

Alabama Mosaic F.A.Q.

COPYRIGHT

Updated: March 2009

What is copyright?

Copyright is the legal right granted by the U. S. Government (U.S. Code, Title 17) to the creators of original works. A creator is an author, composer, playwright, musician, or artist, among others. Copyright is granted to give the creator (or designated agent such as publisher) the exclusive right to publish, produce, sell, or distribute a literary, musical, dramatic, or artistic work. Copyright first belongs to the creator of the content and applies to both published and unpublished works.

[The U. S. Copyright Office](#) website includes the law as well as information to help understand copyright, such as “Copyright Basics” and a tutorial for students and teachers, “Taking the Mystery out of Copyright.”

Copyright is a personal property right, and it is subject to the laws and regulations that govern ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business.

How does copyright apply to AlabamaMosaic?

Users of AlabamaMosaic may use the materials for education including instruction, homework assignments, class projects, or other educational purposes. You may also use AlabamaMosaic content for personal research, such as your family history, as long as the content is not published or distributed for financial gain.

Contributors to AlabamaMosaic agree to post only materials in the public domain or materials for which they have the rights to “copy and distribute.” Scanning an item is *copying* the original and posting the digital file online is *distributing* a copy. To contribute a digital file to AlabamaMosaic, the repository must affirm that it has the full right to copy the item and distribute the digital copy online.

Visit [Copyright Terms and the Public Domain in the United States](#) posted by the [Cornell Institute for Digital Collections](#) for information about public domain materials. To prevent violating copyright, most repositories start their digital collections with materials in the public domain. Repositories may own a physical item, such as a photograph or a letter, but not own the copyright. Digital copies that violate copyright should not be contributed to AlabamaMosaic.

Please be aware that NAAL, Auburn University Libraries, nor any of the trainers listed in the [Directory of AlabamaMosaic Trainers](#) can provide legal advice about when you can copy and distribute copyrighted materials to create digital collections.

What does “in the public domain” mean?”

Works that are not protected by copyright are in the “public domain.” You do not need permission to use, copy, or distribute materials that are in the public domain. Anyone can use them without giving credit to the creator. Public domain materials are works created before 1923, works created for public use such as some government publications, or works that have entered the public domain because the copyright expired with the passage of time. There is a detailed explanation of public domain in

Wikipedia: http://en.wikipedia.org/wiki/Public_Domain. You can also visit [Copyright Terms and the Public Domain in the United States](#) posted by the [Cornell Institute for Digital Collections](#) for more information about public domain materials.

May I use the materials from AlabamaMosaic for a published article?

AlabamaMosaic content is made available for use for education and personal research only. AlabamaMosaic materials can not be used for other purposes, such as a published article or commercial purposes without explicit, prior written permission from the copyright owner. The copyrights for digital copies in AlabamaMosaic are owned by the contributing repository. To obtain such permission, contact the contributing repository.

We tried and failed to locate the copyright owner for some materials that we want to digitize. Is there anything we can do to include them in AlabamaMosaic?

A process called “risk assessment” encourages you to consider the risk to your institution if you digitize copyrighted materials without the permission of the copyright owner. The law allows you to make “good faith effort” to locate and contact the copyright owner (which may be heirs to an estate). You must document (retain a record of) your efforts to locate the copyright holder. If you fail to locate the owner, you may decide the legal risk is low enough that you will digitize the item to include in your digital collection. Failing to locate the copyright holder does not give the repository unlimited rights to copy and distribute the material. If the copyright owner is identified, you may be asked to remove the materials from your collections, and you must comply with that request.

What is expected to demonstrate a good faith effort for materials covered by copyright?

The process may vary by the type of material:

- a) If the material was **published**, you should contact the publisher and request permission. If the publisher is no longer active, you should attempt to identify and contact any successor companies.
- b) If the material was **unpublished**, but you can still identify the creator (author, photographer, etc.), you should attempt to locate and contact the copyright owner (or heirs to the estate). It is best to begin in the owner’s locality, consulting such sources as probate judges for the disposition of the estate, city directories, historical telephone directories, college alumni associations, or local churches. Retain a record of all contacts (letters, telephone log, names of people consulted, any information obtained).
- c) If the material was **unpublished** but you cannot identify the creator (**anonymous** publication), you should contact local institutions that might be able to provide the name of the copyright owner. These contacts might include local historical associations, colleges, churches or other organizations linked to the materials through attribution or contents. You must document all of your efforts in case a claim of copyright is made.

Are unpublished anonymous works protected by copyright?

Yes. Copyright is always the right of the creator even for materials that were never formally published. In the U.S., the duration of copyright for published works made for hire, anonymous works, and pseudonymous works (unless the author’s identity is

revealed in Copyright Office records), is 95 years from publication or 120 years from creation, whichever is shorter. Anonymous unpublished works created before 1978 have copyright protection for 120 years from creation. You may be able to estimate a date of creation from the content, but this can not be used as an absolute factor in deciding to digitize the material.

We have some locally printed pamphlets. Are they published or unpublished materials and are they covered by copyright?

“Published” means that the item was distributed to the public. It could have been copied and “distributed” by selling or giving it away free. It could have been posted on doors (posters) or handed out on the street (flyers). So yes, locally printed materials that were distributed to the public have been “published” and they may be covered by copyright.

Are there any guidelines for when historical items can be digitized?

Copyright protection is limited and when the copyright expires, items enter the public domain. Determining public domain is difficult because the laws have changed the provisions for copyright protection. The critical date for materials published in the U.S. is 1923. Copyright has now expired for these materials, and they are now in the public domain. Materials published after that may still be covered by copyright.

Because of changes in copyright laws over time, it may be difficult to determine the copyright status of some items. The [Cornell Institute for Digital Collections](#) has posted a helpful chart [Copyright Terms and the Public Domain in the United States](#) to help you determine if an item is in the public domain. The ALA Office for Information Technology offers a [digital copyright slider](#) to help determine the copyright status of materials. Neither NAAL nor Auburn University Libraries staff can provide legal advice about when you can copy and distribute copyrighted materials to create digital collections.

We have materials that we think predate 1923, but they are not dated. Can we assume they are in the public domain?

Unless you can prove that an item was published before 1923, do not assume it has lost its copyright protection. In the absence of a copyright notice or a printing date, you can offer evidence that the item is old enough to be digitized. Such evidence might include:

- a) Acquisitions records show that the item was acquired by the repository before 1923.
- b) The creator’s obituary documents that the creator died before 1923.
- c) The item is included in a collection of dated materials that predate 1923.

To demonstrate your good faith effort, you should document the information that resulted in your opinion that the item is not covered by copyright.

Are personal letters and diaries covered by copyright?

Yes. Copyright is held by the person who wrote the letters or diaries or the heirs of that person. Owning the physical letter or diary does not automatically include owning the copyright.

We have been given a scrapbook that includes letters, programs, photographs, and other ephemeral materials documenting an historical occasion in the middle of the twentieth century. The person who compiled the scrapbook gave permission to add it to AlabamaMosaic. Is this OK?

No. The person who created the scrapbook merely compiled materials created by others. Each creator owns the copyright for his or her creation that was included in the scrapbook.

We want to add our school yearbooks to AlabamaMosaic. Does the school or the photographer own the copyright for the photographs?

Under the 1976 Copyright Act as amended (U.S. Code, Title 17), a work is protected by copyright from the time it is created in a fixed form. In other words, when a work is written down or otherwise set into tangible form, the copyright immediately becomes the property of the person who created it. The exception is a category called “works made for hire.” If the work is made for hire, the employer (an organization or an individual) and not the employee is considered the author. The employer may be a firm, an organization, or an individual. Copyright of a work for hire is owned by the person or organization for which it was created **UNLESS there is a written agreement to the contrary signed by both parties.**

Current copyright law protects works for hire for a period of 95 years from the date of publication or 120 years from the date of creation which ever expires first. To understand the complexity of determining copyright status of works for hire, read [Works Made for Hire Under the 1976 Copyright Act](#) published by the U. S. Copyright Office, Circular 9.

What will happen if we contribute materials to AlabamaMosaic, and someone claims copyright ownership?

If someone other than your repository owns the copyright, you should always try to obtain the copyright owner’s written permission to copy and distribute the material. If you should contribute digital copies to AlabamaMosaic, you should do so only after a risk assessment fails to identify the copyright owner. If an owner contacts you to claim copyright, you should immediately remove the disputed materials from AlabamaMosaic. Then, you need to determine if the copyright ownership claim is legitimate. If it is, you should seek written permission to include the digital copy in AlabamaMosaic. Examples of copyright permission forms are included at the end of this FAQ to assist you.

We have some outstanding art and literary works created by our students. Can we digitize them for AlabamaMosaic?

Original student work, even if created for an assignment, belongs to the student. It can not be copied (digitized) and distributed (published online) without permission of the student (or the student’s legal guardian if the student is a minor).

Are the digital images we create protected by copyright?

When a repository makes a digital image, it owns the rights for the digital image. By adding an item to AlabamaMosaic, repositories agree that users do not need to obtain prior permission to use the digital copy for instruction, homework assignments, class projects, or other educational purposes, or for personal research such as documenting family history. Repositories are encouraged to add information to their AlabamaMosaic records to inform users about how to obtain permissions for other uses.

What information should be included with the digital files to explain any copyright restrictions?

Each repository develops a rights statement that sufficiently describes the copyright status of the items in its digital collections. The statement should include enough information to enable users to locate and contact the repository for further information. The [Dublin Core Metadata](#) template includes a field to add the rights statement for each digital file. Here are examples of some rights statements in AlabamaMosaic

This image is the property of the Auburn University Libraries and is intended for non-commercial use. Users of the image are asked to acknowledge the Auburn University Libraries. For information about obtaining high-resolution copies of this and other images in this collection, please contact the Auburn University Libraries Special Collections & Archives Department at archive@auburn.edu or (334) 844-1732.

This material may be protected under Title 17 of the U. S. Copyright Law which governs the making of photocopies or reproductions of copyrighted materials. You may use the digitized material for private study, scholarship, or research. (Birmingham Public Library)

This material may be protected under U. S. Copyright Law (Title 17, U.S. Code) which governs the making of photocopies or reproductions of copyrighted materials. You may use the digitized material for private study, scholarship, or research. Though ADAH has physical ownership of the material in its collections, in some cases we may not own the copyright to the material. It is the patron's obligation to determine and satisfy copyright restrictions when publishing or otherwise distributing materials found in our collections. (Alabama Department of Archives and History)

Collection may be protected under Title 17 of the U.S. Copyright Law. To obtain permission to publish or reproduce, please contact the W. S. Hoole Special Collections Library (The University of Alabama)

Are there other resources to help me understand copyright?

This is short list of helpful resources about U.S. Copyright laws.

[The U. S. Copyright Office](#) website includes information to help users understand copyright, including "Copyright Basics," as well as the law, and a tutorial for students and teachers, "Taking the Mystery out of Copyright." The site also includes U. S. Copyright Office Information Circulars and Form letters:

<http://www.loc.gov/copyright/circs/>

Users can search the new [OCLC WorldCat Copyright Evidence Registry](#) to find information about a book, learn what others have said about its copyright status, and share what they know can be accessed. This is a new database, and information is being added, so check often.

Tales from the Public Domain: Bound by Law (informative cartoon style explanation)
<http://www.law.duke.edu/cspd/comics/>

Legal Issues to Consider When Digitizing Collections. September, 1999 Prepared by Jean Heilig. <http://www.bcr.org/cdp/digitaltb/laws/legal-issues.html>

University of Texas Copyright Crash Course:
<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>

U.S. Patent, Trademark & Copyright Information. This website provides basic information summarized by Thomas G. Field, Jr., Professor of Law and Director, Intellectual Property Amicus Clinic, Franklin Pierce Law Center.

<http://www.piercelaw.edu/thomasfield/ipbasics/index.php>

Copyright, Intellectual Property Rights, and Licensing Issues.

<http://sunsite.berkeley.edu/Copyright/>

Getting Permission to use copyrighted materials.

<http://www.utsystem.edu/OGC/IntellectualProperty/permisn.htm>

[Cornell Institute for Digital Collections](http://www.copyright.cornell.edu/public_domain/) posts a helpful chart, *Copyright Terms and the Public Domain in the United States*. http://www.copyright.cornell.edu/public_domain/

ALA Office for Information Technology maintains the [Digital Library Copyright Slider](#) to help determine the copyright status of materials.

Laura N. Gassaway maintains a helpful chart: *When Works Pass Into the Public Domain*. <http://www.unc.edu/~uncing/public-d.htm>

A Museum Guide to Copyright and Trademark (American Association of Museums) by Michael S. Shapiro and Brett I. Miller, Morgan, Lewis & Bockius, LLP. 1999. 120 pages. Paper \$24.95 ISBN 0931201632

EXAMPLES: Permission Letter/Form

The following permission letter has been adapted from:
"Sample letter requesting permission to use copyrighted materials"
University of Texas System Office of General Counsel
<http://www.utsystem.edu/OGC/IntellectualProperty/permmm.htm>

Permissions should be requested and granted in writing. Requests should be sent with a self-addressed return envelope to the permissions department of the publisher in question or to the creator/ author of the item.

Permissions Department, Publisher, Address or Creator/Author
Address

I am writing to request your permission to digitize the following material:

Author:

Book Title:

Journal Title:

Vol.

Issue

Page #(s)

Figure/
s)

Table #(s)

Image/Photography (describe)

This material will be distributed (published online) in the digital collection of the (name of repository) and AlabamaMosaic (<http://www.alabamamosaic.org>), a shared digital collection about Alabama history. The purpose of this digital collection is to provide resources for instruction and research about Alabama history.

If you do not solely control copyright in the requested materials, I would appreciate any information you can provide about others to whom I should write, including most recent addresses if available.

Sincerely,

Your name and contact information

PLEASE INITIAL ANY STATEMENT THAT APPLIES, SIGN AND DATE THIS FORM, AND RETURN IT TO:

I hereby represent that I have the authority to grant the permission requested herein _____
Initial

I am the sole owner / author of the work described herein _____
Initial

Author Signature

Company Signature

Author's name

Name of authorized signatory

Address:

Title

Company

Date

Date

Note: This example is for a single item. You may wish to obtain a single permission for collections containing several individual items. It gives the repository permission, but does not restrict the use to any particular medium for distribution. Revise or alter this form as needed.

Copyright Permission Form

I authorize **Name of Repository** to digitize and publish online the following materials for which I own the copyright:

Creator (author, photographer, etc) _____

Title _____

Date Created _____

Publisher (or note "unpublished") _____

Describe or list item (s)

I understand the item or items described above will be distributed online for use by the public for educational and research purposes. I have the authority to grant the permission requested and do grant the permission as requested.

Name _____

Address _____

Date _____