

COPYRIGHT & UNPUBLISHED MATERIAL IN AHC COLLECTIONS: AN INTRODUCTION TO WHAT RESEARCHERS NEED TO KNOW.*

The U.S. Copyright Law (Title 17, United States Code) governs, among other things, 1) the making of photocopies or other reproductions of copyrighted material; 2) the use of copyrighted material in other “works”—research papers, published books and articles, web pages, displays and exhibits, plays, songs, etc.

The copyright law distinguishes in many ways between unpublished and published material. It is important to note, however, that **unpublished material generally enjoys MORE copyright protection (longer and in some respects more stringent) than published material.**

How can you tell if something is published or unpublished? The law defines “Publication” as the distribution or offering for distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. Congress defined “to the public” as distribution to persons under no explicit or implicit restrictions with respect to disclosure of the contents.

- Generally, material for which only one or two copies exist (for example, a handwritten letter, a typewritten letter and its carbon copy, a family photo) is unpublished because it was not intended for public distribution.
- As Congress defined “to the public,” even mailing a letter (or sending a photo) to a family member or friend does not constitute publication; nor would circulating the minutes of a meeting to the members of a board; nor, in most instances, would the distribution of a newsletter to members of a private organization.

Unpublished material may be found throughout the collections at AHC. However, the **Manuscripts** and **Photo** collections, in particular, are **almost entirely unpublished**. On the other hand, the Hebard, Rare Book, and Moving Image collections consist mostly of published material.

Important Facts about Unpublished Material

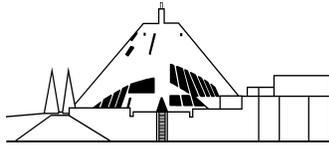
There are five very important facts to be aware of regarding copyright, for anyone doing research in the AHC’s manuscript collections:

- Virtually **ALL** unpublished material in the manuscript and photo collections **IS COPYRIGHTED**.
 - The simple act of recording information in a “fixed medium” is sufficient to establish the creator’s copyright in unpublished material under U.S. law—no “copyright statement” or © is necessary.
 - As amended in 1999, **copyright law protects copyright in unpublished material for the life of the author plus 70 years**—with the important proviso that **no unpublished material will enter the public domain until January 1, 2003 at the earliest**.
 - Some categories of *publications* are in the public domain; that is, their use is not protected by copyright law: 1. Publications more than 75 years old. 2. Publications that do not include a copyright notice and were first published before January 1, 1978. 3. Most United States government documents.
- The fact that the AHC owns unpublished material **DOES NOT MEAN THAT THE AHC ALSO OWNS COPYRIGHT**. Copyright exists independently of the physical material, and must have been explicitly transferred in writing.

- Even when a donor does transfer his/her copyright his/her collection to the AHC, the AHC may not own copyrights in most of the collection—because the donor owned copyright only in material he/she created. For example, Jane Doe owns copyright in the carbon or photo copies of her outgoing letters, because she created them. She also owns copyright in personal snapshots she took. However, she does not own the copyright in letters and photos sent *to her* by family and friends (though she does own the letters and photos as physical items). If Jane Doe donates her letters and photos to the AHC and transfers her copyright, the AHC will only acquire copyright in the letters Jane Doe wrote and the photos she took. **Therefore, in almost all cases, the AHC does not own incoming letters, and collected material (such as clippings, newsletters, circulars) in a manuscript collection.**
 - In addition, prior to 1974, the AHC rarely sought transfer of copyright in unpublished material it acquired
 - Some unpublished material acquired since 1974 were donated by individuals or organizations who did not themselves own copyright in *any* of the material, and therefore could not transfer copyright to the AHC.
- Copyright law provides libraries with a limited authority to make copies of material for which the repository does not own copyright. In particular, repositories are authorized to furnish a photocopy or other reproduction of copyrighted material to researchers so long as **the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research."**
 - Purposes that would exceed the limit of copyright law include (but are not limited to) print or web publication, exhibits or displays, plays or songs, or distribution of additional reproductions.
 - **The AHC reserves the right to refuse to accept a duplication request if, in its judgment, fulfillment of the request would involve violation of copyright law.**
- The copyright statute does provide that the "fair use" of a copyrighted work by a library patron is not an infringement of copyright. This "fair use" doctrine allows limited use of copyrighted works for educational and personal purposes, "such as criticism, news reporting, teaching..., scholarship, or research."
 - The law lists four factors to be evaluated in determining whether a particular use of a copyrighted work is a permitted "fair use": 1) the purpose and character of the use, including whether such use is of a commercial nature; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and 4) the effect of the use upon the potential market for or value of the copyrighted work. The U.S. Copyright Office (<http://lcweb.loc.gov/copyright/fls/fl102.pdf>) puts it this way: "The distinction between 'fair use' and infringement may be unclear and not easily defined. **There is no specific number of words, lines, or notes that may safely be taken without permission.** Acknowledging the source of the copyrighted material does not substitute for obtaining permission."
 - In response to the question "Could I be sued for using somebody else's work? How about quotes or samples?" the U.S. Copyright Office further advises: "If you use a copyrighted work without authorization, the owner may be entitled to bring an infringement action against you. There are circumstances under the fair use doctrine where a quote or a sample may be used without permission. However, **in cases of doubt, the Copyright Office recommends that permission be obtained**" (<http://lcweb.loc.gov/copyright/faq.html#q60>).
 - **The courts have so far construed "fair use" very narrowly when applied to unpublished material.**

For additional information on the copyright law, the best place to start is the Library of Congress' copyright page on the World Wide Web: <http://lcweb.loc.gov/copyright>

*This document is intended to provide useful information about intellectual property law for patrons of the American Heritage Center. While all information in this document is believed to be correct at the time of writing, this article is for educational and introductory purposes only. It is not intended to be a complete treatise on the subject and **does not purport to provide legal advice.**



PUBLISHING ALL OR PART OF UNPUBLISHED MATERIAL: AN INTRODUCTION TO WHAT RESEARCHERS NEED TO KNOW*

- ✓ Permission to reproduce, publish, broadcast, display, or distribute an item or text *beyond the limits of “fair use”* (see separate handout, “Copyright and Unpublished Material in the AHC Collections: An Introduction To What Researchers Need To Know”) must be requested in writing from the American Heritage Center as owner of the material.
 - ❖ Permission is granted in writing, not orally.
 - ❖ Possession of a reproduction of an item does not constitute permission to use it.
- ✓ The person requesting permission must **also** secure copyright clearance from the copyright holder. In some instances, the AHC is the copyright holder. In most instances, however, the copyright holder is the creator of the work or his/her heirs.
 - ❖ The nature of historical archival collections means that the current copyright holder may be difficult to determine.
 - ❖ Whenever possible, the American Heritage Center provides information about copyright owners to researchers wishing to obtain permission to quote or publish beyond “fair use.”
 - ❖ The AHC provides such information as a service to aid patrons in determining the appropriate use of an item, but the legal determination ultimately rests with the patron.
 - ❖ In requesting permission to reproduce materials from the collections of the AHC, the requester agrees to hold harmless the American Heritage Center, the University of Wyoming, its officers and employees from any action involving infringement of the rights of any person or heirs and descendants in common law or under statutory copyright.
- ✓ Credit must be given to the American Heritage Center and the copyright holder, if separate.
- ✓ Permission is for one-time use only. The American Heritage Center retains all rights it possesses in the item or text, and the requestor warrants that they will not be used for any purpose other than that specified in the written permission.
- ✓ In some cases, the American Heritage Center will request that a copy of the publication be donated to the AHC.

*This document is intended to provide useful information about intellectual property law for patrons of the American Heritage Center. While all information in this document is believed to be correct at the time of writing, this article is for educational and introductory purposes only. It is not intended to be a complete treatise on the subject and **does not purport to provide legal advice.**