

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.<sup>8</sup> 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.<sup>9</sup> 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Copyright applies equally to unpublished works and to published works. If traditional poets have composed yet-unpublished poems, these poets have copyright over their poems (subject to one proviso discussed in the section below) even if they do not know it.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