

Copyright Basics

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SUMMARY KEYWORDS

copyright, copyright holder, institution, copyright law, public domain, protected, author, libraries, atla, questions, materials, work, statute, tangible medium, written, plagiarism, law, called, policy, copy

SPEAKERS

Christine Fruin, Ana Cackley



Ana Cackley 00:00

Good afternoon, everyone. Thank you for joining us. My name is Ana Cackley and on behalf of Atla, I'd like to welcome you to today's program copyright basics. Before we get started, I just like to point out a few features of the webinars interface. By default, you'll be listening in using your computer computer speaker system. But if you'd like to join us by phone, that's an option as well. At the bottom of your screen, you should see a control panel, it contains a chat box where you can type in your questions for the speaker, contact us about any technical difficulties and send in any, and you can send in your questions for the speaker at any time during the presentation. We will collect these and address them during the q&a session at the end. We now have live transcription for Atla Webinars, you can find the live Transcript by going to the red button in the top left corner of your screen labeled live on custom live streaming service. If you just click the carrot, and then click View live streaming service, it'll open up transcript in a new browser window. We will also make this transcript available on our on demand learning page. Today's presentation is being recorded and that recording will also be available on the on demand learning page. We everybody who has registered for today's webinar will receive an email notification when that recording is available. And now I'd like to introduce our presenter today, we have with us our very own Christine Fruin. She is the scholarly communication and digital projects manager here at Atla. And with that, I will turn it over to Christine, thank you so much, folks for your patience while we switch switch presenters.



Christine Fruin 01:59

Sorry, when I started sharing screen, I lost the ability to find the unmute button. So, so glad to see so many folks joining us this afternoon to go over some basics of copyright. And when I say basic, we are going back to the very beginning. In fact, that is our very first slide is the origin of copyright law. So I hope that you all are ready to go on this journey with me all the way back to the beginning. So the origin of copyright law actually is in the US Constitution itself. And also I do want to clarify for everyone. Copyright law is not unique to the United States. It exists just about every country in the world has some form of intellectual property legislation statute like but today I am except for like the very end of the presentation, I am going to be talking in the context of us copyright law. So if any of our friends are joining us from Canada, or maybe even from us, it would be awfully what time it would be in Australia right now. But I know we have friends all around the world, but just know that I am primarily talking from a US perspective today. So just wanted to throw that out there real quick as as kind of a disclaimer. So copyright law, yes, has its origins has its genesis in the US Constitution, where in Congress was granted the Express authority. And this is in Article One, excuse me, section eight, clause eight, where Congress was expressly granted the authority to pass laws. And the quote here is to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. Now, what what why was Congress given this law, what was the intent and purpose behind this? Well, it was intended to protect investments that individuals or organizations or groups made in the creation of new works. It was also intended to set up a kind of a reward system and an incentive really, to encourage folks to create works Towards this end of promoting science and arts, but also to benefit society, there is a societal benefit, in that we get to, you know, have an increased body of knowledge that we get to, as we will see later build upon existing works that exist within this larger body of knowledge. So there is a societal than benefit as well and also to help prevent plagiarism, although I'm going to share in a little bit that plagiarism and copyright infringement are actually two very distinct things. The current copyright law as we know it, is codified within what's called the United States Code, which is where all federal Laws are codified. And it was enacted, the majority of it, the body of it was enacted in 1976. And went into effect shortly thereafter. There have certainly been numerous amendments, expansions, some deletions and changes to it over the years. But the bulk of the the corpus of the laws we now know it went into effect back in the mid 70s. So these are some of the topics that we're going to be covering today is what what do you need what what is included within this copyright basics? What should we know about copyright law? So first of all, the big question of what is protected? And how long does that protection last? What are a copyright holders rights? So as I said, there is an incentive that was built into the rationale, but why Congress was given this authority. And then, of course, what's really important, particularly for libraries, what are the limitations upon those copyright holders rights. And then at the very end, we are going to

touch just very briefly on the interaction between foreign copyright laws, and us copyright law, I do get this question quite a bit about determining copyright status, or what to do. And you know what to do if I'm wanting to use a work that perhaps is subject to copyright in another country? I'm not going to probably answer all of those questions today that that is a that is a 16 week course on foreign copyright. But I'm going to just talk very briefly, just something to perhaps get you started, should you ever confront one of those questions? So let's dive into this first one, what is protected by copyright? So again, turning to the language of the statutes, so the Copyright Act of 1976, kind of in the very first, one of the very first sections of that larger act is what is protected by copyright? This is what the statute says, original works of authorship, fixed in any tangible medium of expression, now known or later developed? Well, let's let's piece that apart a little bit and talk about what each of those individual component parts of that definition mean. So first, original works of authorship, what does that mean? So there's no protection for something that has already been authored by someone else. So if you take an entire work and copy it, and slap your own cover on it, and your name, you don't suddenly become the copyright holder of it, we're even going to talk about this a little bit even about and sometimes we see entities do this, things that have fallen out of copyright, things are in the public domain, and they reprint them suddenly think that they can have a copyright in that reprint. Now, there's no again, it's something that's already been authored by someone else, the work must be unique and not just a copy. However, much of what we see today as copyrighted works is actually the building upon other other you know, other existing works other existing knowledge and so, there has to be some modicum of change some some material, change, some creative input, that that changes it just enough to make it different from the original. So doesn't mean you know, so, it's more of that like complete copy more so than not just maybe taking pieces of things and changing them in such a way and adding enough other original content to make a whole nother work that would raise to this level of originality fixed in any tangible medium. So, what does this mean? So, it must be in some observable or concrete form that is it can be seen it can be touched, it can be heard, it can be you know, observed in some way perceived or reproduced or otherwise, otherwise, you know, communicated and shared and even digital works are considered tangible under this definition. So, things like software, the the underlying code, even though we may not be able to see it, we can see the the output of it the processing of it on on a computer screen. So, that thereby entitles it to protection from copyright, the reason why they used such kind of vague language and thankfully, they did fix it in any tangible medium of expression. Think about the time at which this was written, we have had a whole lot of technological developments since then. And so, we are grateful for this kind of broad flexible definition of fixed in a tangible medium, because it will allow us flexibility for new mediums of expression as they are as they are developed. So what about what is protected so what kinds of works would fall within this tangible medium expression, what kinds of things whether the statute actually the copyright actually

enumerates and live South specifically what it considers to be within this definition. So literary works so that you know includes things such as poems, works of both fiction and nonfiction, you know, any, any kind of written, written material, even like newspapers probably, you know, would, would come into that musical works. And this includes not only the underlying score, but also the lyrics. And this is why music can be very complex with respect to copyright, there can be many layers, because you may have the recording, you may have a lyricist, you may have a composer, then there might be a copyright on the actual recorded performance itself. So, music can be very, very tricky, dramatic works, including any accompanying music so sometimes the copyright music might attach to the score if it goes along with a play or an opera. And and so they've they've accounted for all the different kinds of creative work, excuse me. Sorry about that. pantomimes and even choreography, all different kinds of artistic work. So photographs, sculptures, paintings, and the like, again, motion pictures and other audio visual work. So movies and other kinds of recordings, sound recordings, so you know, CDs or mp3, or if you've got vinyl in your house, architectural works and software. So that is the complete enumerated list from the statute itself. So no matter how grand or how trivial, things that maybe you have even created, could be copyright protected. So YouTube videos of your cat, for example, or if you have an if you have a finished but unpublished novel that has been saved to your computer, or perhaps a poem that you wrote and posted online, or if you are a music composer, so even us without having ever filed for any kind of copyright registration, or, you know, when we're going to talk a little bit about that as well. Even the most trivial of things that we do in our daily lives, or maybe in our in our own hobbies can qualify as this work that is eligible for copyright protection under the US copyright law. So we talked about what is protected, what about the flip side of that what is not protected. So the kinds of things that are not protected are going to be mere ideas. So if you have an idea for a novel, or you have an idea for a composition, musical composition, but you have not yet got it out of your mind, and fixed in that medium, that that tangible, mean expression, it is not protected by copyright. And I'm sure we've probably seen stories, particularly coming out of like Hollywood, a folk saying that they that somebody stole their idea for a movie or for a television show or for a song. And if they didn't rise to that level of protection to trigger copyright, you really can't sue somebody for just stealing your idea. Also things such as titles, so titles of books or titles of songs, unless they suddenly rise to such a level of that they fall within trademark protection. So that's another that's another facet of intellectual property. So intellectual property, I'm just going to kind of go down down a rabbit hole for just a moment. Intellectual Property covers really three things copyright, trademark and patents. And there are times where kind of trademark and copyright sometimes play together and the example and maybe it's probably a tired example now, and may not even be inappropriate anymore, but the one I used to use all the time is Harry Potter. And so someone wants that because my said titles are not copyrighted. So I said, Oh, so I could write a book with a completely different story. And

call it Harry Potter and the Sorcerer's Stone said, Well, no, you can't, because there is trademark that is owned on that name, Harry Potter, um, and that in that title. So there are instances where things such as titles may not be necessarily copy of copyright, but might have some other form some other form of trademark protection. So we are gonna see this a lot, perhaps in food brands, or, you know, or other kind of pop culture, types of things where trademark might come in where copyright doesn't doesn't quite fit. mere fact, nobody holds a copyright on the music, the mathematical expression of two plus two plus, you know, equals four, or perhaps dates and history. Those are not protected processes. And usually the example that I frequently use for this when we talk about processes is like a recipe. So just a list of ingredients and some instructions on how you make something is not necessarily copyright protected. Now you take an assembly of all those recipes with photos and other material assembled into a completed book, then that is going to rise to the level of being copyright, but just you jotting down on a note card, your recipe for the best chocolate chip cookie, that kind of just that raw process, not eligible for copyright protection. Works prepared by the federal government, by statute, are exempt from copyright protection now, state I sometimes get them the follow up question, Well, what about state law, government documents, those are up to individual state laws. And actually, I'm Harvard University has a wonderful resource that they put out about four years ago, that has tracked the state law, copyright, state law copyright tracking project, I think is what it's called, I may have gotten some of the words transposed there, where they have gone through and listed out they have like a map of the United States, and you can click on a state and it will tell you what the what the what the law is there with respect to copyright protection of state law, governments are state law documents, excuse me. And some it's all are all aren't or only state government documents of these particular types. Also not protected by copyright, we're going to talk about this in a moment, our works, of course, that are in the public domain. And these are works for which copyright, the time of copyright protection has lapsed. And so they are considered to be in the public domain, and no longer protected. Other kinds of things that you might be surprised to learn are not protected by copyright, but again, might be protected by some other form of intellectual property are things such as fonts, I actually used to work with, when I was at another university had used to get questions sometimes from students in graphic arts, about fonts. And I said, well, fonts themselves may not be protected by copyright, but the software that is often tied to a font set, or that you download sounds like that, that is where it might, you know, that is where it might come in. So that that's always an interesting, improvisational speeches is another one. So someone just getting up and speaking very spontaneously, without any notes without any planning, without a planning that may not be copyrighted, what if somebody records it, then it gets a little bit more a little bit more complicated. So who can be an author or who can be a creator, really, because not all works aren't necessarily you consider an author, it might be an artist, it might be, you know, something else other than author, but just for

simplicity's sake, we'll just say author, and anybody can be an author, you know, so your students, which oftentimes in higher ed, is not always real. It's not always real clear that students don't realize that when they are writing their final papers, you know, dissertations, or theses or other papers, but they are the copyright holders of those works. And before faculty members can share those papers, on you know, a website where their students they wrote not only for purposes of privacy, but also copyright, need to be getting students, permissions, professors, and even, you know, even entities, such as professional societies or associations, such as Atla, government agencies, corporations, and of course, artists as well. That's that's a short list. But let's talk about work for hire. So sometimes you have an author or a creator, who actually is creating their works within the scope of their employment. And there's actually a statute which states that the, in this situation where someone is creating things within the scope of their employment, it's part of their job responsibilities. Actually, the the presumption is, is that it is the employer, not the employee, who is the copyright holder in that instance. So this protects the investment that employers make in their employees. However, employers can adopt very specific policies and they do they have to be written specific policies that transfer that copyright back to their employees where they disclaim and waive their statutory right to be the presumed copyright holder. And so we see work for hire policies. We see these very commonly in higher education. Most institutions have policies that do just that they waive, they disclaim their, their their entitlement to be copyright owner, typically of the scholarly works of their faculty, because most faculty are hired especially at large especially at larger institutions, college And such are hired with an expectation to not just teach, but also to produce some level of scholarly output. So ordinarily, because of that, kind of, you know, that expectation that part of your job responsibilities is that you are Scott, you know, productive in terms of scholarly works, the employer would be the presumed copyright holder. So most institutions should have policies speaking to that and will give will give copyright ownership of those scholarly works back to that faculty author. As we have seen, over the years, the growth of online courses, there has been a need to go back and amend the language of those policies to address ownership, of course, materials, particularly course materials produced for online courses. And the reason for this is because of the immense resources that an institution will typically have to commit to the creation of those materials. So they're going to have instructional designers, they're going to have recording studios, if they're, if they're doing all of these modules with recorded video, and licensing of perhaps digital materials, you've got the the platform's too hot to host these courses. And you'll have like this whole entire class that is like packable, and ready to go. institutions have invested a lot of resources in supporting that. And so before, in the early days of this faculty, were kind of like, Oh, this is all mine, I can just take this and use it wherever. And you institution, you don't get to use it anymore, and instant. And there were some kind of fights setting up because institutions like, wait a minute, we're not starting from scratch here, just because you have left or retired. And so what we have

seen is amendment of these work for hire policies and institutions of higher learning, that have said, okay, faculty member, yes, you can take this material elsewhere. But you're also granting us a license to continue to use these materials here, because we're going to continue to offer these courses to our students. So I think there's still a lot of work in development that needs to be in this area. But if your institution in particular, is doing a lot of online education, and doing a lot of development of the of these kinds of materials, it would be worthwhile to look into whether the appropriate documentation and policy writing has been done around this. So let's go just kind of take a step back into kind of our your basics again. So I'm a copyright holder. So you are you have satisfied that statutory definition you have, you are someone that can can can be an author, and your work is rises to that level of originality. And it is fixed in a tangible medium expression. Okay, I've ticked all the boxes, I'm a copyright holder, what are my rights. So again, we turn back to the language of the statute itself, which specifically enumerates once again, what the rights are of the copyright holder, and they are this to reproduce the work. So that is to make copies of it, to prepare derivatives, so this might be an updated version, this might be a translation, that's, that's the most common example, I always like to share with folks have a derivative work is if you write something in English, you as the copyright holder have the sole right to translate that work into, into other languages. And so typically, we will see in author or co author, especially book contracts, that major publishers will do his his translation rights. And that is why because those that resides usually solely with the author's copyright holder, the right to distribute it, so whether you're given copies away, or if you're selling them to perform it in the case of perhaps a, you know, a play script or a musical composition, to display it. So that would be to, you know, stream something or to air a film, and then to transmit it, which is a lot of the digital things that we see the digital so that display is not streaming I'm sorry, transmitting would be would be your streaming instances, not display. Sorry about that. So those are the those are the rights. The copyright holder has an AR as the statute says they're exclusive rights meaning nobody else is allowed to do these things, except as we're going to see in a moment, there are some exceptions. So I told you at the beginning that we would come back to this this clarification about copyright and plagiarism and and I said that, you know, one of the one of the purposes of copyright law was also to help prevent plagiarism. So Really quickly copyright law itself. And I got to look at my time here as I as I told, I have to leave this one and then go presented ACRL the religion and theology and philosophy interest group don't know if any of you are coming to that after this. So clarification about copyright and plagiarism. So copyright law itself does not require attribution. So it does not require the giving of credits to to the author to the copyright holder. That is something that if you want to require it, you have to specifically ask for it, which is something that we'll see like in Creative Commons licensing, which I'm not getting into today. But if you are familiar with Creative Commons licensing, you will know that every one of those licenses you have to give attribution. And the reason for that is because otherwise it is not required by

copyright law to give attribution. Plagiarism is, in essence, it is copying without providing attribution, which is not as I said, it's not a copyright, about violent violation only unlawful copying is. So plagiarism itself is not against any law. However, it's typically a matter of ethics or academic policy, whether whether it be at an institution, or a publication, or perhaps your employer if writing is a big part, a big portion of your job. So plagiarism is ethics, not the law. There is one minor exception. However, I'm not going to deep dive into this either. But the visual artists Rights Act is the only part of us copyright law that requires attribution. And it's for very specific types of are very specific types of visual arts. So authors typically get very upset about this and misunderstand that and feel like their copyright has been violated, if if credit has not been given, so even if you are using something in the context of fair use, you're not required to give credit. But it is good ethical practice. It's also a good show, it's a showing of good faith, should you exercise your right of fair use, use that you have given credit, but legally, not not not part of the copyright law, but it is good. It's just it's a good it's a best practice. It's an ethical practice. And I always tell people you expect your students to cite to things, we should be doing that in our work in our work as well. So how long does copyright lasts? This is also a common and confusing question. So as I said earlier, copyright does have an expiration date. And once that expiration date comes and goes, works are said to pass into the public domain. Generally speaking, for any work that was published or created after January 1 1978, which was the effective date of the current copyright law, it's the life of the author plus 70 years, there are some differences for anonymous works for corporate works. But that is the general rule. If you haven't looked at this resource before, I highly recommend Cornell University's public domain chart is the best place to go to kind of easily break this down. out of print does not mean out of copyright. This is also another common misunderstanding someone feels like if it is not commercially available, anywhere publishers aren't publishing this book anymore. It's not copyright protected anymore. And that is not true, will help your fair use case if it is out of print, but does not mean out of copyright, you still have to you still have to respect that right? Even if even if it's out of print publisher doesn't exist, author is dead copyright keeps living until 70 years after they're dead. So just want to point you really quick, this is a flowchart, we're not going to sit and walk through this, but I wanted to just direct your attention to it. Berkeley law school, about four or five years ago put out this wonderful resource called is it in the public domain. This is one of the many flowcharts that are in this resource. And it really helps you navigate determining whether or not something is in the public domain. A us work again, remember talking from the perspective of us copyright here. So um, I should have put the link up here, but I think it's really long. I didn't want to try submission on this slide. I think I may have it linked from my copyright LibGuide as well. But if you google isn't in the poco, main Berkeley law school, you're probably going to find it. It's a PDF. It's freely available online. So if you don't already have this in your copyright toolbox, it is something that you should definitely add to it. And this is one of the most basic ones in there for

navigating this question based on publication date, because we had some changes in the law regarding registration and renewal prior to 1978. And they're really important questions to ask when determining whether something that pre 1978 is in the public domain or not. So, as I shared there are you know, we said copyright holders rights are exclusive. But there are numerous limitations written into the Copyright Act itself. several, several statutes, which do impose some limits upon a copyright holders exclusive rights. And in this instance, if your use falls within one of these limits, you do not have to get permission from the copyright holder before proceeding with making your use of the work. If your use exceeds those statutory limits, then of course, you need to either get permission or perhaps alter the way you're you're using the material to swing yourself back into back into those the parameters and boundaries of those limits. So we're going to touch really quickly on what though some of those statutory limitations are and I keep seeing the chat, little chat box. Oh, thank you on she put the link to Berkeley up thank you. I'm, that's why it's great to have an assistant on I also see just I want to dress I see that will the PowerPoint be able I can definitely share a PDF of this out. We have a list of and I'll work with them to figure out what might be the best way to do that. Or you can drop me an email and I can send it to you, I have no problem, I have no problem sharing my things. So statutory exceptions. So really quickly, first sale doctrine quickly. But importantly, because this one is why libraries can do what they can do. For Sale doctrine, section 106 says, I'm kind of paraphrasing here, after the first sale of a physical copy, the copyright holder cannot control further distribution. And this is why libraries can buy books and check them out. But notice I said physical copy, tangible book right here, I'd hold it up not applicable to digital content. This is something that is being very closely watched. And also has been already judicially tested, you may have heard several years ago about this case called the re Digi case, which involved setting up a place where folks could sell their their like songs that they had bought, like from iTunes, or other kinds of musical places. And this is where interpretation of the for sale doctrine was was really tested all the way to the appellate court. And it was held that it's not a physical copy and the way that digital content is licensed. It doesn't it doesn't have a neat fit. I'm not going to pass any judgment here about whether I agree or disagree with that. But just know that we're talking about things, tangible, physical things, not digital content when talking about for sale doctrine. This is why it's so contentious for libraries. And I don't like this, about ebooks and the ability to lend ebooks and why libraries have to pay exorbitant license fees to buy and then circulate ebooks. So for sale doctrine, just know that in terms of physical materials, this is where your authority comes from fair use, we're not going to talk about today, February 23, I am doing one whole webinar just on fair use. So I'm not getting into that today at all, folks. So if you're came here hoping to learn about fair use, not to come see me again in a few weeks. Other exceptions that are important for libraries. And no, this is not an exhaustive list of all the exceptions, I've tried to touch on ones that were really going to be important for you all. section one away is another Biggie for libraries, you all should be

fairly familiar with this. So this is where you get the superpower of interlibrary loan and making preservation copies and making replacement copies. So 108 super super, and it is called the library exception. super important for libraries and archives. Some that are important for teaching is section 110 and 121. So section 110 is specifically about using copyrighted materials in the classroom. We used to just have section 110 one, which was classroom performances and displays, very specifically performances in display. So this was talking about music, this was talking about movies, things that could be performed or displayed, but speaks very specifically about the physical classroom because when this was written, we didn't have distance that we didn't have online education. So it is about showing movies in class to students that are they're engaged actually in instruction. So common Another common misconception is Oh, I can show a movie as a reward for all the kids that did really well this quarter. I don't know about you all but I saw many a Disney movie when I was growing up at the end of the quarter at the end of the semester for good behavior I think a lot of schools and a lot of libraries misunderstand what this performance or what excuse me what the statute means, and are failing to get public performance licenses. If you want to dig more into showing movies on class on campus in your libraries are another organizations. We're also doing a webinar on that. I think that one's in March. So I'm not going to talk too much more about that, because we're going to really dive into that later. With the growth of distance education, and distance education at the time that this 110 two was written was not at all what we think about today, it was people watching taking part in a class from a distance, like over closed circuit television, they were on a remote or satellite campus. So again, not really written for today's the way we think talking about online education today. So you may have heard of the T check, the TEACH Act, changed Copyright Act and some other laws and some ways to, to adapt them to distance learning, as opposed to online learning. I'm going to talk a little bit more about this, I think I will touch on this a little bit and the fair use, I'm one that I'm going to do next month. But what I'm just going to give you my really short sweet take on T check, forget you ever heard about it is, in my opinion, garbage legislation. Um, it is not helpful to institutions, there are these huge hurdles that institutions have to cross to invoke the T check, fair use is going to be a much better avenue to getting materials online than fair use. So I don't spend a lot of time on the T check. Because it's really not helpful to institutions, it is a severely limiting and very high bar to cross. And just, it's just really not helpful. Last, but certainly not least, this is extremely important is section 110. One, which is sometimes also referred to as the Chafee Amendment, which is reproduction for persons with visual impairments. Only recently was it was it held that libraries were were included within the definition of an authorized entity that is permitted to make these kinds of copies for persons with visual impairment. So this is what enables us to create scans of materials in a format in the whole work in a format that it can be used by our students or even our faculty members who might have visual impairment. So super important statute for libraries. So as I said, we are going to spend

because I do want to leave some time for questions. And I'm actually doing better than I thought. We're going to delve, this is a super text heavy slide and I apologize for that. But it's it's trying to distill down this very complicated thing into into something short is a challenge. So let's talk about copyright status of foreign works. So big international treaty out there is dealing with Intellectual Property globally is the Berne Convention and what the Berne Convention is, is in order to be a party to it, there are certain minimal protections that a countries that a country's own copyright laws has to provide for in order for them to become a member of the Berne tree, the US was a very late entrant to this because we had much more stringent protections, much more stringent formalities. So I kind of hinted at earlier, when we were talking about the length of copyright protection, there used to be as part of the law. Prior to our entry into the Berne Convention, we used to have to have registration. So that would require actually filing paperwork with the copyright office in DC paperwork, registering ourselves as the copyright holder. That process still exists. However, it is no longer a requirement in order for a US author, US creator, to get copyright, we have gotten rid of that another formality we used to have was, notice notice being that little C with a circle around it, that used to be required, you had to put the world on notice that you were the copyright holder of this particular work. We don't have that requirement either. So you know, thinking back through all of those tick box, you know, tick boxes, you have to check to be a copyright holder, have to be an author has to be an original work has to be a tangible medium of expression. You do those things, boom, you're done. Don't have to find paperwork or pay a fee of DC don't have to have notice on it. You're done. didn't used to be that way. Some may say and I kind of wrestled with this. If whether doing away with that was a good thing I mean, becoming a part of the Berne Convention, certainly, the cost of that I have problems with because now we've suddenly gotten rid of a way to discern who a copyright holder is, when we're trying to track that person down when we have to get permission, we know how no longer have a required record of that. Now, most commercial entities, most commercial publishers, movie studios, and the like still are registering copyright. But individuals, I mean, aren't going to go through the hassle. Even though it is an online form, the fee i think is like \$55, most people aren't going to do that. So that was one thing to become a Marilyn burns mentioned No formalities. The other is to have some form of moral rights that being attribution. In the US how we did this was we passed the visual arts Rights Act, only requiring moral rights for certain kinds of works that allowed us to kind of squeak into become a party to this. And then copyright duration has to be at a minimum life of the Creator plus 50 years, well, we do a little bit better of that of life plus 70, and then some sometimes. So in exchange for being a signatory to the burn treaty, in exchange, you get what's called national treatment, which means authors from other member countries get the same degree of copyright protection as that country's own citizens, meaning your works are copyright protected the same here as they would be elsewhere. So foreign copyright is if you know if it's a burned signatory is recognized here in the US. So if you

have a work that is protected by foreign copyright, we have to acknowledge it, we have to protect it, we have to give those authors the same degree of protection. little wrinkle to this is the Uruguay Round Agreements Act, the Ura. What happened here was that foreign works that had been treated as all this was going on, a situation arose where foreign workers had been treated as in the public domain, because they failed to comply with us formalities of notice and registration and thus pulled them out of public domain. And it kind of created a mess and where this kind of all erupted. And this is actually this, this kind of four part test actually came out of a Supreme Court case around. I want to say it was the Peter in the wolf Symphony. But that may not be right, I should remember this, this is terrible. But it's arising from a case of determining whether this Symphony was copyright protected here or not. And so now, copyright protection has been restored. So works that had been treated as it for works, they've been treated as if they were in the public domain for years, and the US suddenly got copyright protection again. And it's a four part test. First, the work has to have been created by a citizen of the Berne Convention, singer, a signatory they have to they have to be a citizen of one of the signatories to that second as of January 1 1996, which I think is the effective date of the Ura. The work was protected by copyright in in the country where it was first published, produced, and so forth. Third, the work was previously treated as if in the public domain for failure to to comply with our former requirements of notice and registration. And fourth, there could not have been what they call contemporaneous publication, which they say, couldn't also have been published here and the US have kind of a US printing within 30 days of the first publication, and the country were copyright attached. Very complicated. But it's important to know, there is an excellent article out there actually by Peter hurdle H, ar t le, again, if you google this, you can find it. Peter does an excellent job and about 12 pages, kind of breaking this down and giving some examples of how this all came to be. It's an article I frequently turn back to when I am confronted with having to to, to navigate this and figure this out. But to kind of help illustrate it. I actually do have an example here. And this example is Pippi Longstocking. So Pippi Longstocking was first published in Sweden in 1945. At the time, Sweden had no formalities for copyright protection. So therefore it was published in Sweden without notice or registration. But here in the US at that time, we had those So technically, before all of this change in the law, we would have treated this as being in the public domain here, even if it was still protected. In Sweden, because it didn't raise to our higher higher levels. It wasn't first published in the US until 1950. So we don't have that 30 days we had five years. Under Swedish law, copyright lasts for the life of the author plus seven years and linger and the author, Astrid linguine, died in 2002. So going through those four questions and determining whether or not would this book be protected in the US? So is Sweden a party to the Berne Convention? Yes. As of January 1 1996, was it in the public domain in Sweden? No, it was not because he hadn't died until 2002. And copyright protection lasts for 720 72, which will be that would the 1945 work be in the public domain in the US for non compliance with formalities? As I said, Yes, because

they did not have registration notice. And had the book been published in the US within 30 days? No, it had not. So is it protected by us copyright law? Yes, it is. Under this copyright restoration, that is in effect through the Ura as well as because we're a part of the Berne Convention. Even though the formalities that were required of in the US in 1945, are no longer there. It's, it's complicated, more complicated. But yes, we would still treat this as protected by us copy, we would consider protected here as well. Although formerly Previously, we would not have for not having complied with the requirements we had in 1945. So that is a really, like I said, it's foreign copyright is super complex. But there's just a couple things for you to go on. So we have about 10 minutes, I don't know if any other chats or questions have come in, but I'm happy to entertain those. Now. I do maintain a LibGuide that you are welcome to check out. And of course, especially for our Atla. Members, you are always welcome to email me if you have questions. And if any of you are seeing again, get a drink real quick. If any of you are Atla member libraries, not individual members, but member libraries, your your member representative should have gotten an email, a letter from us in December, I am hosting Copyright Office Hours. And I actually think I have one of those tomorrow, every two weeks, where Atla member staff at Atla member libraries are welcome to just pop in and ask me questions that they may have. Or maybe they're dealing with some things that their institutions. So those are every two weeks, on Wednesday, so check with if you are the member rep remember that or check with whoever may have received that email to get details about that if you work at a Atla member institution. So with that, let's I will peek here at chat. I'm going to stop my screen sharing here. Okay, there.

A

Ana Cackley 48:19

We do have one question. We have question. What about tutorials created by librarians? Do they hold the copyright? Or does the institution?

C

Christine Fruin 48:30

So I would, I would respond to that that first of all, I would look at your arm, see if your institution has a policy of work for hire policy. But without any policy in place. If creating tutorials is part of your job, then I would say the institution holds the copyright to those not you. But I would definitely check refer to any policy that you have, whether it might be an employee handbook or the institution might have a standalone intellectual property policy. But the incident if that is part of your job, the institution would hold that unless they've done something else. So we actually confronted this where I worked before we had Atla question arose with respect to libguides. And whether LibGuides belonged to the institution or to the librarian who made them and there was a librarian who was leaving was like, well, I kind of want to recreate this LibGuide I made at the next institution I go to

I don't want to like have to completely you know, and that is why I'm both there. And even here at Atla. I advocated for licensing them. And I had to get permission of like our general counsel's office to do this and explain to them about the work of libraries and about lib guides and why it's important to share got authority for us to license them with a Creative Commons license so that librarians could share them could take if they left and went somewhere else could take that knowledge with them. And so if just I would definitely check with your administration and with any policy employee policy that you may have, I hope that answers the question. If not, I'm happy to elaborate more if there's follow up to that. Okay, well, I'm happy to hang out here for a few minutes. If there's any other questions. Otherwise, thank you all for attending. Make sure you check out the Atla events page for like I said, there's four webinars in this copyright series. I'm pretty sure it's it's fair use in February. Pretty sure I'm doing movies showing movies on campus and in on in class in March, and then I think I'm doing copyright and digitization projects, meaning like, Special Collections kinds of things. I'm doing that in April, which is a repeat of kind of what I did at conference last year. So if you came to my presentation on copyright and digitization at the 2020 conference, you're going to get a repeat. Just gonna let you know. Maybe, you want to hear it again. All right, thank you all have a good rest of your week.