

p. 440

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.

p. 441

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