibit an individual or company from shredding the only extant copy of a potentially competing dictionary even if the copyright holder had bought the copy itself at a fair price and had paid handsomely for the copyright.

In sum, in conducting linguistic fieldwork one should be vigilant in looking out for the moral rights of the people with whom one works and treat these rights as if there were required by copyright law. The simple

test in all cases is this: if I were the author and this were my work, how would I like to be treated?

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19.3 Basics of US Copyright Law

The current US copyright law, which was adopted in 1976 and went into effect in 1978 (and subsequently expanded and modified by various amendments), is found in US Code 17.⁸ Rather than go over this step by step, I shall focus on essential matters that fieldworkers need to know to ensure that they personally have full use of research materials that they have collected and that they are in a position to make their materials available to others, whether through archiving, informal sharing, or publication.

19.3.1

Copyright is automatic. Although one often comes across the active verb ‘to copyright’, one in fact does not copyright a work. Rather a work becomes copyrighted (the stylistically despised passive being required), i.e. it acquires copyright protection whether one wants it or not. There are no formalities required, neither with regard to notice nor registration. One does not have to put © (or ‘copyright’) and one's name and date on a work for it to be copyrighted, nor must one register the work with the US copyright office.⁹ Formerly, US copyright law required explicit copyright notice on all published works or the copyright would be forfeited—quite a draconian system—but this requirement was dropped in 1989 when the US joined the Berne Convention, which states the principle of formality-free protection. It is still good practice to put a copyright notice on works. It is an explicit statement that you have an interest in protecting your copyright and it makes it clear to the world who the copyright holder is (at least at the time) and who can be contacted for necessary permission. Most major publishers do in fact put a copyright notice in their books on what is still referred to as the copyright page, namely the back of the title page, but lack of the notice does not invalidate the copyright or weaken its force.

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19.3.2

Copyright applies equally to unpublished works and to published works. If traditional poets have composed yet-unpublished poems, these poets have copyright over their poems (subject to one proviso discussed in the section below) even if they do not know it. Prior to 1978, the US had totally different legal regimes for published works (covered by federal copyright law) and unpublished works (covered by individual state laws), but this distinction has been eliminated, with all of the benefits and problems that this entails.

19.3.3

Copyright attaches to creative works the moment that they are *fixed*, i.e. reduced to ‘tangible form’. If poems are in someone's head, they are not copyrighted. This is true even if the compositions are complete from the poet's point of view, even if the poet recites them publicly, even if other people know the poems by heart, and even if everyone knows whose poems they are. But if a linguist were to take down the poems by hand, or record them on tape, or have the poet write them out, the poems would suddenly become copyrighted. At that point, without explicit or implied permission from the poets, who might have no idea that their works were now copyrighted, the linguist would have no right to translate them into English (or any other language) or to reproduce them in the original language in scholarly works that the linguist might prepare.

19.3.4

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Under US law, copyright for works created in 1978 or thereafter lasts for the life of the author (or last surviving author in the case of joint works) plus 70 years—an incredibly long time.¹⁰ In some countries, e.g. Jordan, it is life plus 50, in others, e.g. Mexico, it is life plus 100, but for all practical purposes, the copyright lasts so long, whichever country's laws are controlling, that it can be thought of as ↳ perpetual. The issue of duration is thus essentially irrelevant when it comes to the primary materials that a field linguist normally collects.¹¹

19.3.5

Copyright attaches to original creations.¹² To begin with, the work must be that of the putative Author and not something copied from someone or something else or something passed down through the generations. Folktales, traditional tunes, proverbs, or centuries-old aphorisms are not copyrightable. Second, a work must exhibit a modicum of creativity. The author doesn't have to be an e. e. cummings or Thelonious Monk or Stephen Jay Gould, but something more than trivial creativity is required. Thus simple conversations or a shopping list or an alphabetical list of the students in one's class would not qualify. Unfortunately there is no clear measure on how much creativity is required. Presumably a single dictionary entry, such as Hausa 'kàréé' = English 'dog', wouldn't qualify whereas a 10,000 word Hausa–English dictionary would; but how about a 100-word Swadesh list with simple equivalents in some previously undocumented endangered language? One presumably could view this as copyrightable creativity, but one could equally argue that such a list is empirical fact not qualifying for copyright even though collecting the list involved travel to some difficult location and the expenditure of considerable funds.¹³ Or consider the matter of folktales. Folktales, being part of a culture's shared tradition and not the composition of some identifiable human author, would appear to be excluded from copyright protection (but see WIPO 2010b). On the other hand, a creative rendition of a tale by a master storyteller could qualify for copyright. And even if the folktale itself or the performance of the folktale did not qualify for copyright protection, a sound recording of someone reciting the tale would be copyrighted and subject to standard rules regarding permissions, transfers, etc.

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19.3.6

Copyright conveyances are of two major types, which have related procedural requirements. For purposes of convenience, I shall call one 'transfer' and the other 'non-exclusive licence'. The prototypical transfer is the transfer of a full copyright from one person to another. This is what happens when, for example, Abel, an author and copyright owner, conveys his copyright to Baker, who thereupon becomes the copyright holder with all related rights and privileges, none remaining with Abel. A typical example is when a scholar assigns the copyright to her book or article to the publisher, whereupon a notice such as © 2000 Oxford University Press will appear on the copyright page and the scholar will later discover, much to her chagrin, that she needs permission from the Press to use her own book or article in her own research and teaching.

A lesser but still powerful transfer is the granting of an exclusive licence. The copyright holder retains the copyright as such (which may be an essentially empty shell), but gives someone else the exclusive right to exploit the work fully or in specific ways. For example, a copyright holder may give a publisher the exclusive right to exploit a work in every possible way, thereby retaining no rights although nominally remaining as the vacuous copyright holder, or the copyright holder can give some organization the exclusive right to publish Spanish translations of the work throughout the world, or give some company the right to distribute the work in particular countries or parts of the world, e.g. the Far East or Latin America. What is essential here is not the extent of the rights conveyed—they can be quite general or very specific and limited—but whether the rights are exclusive or not.

The other type of conveyance is the 'non-exclusive licence', which is just a fancy term for 'permission to use'. Here the copyright holder gives someone (or some group of people) permission to use the work, either

without restriction or in some limited manner, but this permission is not exclusive. For example, Cable, a copyright holder, may give three different colleagues permission to use his article in a course packet, where this licence does not preclude Cable from allowing other people to use the same article in their course packets or from using the work himself. Unlike copyright transfer, which always involves a specified recipient who is then the exclusive holder of the rights that were transferred, a non-exclusive licence can be offered to unnamed or unknown people or to everyone. If a scholar posts a draft paper on his personal website with an accompanying statement that anyone is free to download it or copy it for teaching or research purposes, that would be an example of a recipient-unspecified non-exclusive licence. This would allow anyone in the world to use the posted paper, but none of these people would thereby obtain a copyright interest in the work such that they would have the right or power to prevent anyone else from using the paper. Other frequently encountered non-exclusive licences with unspecified recipients are Creative Commons licences (see Garlick 2005), which are issued by copyright holders who want to share their work with others without limiting or specifying who these 'others' are.

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The two kinds of conveyances have a couple of very important procedural differences. To begin with, non-exclusive licences (i.e. permissions to use) need not be in writing. They can be oral or they can even be implied from a situation. For example, if someone dictates a text for you in connection with your linguistic research, the person normally understands that you are going to translate the text into English and therefore permission to do so is implied. Similarly, if you submit a book review to a journal, even in the absence of a contract or cover letter, the clear implication is that you have given the journal permission to publish the review in accordance with its normal publishing practice. Second, non-exclusive licences can be granted by any of the copyright holders, without the agreement or even the knowledge of the other copyright holders. If two scholars write a joint paper, either can post it on a website so as to allow friends and colleagues to copy it, make use of it, and incorporate it in their works without consulting or informing the co-author. From a professional point of view, this behaviour would be frowned upon, but from a copyright point of view, such actions are allowed.¹⁴

By contrast a transfer (= assignment of the copyright as such or an exclusive licence) must be in writing and signed by the copyright holder(s). One doesn't have to have a formal legal-looking printed form on velum or other elegant paper—courts have accepted rough memos on paper napkins or on the back of envelopes—and one doesn't have to have witnesses or guarantees by notaries or other officials, but there must be a writing accompanied by a signature. No exceptions or excuses are allowed. Second, the transfer must be agreed to and signed by all of the copyright holders. One person could sign on behalf of others if there were indisputable evidence that the person was authorized to do so, but, unlike in the case of non-exclusive licences, all of the copyright holders must agree to the transfer. The problem is that when field linguists get ready to publish a work and are dealing with a publisher who requires copyright assignment, as many do, if they haven't made proper arrangements in advance, they may find that they cannot get a proper response from fieldwork assistants who qualify as copyright-holding co-authors and thus cannot meet the publisher's contractual demands.

19.4 Co-workers in the Field: Who Owns What?

Field linguists depend on the good graces and assistance of speakers of the languages they study in order to conduct their research (see Newman and Ratliff 2001: esp. 2–4). The question is: what copyright interests do these people have in their contributions to the linguistic study, and what must linguists do to ensure that they have all the legal rights necessary to use the materials fully, to publish books and articles based on the research, and to archive basic data for use at a later time and by other scholars? Let us separate out five categories of native speakers involved in the fieldwork phase of a research project, with the understanding that one person often fills more than one role and that the roles themselves inevitably overlap with one another. I shall call these people (1) informants, (2) subjects, (3) text providers, (4) assistants, and (5) consultants.

19.4.1

Linguistic informants (often referred to euphemistically by the semantically inaccurate term ‘consultant’) are people who provide natural samples of their language and raw data about the language, involving things ranging from simple translation equivalents to transformational-manipulative processes to grammaticality judgements. The informant could be someone whose contribution is limited to a one-time ad hoc description of the names of musical instruments and their parts or someone who works with the linguist over an extended period of time. To the extent that the informant is providing facts about the language and examples thereof, i.e. is helping to amass facts, the informant has no copyright interest in or legal rights to the work. Copyright protects the expression of facts and ideas, not facts and ideas in and of themselves. As a matter of politeness and professional courtesy, the linguist ought to acknowledge the informant's contributions and give credit where credit is due, but this is divorced from intellectual property issues. From a copyright point of view, the linguist is free to utilize all of the data that he obtained from the informant, analyse them, put them in archives, publish them in scholarly articles or commercial trade books, etc., all without worrying about intellectual property rights that the informant might have.

19.4.2

Subjects are people whom the linguist studies by such means as sociolinguistic observation or phonetic/psycholinguistic experiment. If the linguist sprays ↴ someone's mouth with chocolate powder to make a palatogram, that person is a subject; if the linguist measures teenage students' reactions to colour charts in relation to their colour terminology, those students are subjects; and if the linguist sits quietly in the waiting room of a driver's licence bureau carefully jotting down observations regarding the frequency, manner, and situation of language shifting among the workers behind the counter and the many multilingual individuals coming in and out, those people are subjects. These subjects have no copyright claims on the notes and other materials that the linguist has amassed. If the linguist were to make an audio recording of the people's speech or to videotape their social and linguistic interactions, copyright issues still would not arise. The linguist still would have full control over the materials and full freedom to use them for her scholarly purposes. There very well could be privacy issues, especially where videos or photos are concerned, and the research would have to take into account rules and agreements with and obligations to the researcher's Institutional Review Board that handles Human Subjects Review, but copyright wouldn't present a problem.

19.4.3

By contrast, individuals who provide texts, whether simple narratives, oral history, folktales, modern poetry, letters written in the native orthography, or what have you, will in most cases qualify as the authors of those works and thus, as soon as they are written down, or fixed in any other tangible form, acquire copyright on those works. As indicated earlier, it is the author who obtains the copyright—without asking for it—even if the researcher commissioned the work and paid a considerable amount for it. The only question is whether that author's work is an original creative work that qualifies for copyright. If the text provider is simply repeating a traditional poem verbatim or has done no more than spoken a few lines of conversation, then the text might not meet the very minimal standards required for copyright protection. But if the work qualifies for copyright, the question of who initially owns the copyright to the work is usually straightforward, namely the text provider.

p. 445 How then can researchers assure themselves of the ability to use and publish these texts, which they may have gone to a lot of trouble and expense to collect because of their potential linguistic, cultural, or literary value? There are two main possibilities, which relate to the two kinds of conveyances discussed above. One approach would be for the linguist to have the text provider make a written transfer of his or her copyright to the linguist so that, from that time forward, the linguist would be the copyright holder. In the case of mundane texts provided for linguistic purposes, this seems reasonable and the text provider might be fully willing to do so given that the texts have no real value apart from the linguist's project. Placing the copyright in the researcher's hands so that the texts then had the same legal status as the rest of the linguist's corpus of materials would appear to be the most effective strategy. If convenient, the linguist could explain this arrangement to the text provider before the texts were collected, but the transfer could equally be done after the fact. In either case, a written document signed by the text provider would be needed.

In the case of stories, oral history, poetry, songs, etc., i.e. works that have some intrinsic literary or artistic value, the question is whether it really would be appropriate for the linguist to encourage the copyright holder to transfer the copyright leaving the person with no proprietary rights whatsoever. Even with the best of intentions, the idea of a linguist going to a field site as a guest and walking away as the owner of the copyright to the creative works of local poets and storytellers feels dishonest and exploitative. Moreover, the linguist has a duty to ensure that if such a transfer were to happen it would be made with informed consent, and, depending on the level of education and sophistication of the text provider, this could be problematic. The linguist could, of course, buy the copyright, which in some cases would leave everyone happy, but determining the fair value of intellectual property in an unequal power relationship involving individuals from distant countries and disparate cultures is not so easy.

The best solution in most situations when dealing with works having intrinsic literary or artistic value is for the linguist to get a broad non-exclusive licence from the text providers/copyright holders. Since, as we now know, a non-exclusive licence is nothing more than permission-to-use, this satisfies the researcher's needs while leaving the text providers with the copyright to which they are entitled. With written texts, the copyright holder could simply add a note at the bottom of a particular text or on a separate sheet of paper covering a number of texts giving the linguist permission to use. The statement could be formal sounding, e.g. 'I, Gorko Mbukulu, give Ms Sarah Smith, an American lady studying our language, permission to use my poem/story/parable/etc. in her work in whatever way she finds helpful'; or it could be as little as 'Sara, do with this what you want, [signed] Mbu.' (Sample permission letters are provided in the appendix to this chapter.) Note that even though the texts are written, the permission could be oral, e.g. a call to one's cellphone or a simple face-to-face conversation, although it is helpful if you have some means of demonstrating that the permission was actually given just in case a dispute were to arise. With recorded materials, the easiest and best practice is to have the text provider give permission on the tape itself, either at the beginning or the end of the audio or video recording. This way the text and the permission do not get separated and possibly lost.

The irony when it comes to research assistants, the fourth category of native speaker identified, is that the better and more effective they are, the more likely it is for copyright problems to arise. To the extent that they are simply involved in data collection or target language elicitation or tape transcription or secretarial-type services (such as making and filing 3 × 5 cards), their work does not reach the level that would legally qualify as copyrightable. But as they get more involved in producing linguistic works and not just helping with data, such as pulling together a proverb collection or in the compilation of a dictionary, they begin to metamorphose into joint authors with all of the legal copyright entitlements and claims that that entails. As mentioned earlier, someone who, for example, contributes 15 per cent to the preparation of a work, would still count as co-author with a half copyright interest in the work. The linguist does not (or should not) want to deny her assistant his due, neither in terms of recognition nor decision-making nor money. On the other hand, owning a copyright jointly with someone half way around the world is far from ideal, and is sure to create practical difficulties and potentially hard feelings. Much more sensible is to have the full legal copyright in the hands of the person who is best situated to exploit the work from a scholarly point of view, including activities such as archiving and publishing, which would normally be the linguist and not her field assistant. This can be accomplished in two ways, only the second of which I recommend.

If the assistant works for the linguist on a regular salaried basis for a set period of time, let's say six months or more, then the assistant's authorship would accrue to the linguist under the Work for Hire doctrine. That is, from a legal point of view the assistant would not count as an author and the problem of joint authorship would not arise. This seemingly simple solution turns out not to be as attractive as it appears. In the first place, not all countries have something in their copyright laws comparable to the US Work for Hire rule and so, depending on the linguist's nationality and the place where the research is being carried out, this provision might not be applicable. But even if the Work for Hire rule is in place, it is not so easy to establish that the assistant is an *employee*. Only employees are covered by the rule, not freelance individuals who are hired to do specific tasks of one sort or another. In the US, employees are easily identified as such by formal hiring processes, tax deductions, personnel office record-keeping, etc. But when a single linguist, not a big corporation, informally asks someone in a village to serve as an assistant, often on flexible terms, it's not so clear that the person providing the linguistic services is really an employee rather than a freelance contractor. Finally, even if one has a true Work for Hire situation, i.e. the linguist as employer is entitled to be considered the legal author of the assistant's work products, a publisher—or archivists with whom the linguist is dealing—might not be satisfied with the legal explanation and want to see relevant paperwork, which might not exist.

p. 447 The prudent step, therefore, is to eschew use of the Work for Hire doctrine and, operating as if the assistant were a joint author with a partial interest in the copyright, arrange for the assistant to provide a straightforward copyright transfer.¹⁵ As described earlier, this is not complicated: all that one has to do is make sure that the assistant's transfer of the copyright to you the linguist is in writing and signed. The easiest way to do this is to have the assistant sign a paper at the time he is hired stating that he thereby assigns any and all copyright to materials produced in the conduct of his work with you to you. Nothing fancy or formal is required, although it's probably a good idea to have more than a note on the back of a vocabulary card. This is not because that casual note wouldn't suffice, but because one has an obligation to make it clear to the assistant that what he is signing is serious and has legal consequences.

In the same way that you as author want to preserve rights when you transfer copyright to a publisher, your assistant's interests as joint author should be protected when that person transfers his or her copyright to you. Protection of the assistants' legitimate rights should be taken into account and incorporated into the transfer agreement if done at the end of the research period, or by means of an addendum if the copyright transfer were covered in at the beginning when the assistant was hired, and one really had no idea how extensive that person's contribution would turn out to be. In the written memo or note or form specifying

the copyright transfer, one definitely should spell out how financial proceeds are to be shared should one publish something involving single payment of royalties. You may think that the likelihood of ever earning anything of significance from your scholarly works is small, but it is good practice, and good personal and public relations, to officially acknowledge your assistant's claims to a portion of what you earn. For you, a \$200 check from a publisher for a book chapter drawing on your field research might not seem that much given the time and effort (rewriting and proofing, etc.) that preparation of the chapter required; but sending half of that to your assistant instead of pocketing it all yourself could have both symbolic and practical significance at the receiving end.

19.4.5

p. 448 The input of consultants is unlikely to present copyright ownership problems, whether one is talking about native speaker PhD linguists at a local university, expatriates with years of residence in the country, or elders in the community ↵ whose input and advice has proved particularly valuable. The role of consultants is to provide ideas, information, insight, leads, questions, and criticism. In so doing they are unlikely to contribute materials that would qualify for copyright protection. However, people who fill these roles as consultants have all experienced (or have heard stories about others) being 'exploited' and having had their ideas stolen by visiting American or European researchers; thus one should be extremely sensitive about perceptions, and be meticulous about meeting rules of social reciprocity and explicit or implicit financial obligations.

19.4.6

Before concluding this section, I need to reiterate that it has been restricted to copyright matters. Linguists in the field also have to be attune to social norms, personal expectations, and customary laws relating to traditional knowledge (e.g. ancient traditions, beliefs, and values) and aspects of traditional culture, whether language-based (e.g. folktales, word games, epic poetry), or not (e.g. signs and symbols, rituals, drawings, paintings, jewelry, designs, handicrafts), or both (e.g. vocal music or dramatic performances). The handling of secret, spiritual, and sacred materials raises questions of cultural sensitivity and professional responsibilities that go far beyond the confines of copyright law.

19.5 Getting Materials Back to the Field

Nowadays, most professionally responsible field linguists appreciate the need to make the results of their research available to the individuals with whom they worked and to members of the communities and countries where they lived. Whether this was an explicit condition of a visa or research permission, and whether the materials are to go back to the field site itself or to a university or research centre somewhere else in the country, we can assume that field linguists recognize the obligation to send something back. The linguist may send back actual copies of notes, reports, articles, or books, not to mention copies of sound or video recordings, or may make the results of the research trip widely available by other means. As anyone who has conducted field research knows, this seemingly simple professional imperative raises all kinds of practical, social, and ethical issues. I shall sidestep these sensitive matters here and leave others to deal with them. What I want to focus on are the copyright issues, so that at least that dimension can be taken into account. For convenience, I shall treat published works and unpublished works apart.

Generally speaking there are no copyright problems with regard to making copies of unpublished materials available to others. Either your works are not copyrighted, as in the case of rough field notes or data sets, or else you are the copyright holder and thus may freely make copies at your discretion. Even if you worked jointly with someone else who has a copyright interest in the works in question, e.g. a colleague, research associate, or field assistant, as a copyright holder, you may make copies of the work available to others without needing the permission of any of the other copyright holders. There are, however, two factors that you must keep in mind.

First, although you are free to behave as you want with regard to materials for which you have the sole copyright (or for which there is no copyright), your ability to share other people's works, where the copyright is not yours, or not solely yours, e.g. stories, poetry, or songs, depends on what copyright law applies and what agreements you have in place. If you recorded poetry by an indigenous poet, followed by transcription and translation, in the absence of a copyright assignment, the poet would own the copyright. Surprisingly, you could own the copyright to the translation but still not be able to make full use of it because someone else owned the copyright to the underlying work in the original language. You might have an explicit or implicit licence to use the poetry or story in your scholarly work, but you might not have obtained the right to make copies to send back and distribute in multiple form to the author's community or country. This could prove to be an unpleasant oversight where the researcher finds himself caught in the middle between local scholars, librarians, and archivists, on the one hand, who expect to have access to the full panoply of research materials, and indigenous poets, praise singers, and storytellers, on the other hand, who demand control over their artistic output in the home setting.

Second, even if there are no copyright problems to deal with, there may be contractual issues. For example, the research lab under whose auspices you did the research might have rules or embargoes on the external sharing of the materials, or the organization that funded the research might have archiving requirements and related conditions covering the distribution of field materials. These requirements are independent of copyright issues and have to be adhered to on their own terms.

19.5.2

The main difficulty with published works is that the publisher typically demands a transfer of rights as a condition of publication, such that the field researcher often relinquishes his or her ability to make full and free use of the work. The fieldworker may have been the initial author, and thus the initial copyright holder, but after publication may discover that she lacks the right to make copies to send back to the people where she worked, clearly an embarrassing situation. The solution is to anticipate the bottleneck before it happens and take steps in advance to alleviate the problem.

In the case of journal articles and chapters in edited volumes, the author needs to understand that he does not have to sign the preprinted contract but rather can preserve desired rights through sensible negotiation. Although publishers typically ask for copyright assignment pure and simple, they are becoming increasingly aware that they do not need all of these rights and that they can function just as well by being author-friendly. For example, *Language*, the flagship journal of the Linguistic Society of America (LSA), has a very progressive Author's Agreement which allows authors to retain a large number of important rights.¹⁶ However—and this was probably an oversight—the agreement does not include a provision allowing fieldworkers to make copies of their articles to send back to their field sites. Fortunately, even if the publisher hasn't anticipated authors' needs in the boilerplate agreement, most are now open to contractual adjustments on an ad hoc basis. Thus, if the author writes and says, 'I would like to be able to make copies of my article in paper or electronic form (e.g. PDF or Word) to share with field assistants and colleagues and

educational institutions in country X', the request will often be granted without great fuss. Adjustments are sometimes more difficult in the case of journals than with edited volumes because the publisher may have a fixed policy and set legal document for all of its journals, which it does not want to play with, but even here reasonable requests often result in contract modifications.

p. 451 In recent years there has been a movement, led by library organizations such as SPARC¹⁷ and followed by university consortia, to encourage authors to use a preset, institutionally endorsed Author's Addendum, which presents publishers with wide-ranging demands, usually phrased in an unnecessarily hostile manner. Not surprisingly, the results have been far from successful, although the movement has captured the attention of publishers who have sometimes made pre-emptive changes in their copyright policies to forestall conflicts with their authors. Although the idea of having a common Author's Addendum drawn up by copyright specialists may sound good, in my view, better practical results have been achieved by authors acting on their own who have made reasonable requests which they are able to justify on the basis of concrete circumstances and real scholarly needs. In the final analysis, the protection of the legitimate rights of authors will depend on concerted action by professional societies, not by individual scholars working on their own.

Most often, the Author's Agreement (= publishing contract) that scholars receive when their papers are accepted for publication comes from the business office rather than from the academic editor(s). Nevertheless, it is useful to contact the editor(s) and seek their support and intervention in requests for contract adjustments. This is especially recommended in the case of edited volumes, where many of the contributors may be junior scholars without much power, whereas the editors may be senior scholars with international reputations with whom the publisher has a business incentive to want to remain on good terms.

The previous discussion relates to traditional journals (and edited volumes). Nowadays, there is another option which may make some of these problems moot. Here I am talking about Open Access journals. These journals, which are increasing in number and reputation and professional significance, are distributed online on the web and made available worldwide without subscription fees. This means that people in the field site country who have computers and internet connection, which is increasingly becoming the norm, and who wouldn't have had access to subscription-based print journals, can immediately get hold of a researcher's writings—in fact at exactly the same time and as easily as people in America, Europe, or Japan. Thus the field researcher is able to satisfy his professional obligation to get information back to the field without any extra effort or negotiation and possible conflict with the publisher. It may be that a scholar has other, well-founded reasons for choosing to publish in a traditional journal, but all things being equal, the field researcher concerned about making materials maximally available needs to keep relevant Open Access journals in mind.¹⁸

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When it comes to publishing results in book form, the approach has to be somewhat different. There are two good ways to try to make your book maximally available in the country (or countries) where the field research was done. One technique is to retain publishing rights in that country and not give them to your publisher. For example, if you did your research in Tanzania, you could give your American or European or Australian publisher full rights *except for* Tanzania, whereupon you could arrange with a local publisher to put out the work in an inexpensive paperback format. Although an established press might insist that they always get world rights for the books they publish, you can easily convince them that they don't know how to sell books in Tanzania, for example—which is to say, they financially would lose nothing by acceding to your wishes.

The other thing that you can do is make a better arrangement for buying books to give away to deserving people in your field site or country. For example, whereas most publishers allow authors a 30 per cent or 40 per cent discount on books purchased for personal use, you could try to negotiate a discount of, let's say 50

per cent for a specific number of books intended to be donated to people and institutions in the field research country. Even at a 50 per cent discount, the amounts can add up—ideally, funds for buying books to give back should be built into field research grants—but this is a small price to pay for the generosity of the people with whom you worked.

19.5.3

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The PhD dissertation has a special status, which doctoral student researchers should be aware of and think about. Most American universities require that dissertations be submitted to University Microfilms International (UMI), now part of a large information company called ProQuest, which handles public sale and distribution of theses. UMI does not, however, require assignment of copyright, which remains with the author. Thus if the author wants to make his work freely accessible to anyone and everyone, he can upload the dissertation on a personal or departmental website. Moreover, many universities around the world now have open-access digital repositories which will house PDF versions of their students' PhD dissertations and make them discoverable, and this is often a sensible way to make this information available. Alternatively, if the author is willing to pay a small fee, UMI offers an open access option that allows interested readers to get hold of the dissertation for free through UMI itself. Another possibility, if the author would like to make the thesis available in the host country, but not necessarily to everyone without restriction throughout the world, would be to make copies of the dissertation to send back on computer disk, with the idea that some enterprising person in the field site country could print out copies on demand.

Finally, given the traditional idea that a dissertation is supposed to be an academic product that contributes to human knowledge, and not a student's personal property, one could argue that all dissertations should be in the public domain. That is, when it comes to dissertations, there should be a policy not only of open access but also open use. Since it is the student and not UMI/ProQuest who owns the copyright, there is nothing stopping a new PhD copyright holder from dedicating the copyright on the thesis to the public. There could be a brief delay, of let's say seven years, during which time only the student would have the opportunity to exploit the material in the thesis in whole or in part, but thereafter, the work would enter the public domain and be available for anyone to enjoy and benefit from. That is, using the oft-cited words of US Supreme Court Justice Louis Brandeis, the thesis would then be 'as free as the air to common use' (*International* 1918: 250).

19.6 Conclusion

Linguistic fieldworkers are not trained to know copyright law any more than copyright lawyers are trained to do phonetic transcription or carry out sophisticated morphophonemic analysis. Nevertheless, copyright and other intellectual property matters do impinge on the ability of linguists to carry out their research fully and to meet professional and ethical obligations, and thus some degree of familiarity with the principles of copyright is essential. Providing that basic exposure to copyright principles and practice has been the goal of this chapter. No field linguist can be expected to understand or solve every intellectual property difficulty that might come along, but the hope is that this overview will alert linguistic fieldworkers to the nature of copyright so that they can anticipate problems, make necessary preparations, and have a good idea as to when they need to seek legal help.

19.7 Further Reading

Useful brochures about copyright law can be found on the website of the US Copyright Office

(<http://www.copyright.gov>). A number of American universities, especially Cornell, Duke, Maryland, and Stanford, have extremely helpful copyright web pages, but the one that I would recommend most is that of the Copyright Advisory Office of Columbia University (<http://copyright.columbia.edu/copyright/>).

Another good source of information is WIPO's web page *Basic Notions of Copyright and Related Rights* (WIPO 2010a). The best comprehensive one-volume treatment of copyright law is Leaffer (2010). Strong (1999) is less detailed and now somewhat out of date, but it is still very reliable and, for the non-lawyer interested in the subject, much easier to read than Leaffer. Useful works focusing on copyright in an academic setting are Crews (2006) and Lindsey (2003). A discussion of copyright with specific reference to issues that confront linguists is found in Newman (2007). Information regarding the important Creative Commons organization can be obtained from their website (<http://www.creativecommons.org>) and from the informative article by Garlick (2005).

19.8 Appendix. Sample Forms

[Disclaimer: The following are examples of the *kinds* of consent forms that one could use in a fieldwork setting. These are not legal documents and should not be interpreted as such. Whether they are suitable or not will depend on the nationality of the researcher, the laws of the country in which he or she is working, and the specific circumstances involved.]

I. Copyright assignments/transfers (Must be in writing and signed.)

a. Research assistant

My name is _____. I have been [or will be] working as a paid research assistant for Amy Apfel, who is doing a study of the X language. I hereby assign to Ms Apfel any copyright interest that I may have in lexical, grammatical, textual, or other materials produced in connection with this research project. She agrees to acknowledge my participation in the project as professionally appropriate in any of her published works.

Signed _____ Date _____

b. Occasional freelance worker

My name is _____. I am a teacher in the XYZ Advanced Teachers College. During vacation times, I helped Baron Barker, who is doing a study of the Y language. Specifically, I translated eleven folktales and fifty proverbs from our language into English. I hereby assign my copyright in these translations to Mr Barker so that he can use them for scholarly purposes. [Optional: However, if he should earn money from works containing these translations, he agrees that I am entitled to 50 per cent of whatever he gets.]

Signed _____ Date _____

c. Poet

My name is _____. I am the author of the following poems written in the Z language: [list by title]. I hereby give Cathy Cantor the exclusive right to translate these poems into English, to publish the English translations, to post them on the web, or to use them for other educational or scholarly purposes. I also give Ms Cantor permission to use the language Z originals of my poems in scholarly works, but only if they are accompanied by the English translations. I hereby acknowledge receipt of \$200 as payment for the transfer of these rights.

Note that I retain copyright in these poems and that this transfer of rights only belongs to translations into English. I reserve rights over translation into Spanish or other languages, and I also reserve full rights to publish or perform my original poems in language Z here in Peru or anywhere else in the world.

Signed _____ Date _____

II. Copyright Permission (non-exclusive licence) (can be oral, e.g. on a tape recorder, or can be written)

d. Traditional storyteller (oral permission)

My name is _____. I am a tailor by trade. I live in psq quarter in abc town. I am about to recite [or I have just recited] a number of stories into a tape recorder for Donald Deutsch. I hereby give Mr Deutsch permission to write these stories down, to translate them into any other foreign language, and to make use of the stories in the original or in translation in his studies of our language.

[If this statement is made in the original language, it is best to have a translation provided on the tape, although a separate translation note added later will do.]

p. 456 **e. Educated friend (informal written permission)**

To Evelyn Edwards from your friend Jacques Junaidu. As a former classmate at UCLA, I am happy to allow you to use my autobiography written in language G in your PhD dissertation and in any other studies of the language that you might write. However, (a) I do not want you to deposit the autobiography in any archive since I may want to do that here in Yaoundé; and (b) in exchange, if you should translate the autobiography into English, I would expect you to provide me with a copy of the translation and allow me to attach it to my original version for my own scholarly and personal uses.

Signed: Jack

Notes

- 1 In preparing this chapter, I was extremely fortunate to have received detailed comments and constructive suggestions from Ms Brigitte Vézina, an intellectual property expert who works with the World Intellectual Property Organization (WIPO). I would like to express my utmost gratitude to her for her careful reading of my paper and her incisive observations. Nevertheless, the opinions, interpretations, and substantive statements about copyright law expressed in this chapter are my own. Neither Ms Vézina nor WIPO endorses nor should be held responsible for anything said here.
- 2 This does not prevent native speakers or well-intentioned linguists (e.g. Maxwell 2004) from making such claims, nor does it prevent fearful publishers from giving in to threats and pressures from language-speaking communities; see e.g. the unfortunate story in Hill (2002). But from the perspective of American copyright law, these claimed rights are more accurately characterized as social *interests* and cultural *concerns*, and not legal rights. Of course traditional peoples do have a valid interest in protecting their 'intangible cultural heritage' from exploitation by the rich and the powerful, but

that is a different story. A proper discussion of issues involving respect for and protection of traditional knowledge (TK) and traditional cultural expression (TCE) would require a full chapter on its own at the very least, see Brown (2003); UNESCO (2003); Story, Darch, and Halbert (2006); WIPO (2010b; 2010c).

- 3 The term 'intellectual property' is strongly disliked by progressive scholars who decry what they view as the commodification of culture (see e.g. Lessig 2004; Porsdam 2006; Vaidhyanathan 2001). In this spirit it would be preferable to refer to the person having a copyright as the copyright *holder* rather than the copyright *owner*; nevertheless, the phrase 'copyright owner' is so well established and commonly used that it makes no sense to go out of one's way to avoid it if the alternative creates stylistic infelicities. The other thing to keep in mind about intellectual property is that the scope of this concept is much broader than merely copyright. Copyright is a subcategory within intellectual property, which also includes, patent, trademark, trade secrets, etc.
- 4 'Shop right' is a doctrine in patent law that grants employers a non-exclusive licence to make use of employees' inventions created on the job without requiring extra payment or special permission.
- 5 The International Convention for the Protection of Literary and Artistic Works, usually referred to as the Berne Convention, was created back in 1886. Original signatories included Belgium, France, Germany, Italy, Spain, Switzerland, Tunisia, and the United Kingdom. Remarkably, the US didn't join until 1989, and even now does not adhere to all of the terms of the Berne Convention, US law, for example, still not fully enforcing the principle of authors' 'Moral Rights' as spelled out in Article 6bis, and discussed here in §19.2.9. The full text of the Berne Convention can be found on the website of the World Intellectual Property Organization (WIPO), see <http://www.wipo.int/treaties/en/ip/berne> , a specialized agency of the United Nations which has the responsibility of promoting and developing a 'balanced and accessible international intellectual property (IP) system' covering patent, trademark, and other types of IP in addition to copyright.
- 6 The way the Berne Convention works is that a country generally must give protection to copyright holders of all member countries on at least the same terms it accords its own citizens. It does not have to enforce the laws of the source country and normally does not. Let me illustrate with reference to the complex matter of duration. Copyright protection in Mexico lasts for the life of the author plus 100 years; in the US it is life plus 70 years. An American court adjudicating an infringement case involving a Mexican copyright will thus limit the copyright's validity to the US prescribed life plus 70 and ignore the life plus 100 duration specified under Mexican law. Similarly, under American law, a Jordanian work will have a term of life plus 70 even though the copyright term in Jordan is life plus 50. However, in both of these cases, the Berne Convention permits the US to apply the original country's duration if it wanted to do so, which would result in giving more protection to the Mexican copyright and less protection to the Jordanian copyright than the US accords its own citizens. In fact, the US has chosen to ignore the different durations of foreign countries and has opted to apply life plus 70 across the board.
- 7 Having an essentially common copyright regime throughout the world presents many advantages. However, members of the CopySouth group, see <http://www.copysouth.org> , take the position that the copyright laws of most developing countries of Africa, southeast Asia, and Latin America were taken over uncritically from the laws of European, particularly formerly colonial, countries even though these laws as written appear to be contrary to the best social and economic interests of these poorer countries (Story 2009; Story et al. 2006).
- 8 This copyright code is available in full at the United States Copyright Office website <http://www.copyright.gov> or at the Cornell University Law School website <http://www.law.cornell.edu/uscode/17> .
- 9 Formal registration actually bestows numerous legal benefits, registration, for example, being a precondition to filing suit for copyright infringement; nevertheless, it is not a condition of copyright *per se*. Moreover, registration is always possible at some later date and need not take place when a work is first produced or first published. This schizoid approach to registration—it is not required, but you had better do it!—reflects a far from satisfactory compromise between the US tradition of (and strong preference for) registration and the Berne Convention principles which forbid formalities as a requirement for copyright.
- 10 The initial author remains the measuring life for duration purposes even if, as is normally the case, the copyright has been transferred to someone else, either during the author's lifetime or later. With works where the author's life cannot be determined, e.g. anonymous items or works where a company counts as author under the Work for Hire doctrine, copyright duration is specified in terms of a set number of years, which in the US is currently 95 years from the date of publication or 120 years from the date of creation, whichever comes earlier. Some countries have different copyright durations for different classes of works, e.g. one duration for books and another for motion pictures. In the US, the duration is the same regardless of the medium or type of work.
- 11 The issue of copyright duration, however, remains a factor if the linguist wants to make use of handwritten manuscripts or other older sources. The basic term for pre-1978 publications is 28 years potentially renewable for another 67, with different duration rules applying to foreign works and to unpublished works. Determining whether older works are still covered by copyright or are in the public domain and thus available for free use turns out to be an extremely complicated question; for such matters the linguist is well advised to seek the help of a copyright professional.

- 12 There exist categories of works that do involve originality and creativity, but which under US law have been explicitly excluded from copyright coverage, e.g. brief phrases, titles of works, and typefaces (but not computer fonts, which are copyrightable). Also excluded are all works of the US Government and state constitutions, statutes, and judicial opinions.
- 13 The amount of time and effort involved in creating something is irrelevant in American law, which rejects the concept of copyright based on the 'sweat of the brow' (see *Feist* 1991). It seems counterintuitive, but data that required a year's worth of hard work to amass might not be copyrightable whereas a letter to the editor of a scholarly journal that took an hour to write would be copyrighted.
- 14 The only legal requirement is that if monies are involved, e.g. someone pays one of the co-authors for permission to include the joint article in a collected volume, the co-copyright holder who is operating unilaterally must provide an accounting and sharing of proceeds with the other copyright holders on an equal basis.
- 15 There are actually legal consequences of getting the copyright initially as employer-Author under the Work for Hire doctrine and getting the copyright from the initial author by copyright assignment, different advantages accruing in the different cases. Although this would make a challenging question in a final examination in a law school copyright course, the differences are inconsequential for most purposes and we need not go into them here.
- 16 Section 4 of LSA's 'Publication Agreement and Transfer of Copyright' for *Language*, which I helped draft, provides considerable protection for authors' rights:

'4. The AUTHOR of a work published in *Language* shall retain the following rights: a. the right to include the Work in a thesis or dissertation; b. the right to expand the Work into book-length form for publication; c. the right to include the Work in a compilation edited by the AUTHOR or in a collection of the AUTHOR's own writings, whether edited by the AUTHOR or by someone else; d. the right to reproduce and distribute the Work to students in a course taught by the AUTHOR; e. the right to present the Work at a conference and to hand out copies of the paper to persons attending the conference; f. the right to deposit the Work in the AUTHOR's institutional repository or other noncommercial scholarly archive subject to a two-year embargo from the time of publication.'

[The perceptive reader may ask on what basis could someone writing this chapter (in this case me) include the long quotation just presented? To this question, which can serve as a test to see whether readers of this chapter have captured the essence of US copyright law, there are at least three possible answers. The first is that I might have sought and received permission from the LSA, permission always being a good solution when one wants to use copyrighted materials. The second is that since I helped draft LSA's Publication Agreement, I qualified as a joint author, and thus co-copyright holder, who thereby had the right to use the material as I pleased (see §2.6 above). The third is that citing a standard author's agreement for a scholarly article falls within the range of 'fair use', for which permission from LSA was unnecessary (see §19.1.4 above).]

- 17 SPARC is the acronym for The Scholarly Publishing and Academic Resources Coalition, see <http://www.arl.org/sparc/> . Although SPARC undoubtedly means well and cares about the welfare of scholars and academic institutions, my personal view is that its aggressive activism and distorted propaganda has shown it to be naïve and wrongheaded when it comes to important political and policy matters affecting academia.
- 18 The Directory of Open Access Journals <http://www.doaj.org> currently lists close to 7,000 open access journals in existence. Since the DOAJ is not aware of all journals that are published on an open access basis, and since open access journals continue to be launched at a rapid rate, their listing could be off by as much as 100%: the number of such journals could easily be in the 8,000 journal range. Good peer-reviewed open access journals differ from traditional journals only in the means of production and distribution and not in matters of editorial policy or in scholarly standards. As a result, the initial resistance by scholars to publish in unproven open access journals is wilting away. In the case of field linguistics, what is arguably the top journal in the field, *Language Documentation & Conservation* (<http://www.nflrc.hawaii.edu/ldc/>), is an open access journal.