



# **Copyright Issues in Mass Digitization of Works Prepared by or for the U.S. Government**

*Prepared by  
CENDI Copyright and Intellectual Property  
Working Group*

*Published by  
CENDI Secretariat  
c/o Information International Associates, Inc.  
Oak Ridge, TN*

*September 2017*

**DISCLAIMER:**  
**THIS DOCUMENT DOES NOT CONSTITUTE LEGAL ADVICE AND SHOULD  
NOT BE CONSTRUED OR USED AS SUCH.**

**Copyright Notice:** This document is a “work of the United States Government” (as defined in 17 U.S.C. § 105) and is therefore not subject to copyright protection in the United States. This document is also available for worldwide use pursuant to [CC0 1.0 Universal](#).

**Notice of Change:** The information presented herein is subject to changes due to future U.S. Government policies, legislation and case law. Please direct comments about this document to [CENDI](#).

**CENDI** is an interagency cooperative organization composed of the scientific and technical information (STI) managers from the Defense Technical Information Center (Department of Defense), Government Publishing Office (GPO), the National Aeronautics and Space Administration (NASA) Scientific and Technical Information Program, the Department of Agriculture’s National Agricultural Library (NAL), the Department of Education’s National Library of Education (NLE), the Department of Health and Human Services’ National Library of Medicine (NLM), the National Science Foundation (NSF), the Department of Commerce’s National Technical Information Service (NTIS), the Department of Transportation’s National Transportation Library (NTL), the Environmental Protection Agency’s (EPA) Office of Research and Development & Office of Environmental Information, the Department of Energy’s Office of Scientific and Technical Information (OSTI), and the Department of Homeland Security’s (DHS) Science and Technology Directorate. CENDI's mission is to help improve the productivity of federal science- and technology-based programs through the development and management of effective scientific and technical information support systems. In fulfilling its mission, CENDI member agencies play an important role in helping to strengthen U.S. competitiveness and address science- and technology-based national priorities.

**CONTRIBUTING MEMBERS:**

Vicki Allums (DISA); Jane Barrow (NAVSEA); Diedre Clarkin (NLM); Chris Cole (NAL); Geoff Cooper (EPA); Charles Ducker (DoT); Jeff Heninger (NASA); Melanye Johnson (HHS OGC, NIH Branch); Richard Lambert (NIH); Sandi Morris (SPAWAR); Tim Slabouz (USMC); and Vakare Valaitis (DTIC).

The Copyright Working Group acknowledges with much appreciation the invaluable contributions from Bill Adams, Bonnie Klein, and Leigh Warren.

## Table of Contents

1	Introduction.....	1
2	Copyright Implications for Mass Digitization .....	3
	2.1 U.S. Government Publications .....	3
	2.2 Notices.....	4
	2.3 Fair Use .....	4
	2.4 Reproduction by Libraries and Archives.....	5
	2.5 Orphan Works .....	6
3	Other Legal Restrictions .....	6
	3.1 Privacy and Publicity Rights .....	6
	3.2 Statutory Protections of U.S. Government Names, Insignias, Seals.....	6
	3.3 Export Control.....	7
	3.4 National Security.....	7
	3.5 Trade Secrets .....	7
	3.6 Agency Distribution Statements.....	8
4	Mass Digitization Checklist.....	8
5	Conclusion .....	9
6	Additional Resources .....	9
7	Appendix A - Definitions.....	11

*This page left intentionally blank.*

## 1 Introduction

Modern technology has given rise to a number of national and international public, private, commercial, and noncommercial book digitization projects.<sup>1</sup> Many digitization projects have been limited to, or start with, works in the [public domain](#), due to the costs associated with clearing the rights to digitize copyright-protected<sup>2</sup> works and the uncertainties of relying on [fair use](#).<sup>3</sup> By focusing on public domain works, digitizers can build sizeable digital collections while avoiding (or postponing) the time- and labor-intensive clearance process for copyright-protected works. Thus, public domain works are attractive candidates for mass digitization projects. While U.S. Government documents are generally in the public domain, this paper seeks to clarify the usability of these documents for the benefit of the digitization community.

Works that are prepared by or for the U.S. Government<sup>4</sup> have been, and will likely continue to be, one popular focus of mass digitization efforts – by both the U.S. Government and non-U.S. Government entities alike. There are several reasons for this. First, the U.S. Government is the largest single producer, collector, and disseminator of information in the United States, and historically, much of this information was originally made available in print form. By virtue of the vast amount of Government information, it is no wonder that U.S. Government documents find their way into digitized collections. Second, Federal information is a valuable national resource, providing the public with knowledge of the Government, society, and economy -- past, present, and future.<sup>5</sup> However, not all works produced or disseminated by the U.S. Government are in the public domain.

A copyright-protected work enters the [public domain](#) when the term of copyright protection for the work has expired; the [copyright owner](#) has expressly dedicated the work to the public

<sup>1</sup>See, e.g., U.S. Copyright Office. [Legal Issues in Mass Digitization](#): A Preliminary Analysis and Discussion Document (Oct. 2011), at Appendix C, available at [http://www.copyright.gov/docs/massdigitization/USCOMassDigitization\\_October2011.pdf](http://www.copyright.gov/docs/massdigitization/USCOMassDigitization_October2011.pdf). Orphan Works and Mass Digitization (June 2015) available at <https://www.copyright.gov/orphan/reports/orphan-works2015.pdf> See also “Finding the Public Domain: The Copyright Review Management System” [http://www.sr.ithaka.org/wp-content/uploads/2016/10/SR\\_Issue-Brief\\_Finding\\_Public\\_Domain\\_CRMS\\_102616.pdf](http://www.sr.ithaka.org/wp-content/uploads/2016/10/SR_Issue-Brief_Finding_Public_Domain_CRMS_102616.pdf)

<sup>2</sup> Copyright is a form of protection provided by the laws of the United States to the authors of original works of authorship including literary, dramatic, musical, artistic related works, 17 U.S.C. §102. Copyright protection arises automatically once an original work of authorship is fixed in a tangible medium of expression, now known or later developed, e.g., written, filmed, or recorded. U.S. law no longer requires the use of a copyright notice, although placing it on the work is often beneficial. Use of the notice informs the public that a work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Prior law did contain such a requirement, and the use of a notice is still relevant to the copyright status of older works.

<sup>3</sup> *Id.* at 10.

<sup>4</sup> Works prepared by or for the U.S. Government refers to works created by U.S. Government employees as part of their official duties and works prepared by contractors under U.S. Government contracts.

<sup>5</sup> Office of Management and Budget [Circular A-130, Management of Federal Information Resources](#)

domain; or the work was published without a [copyright notice](#) before 1989,<sup>6</sup> or was published with a copyright notice between 1923 and 1963 and the copyright was not renewed. In addition, some works, such as purely factual works, are ineligible for copyright protection and thus are in the public domain. While works of the U.S. Government are not protectable by copyright in the United States, they may be eligible for copyright protection in foreign jurisdictions. U.S. law does not prohibit the U.S. Government from claiming copyright protection abroad to the extent that it is available. To eliminate questions, some agencies provide notice that international use is allowed.

Under Section 102 of the U.S. Copyright Act, copyright protection exists in original works of authorship fixed in any tangible medium of expression. However, works created by an officer or employee of the United States Government as part of that person's official duties are ineligible for copyright protection under the U.S. Copyright Act (17 U.S.C. § 105). Regardless, Federal agencies may receive and hold copyrights transferred to it by assignment, bequest or otherwise, or may obtain the right to use a copyright-protected work through a [license](#) or under contract terms mutually agreed to by the Parties. Therefore, as mass digitization of works by both the U.S. Government and non-U.S. Government entities progresses, digitizers must be aware of the potential copyright and other legal limitations to digitization. Often, it will be necessary for digitizers to consult counsel for guidance and further analysis as to the suitability of digitizing a document in the U.S. Government's possession. Key questions to consider include:

(a) Was the work created by a U.S. Government employee as part of that employee's official duties?

(b) Was the work created by a contractor, grantee or other non-U.S. Government author for the Government?

(c) What rights did the U.S. Government acquire under the contract or Federal grant, and are these rights sufficient to allow the work to be digitized?

(d) Are there legal considerations other than copyright that may preclude the work from being digitized?

(e) Does the work incorporate third-party material?

This paper provides general guidance for digitizers, both U.S. Government and non-U.S. Government organizations, on these issues. If you have misgivings about whether a

---

<sup>6</sup> With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, it should be noted that the omission of a notice was not always fatal. See 17 U.S.C. § 405(a) (providing a savings mechanism for situations where the notice was, among other required elements, "omitted from no more than a relatively small number of copies or phonorecords distributed to the public" and "a reasonable effort [was] made to add notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered").

document or category of documents can be digitized, your organization's attorney, or in the case of Federal agencies, the agency's Office of the General Counsel, can provide more specific guidance.

## **2 Copyright Implications for Mass Digitization**

Digitization essentially involves making a certain kind of copy (converting an analog copy to a digital one), and mass digitization is simply copying material into digital format on a large scale. So, fundamentally, the copyright implications of mass digitization are no different from copyright implications generally, and standard rules and guidance on copyright should apply (see, CENDI's [Frequently Asked Questions about Copyright](#)).

The concerns raised by mass digitization often relate to the difficulty inherent in evaluating a large collection of works. Digitizers sometimes intend to provide access to a broader audience. The full scope of digitization activities, therefore, may implicate not only the right to reproduce the work at issue, but also the rights to distribute and publicly display such a work. Even if public distribution or display is not contemplated initially, there may be increasing pressure on institutions to disseminate works once they have been digitized. Accordingly, the clearest message that can be given to mass digitizers, and the institutions they serve, is to be mindful of copyright law and other legal limitations that may apply.

The following is guidance on copyright and other legal issues most relevant to mass digitization of U.S. Government information:

### **2.1 U.S. Government Publications**

As [works of the U.S. Government](#) are outside the scope of the U.S. Copyright Act (See 17 U.S.C. §105), mass digitization and dissemination of such works that have been released to the public without other legal restrictions are generally permitted. It should be noted that some publications of the U.S. Government or material released to the public by the U.S. Government were created by contractors including FFRDC (Federally Funded Research and Development Centers) employees, grantees, or others working at the Government's direction or behest. Additionally, works of the U.S. Government may incorporate works by non-governmental authors. In such cases these entities may own copyright, which may be represented by having a [copyright notice](#) included in such information. Digitizers should use caution in reproducing or disseminating such material.

The agencies receive many works from contractors, grantees as well as others that are copyright-protected but do not necessarily contain a copyright notice. Mass digitizers may want to determine whether the work is copyright-protected. For a detailed discussion of the Government's licensing rights in works created for the

Government, see [Permissions - Government-Prepared and Non-federal Authored Works: Best Practices for U.S. Government Agencies \(CENDI/2014-2\)](#).

## 2.2 Notices

While copyright or similar notices are not required by law after 1989, many Federal agencies choose to provide general guidance regarding the use of information they distribute. A legend similar to the following may be used for works of the U.S. Government: “This is a work of the U.S. Government, (insert Agency, date) and is not subject to copyright under 17 U.S.C. 105”. This would allow mass digitizers an initial source to begin to determine whether the work is a U.S. Government work.

Furthermore, some Agencies may opt to further clarify the absence of copyright in a work of the U.S. Government by describing provisions for use in foreign jurisdictions. The following are examples of such a notice:

*“Notice of availability of U.S. Government Works for use and reuse (copyright notice): Works prepared by [Agency] are not subject to copyright protection in the United States under 17 U.S.C. § 105 and may be considered to be in the public domain. Unless specific U.S. Government Works (or categories of Works) are designated by [Agency] as subject to copyright protection in foreign jurisdictions, as applicable, these works are also available for worldwide use and reuse [and under CCO 1.0 Universal].”*

or:

*Works prepared by (Agency) employees in the scope of their employment are not subject to copyright protection under 17 U.S.C. § 105. Such works are available for worldwide use and reuse [and under the terms of CCO 1.0 Universal]. Please be aware that not all materials on our website are works of the U.S. Government. You may find documents, illustrations, photographs, or other resources contributed or licensed by private individuals, companies, or organizations and these may be protected by copyright laws. Transmission or reproduction of protected items beyond that allowed by fair use, requires the written permission of the copyright owners. We are unable to give copyright permission for any materials that are posted on our website for which the copyright is owned by a third party. If you would like to use these materials, please contact the copyright owner directly for permission.*

Agencies may also include a request for appropriate acknowledgement in any subsequent reuse.

## 2.3 Fair Use

Fair use is a statutory limitation on the [copyright owner](#)'s exclusive rights that permits the use of copyrighted works without permission under certain circumstances. 17 U.S.C. § 107. Section 107 of the Copyright Act provides a framework for



determining whether a particular use is fair. It requires consideration of four factors.<sup>7</sup> Fair use determinations are not based on a mechanical application of the statutory factors. Fair use decisions are made on a case-by-case basis.<sup>8</sup>

Though there may be circumstances when fair use may be applicable to a mass digitization project, the process of mass digitizing material does not automatically constitute a fair use, and even if digitization is permissible, as fair use, access may not be.<sup>9</sup> Further, if fair use is available, it may be limited in scope, depending upon the particular circumstances. If a mass digitization project involves copyright-protected material, and the digitizer does not have permission from the copyright owners to use such material, the digitizer should carefully consider whether any exceptions to the exclusive rights of the copyright owner, like fair use, are applicable.

## 2.4 Reproduction by Libraries and Archives

Section 108 of the United States Copyright Act allows qualifying libraries and archives, including their employees acting within the scope of their employment, to make and distribute copies of materials for specified purposes under specified conditions. Section 108(a) establishes the general eligibility requirements for libraries and archives. Sections 108(b) and (c) set forth the more specific requirements libraries and archives must meet before they may reproduce and distribute copies of works for purposes of preservation or replacement. In addition, during the last 20 years of any term of copyright of a published work, Section 108(h) permits a library or archive to reproduce, distribute, display or perform, in facsimile or digital form, the entire work or portions of the work, for purposes of preservation, scholarship or research, as long as certain conditions are met. Section 108 contains specific conditions and criteria that must be met in order to utilize the exceptions contained therein, including restriction on dissemination of digital copies outside the premises. The exceptions in Section 108 were designed to complement rather than to supplant fair use, and Section 108(f)(4) clarifies that nothing in Section 108 “in any way affects the right of fair use as provided by section 107...” Libraries and archives

<sup>7</sup> (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (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.

<sup>8</sup> H.R. Rep. No. 94-1476, 94<sup>th</sup> Cong., 2d Sess., at 65 (1976) (“[S]ince the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts”)

<sup>9</sup> *Authors Guild, Inc. v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014) (holding that defendant-university libraries unauthorized digital reproduction/copying of millions of copyrighted works in their collections and the subsequent use of said copies to create a full text searchable database accessible to the public and to further provide persons with certified print disabilities access to the copied works to be fair uses under 17 U.S.C. § 107); *Authors Guild v. Google, Inc.*, No. 13-4829 (2d Cir. 2015) (holding that defendant’s unauthorized digital reproductions of entire copyrighted books from multiple major library collections, the provisioning of the digitized copies to the participating libraries and the creation of a publicly accessible and searchable database through which the defendant displayed limited snippets of the text of the copyrighted books to be fair uses under 17 U.S.C. § 107)

may still avail themselves of fair use to the extent it is applicable. For further information see, U.S. Copyright Office Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, at <http://www.copyright.gov/circs/circ21.pdf>.

## **2.5 Orphan Works**

Orphan work is a term used to describe the situation in which the owner of a copyrighted work cannot be identified and located by someone who wishes to make use of the work in a manner that requires permission of the copyright owner.<sup>10</sup>

Orphan work status does not convey any special legal status under current law, but may be relevant for determination of fair use.

## **3 Other Legal Restrictions**

Although a work created by and for the U.S. Government may be eligible for digitization because it is not protected by copyright or the U.S. Government has sufficient licensing rights, other legal restrictions may apply that restrict digitization and dissemination of the work domestically and abroad.<sup>11</sup> The following briefly summarizes some of the most significant restrictions that may be relevant to prospective users.

### **3.1 Privacy and Publicity Rights**

Personal privacy and publicity rights, recognized in some states' statutes or common law, may protect the interests of a person who is the subject of a digitizable work – for example, the person's name, likeness, image, or signature. Some states even recognize such rights in deceased persons, and their estates may continue to protect those rights after the subject's death. One such example is a U.S. [Government work](#) that contains a photograph for which the U.S. Government obtained written permission from the pictured person to use for a limited purpose, such as use within a particular agency's publication or website. Such permission may not extend beyond the agency's or the Government's particular use. Third-parties may need to contact the pictured person for permission to use the photograph.

### **3.2 Statutory Protections of U.S. Government Names, Insignias, Seals**

Additional, non-copyright restrictions may apply to works of the U.S. Government that include certain indicators of Federal agencies or other Government offices or components. A number of Federal statutes<sup>12</sup> prohibit certain unauthorized uses of

<sup>10</sup> See <https://www.copyright.gov/orphan/orphan-report.pdf>

<sup>11</sup> See [CENDI Copyright Frequently Asked Questions About Copyright: Issues Affecting the U.S. Government](#), Section 3.1.5 (Since U.S. Government works are not protected by copyright in the U.S., are all U.S. Government works publicly available without restriction in the U.S.?)

<sup>12</sup> For example, 18 U.S.C. § 709 False Advertising or Misuse of Names to Indicate Federal Agency (various agencies); 50 U.S.C. § 403m (Central Intelligence Agency); 51 U.S.C. § 20141 (National Aeronautics and Space Administration); 42 U.S.C. § 1320b-10 (Social Security Administration and the Department of Health and Human Services); 18 U.S.C. § 713 Use of likeness of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States of Congress.

U.S. Government or agency names, acronyms, logos, insignias, seals, etc. -- for example, a use of such indicators that might create a misleading impression of affiliation or endorsement by a Federal agency or U.S. Government component. Digitization activities could potentially implicate such statutes, some of which prohibit the resale of exact copies of agency publications.

### **3.3 Export Control**

Refers to all unclassified technical data that discloses critical technology or information with military or space application that may not be exported (including release of information or technology to foreign nationals in the United States) lawfully without first obtaining approval, authorization, or a license in accordance with 22 U.S.C. § 2778 (also known as the “Arms Export Control Act”); 50 U.S.C. chapter 35 (also known as the “International Emergency Economic Powers Act”); 22 CFR parts 120-130 (also known as “International Traffic in Arms Regulations” (ITAR)); and 15 CFR parts 730-774 (also known as “Export Administration Regulations” (EAR)).

### **3.4 National Security**

National security imposes restrictions on the release or unauthorized use of certain materials, including, but not limited to, information that has been determined pursuant to Executive Order 13526, “Classified National Security Information,” December 29, 2009, or any predecessor order, to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. Furthermore, classified information that has been declassified may not be released automatically to the public unless it has been reviewed by the originating agency to determine if such information should be characterized as being “controlled unclassified information.”

### **3.5 Trade Secrets**

The Economic Espionage Act of 1996 (18 U.S.C. §§ 1831-39) defines trade secrets as all forms and types of financial, business, scientific, technical, economic or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if: a) the owner thereof has taken reasonable measures to keep such information secret, and b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through, proper means by the public. Enforcement of laws governing unauthorized disclosure of proprietary or trade secret information generally requires that this information be clearly identifiable through appropriate markings. See 18 U.S.C. §1905.

### **3.6 Agency Distribution Statements**

A distribution statement is often required in marking a technical document to denote the extent of its availability for distribution, release, and disclosure without additional approvals or authorizations. A distribution statement is distinct from and in addition to an assigned security classification marking.

## **4 Mass Digitization Checklist**

To assist readers in completing the analysis, the following CHECKLIST may be useful:

- 1) Review the origin of the work. Was it created by a U.S. Government employee within the scope of that employee's duties, or by a contractor or grantee? If the former, it is generally safe to digitize the work unless other legal restrictions apply. If the latter, careful analysis of the U.S. Government's licensing rights must be evaluated to determine if they are sufficient to allow digitization.
- 2) Review the marking notices on the work to determine if they preclude digitization – or, if the document is dated before 1978 and contains no notice, to establish that the document is in the public domain and digitization is permissible.
- 3) Check the date on the document. If it was published in the United States prior to 1923, it is in the public domain and can be digitized. If it was published in the United States prior to 1964 and was not registered for copyright or timely renewed, it is in the public domain and can be digitized.
- 4) Check the document for licensing information, such as a [Creative Commons](#) open license, that would allow you to digitize the document in compliance with the license.
- 5) Carefully review the work to determine if other legal restrictions prohibit digitization.
- 6) Conduct a risk analysis to identify and evaluate all legal, policy, security, and practical issues that may impact the decision to digitize the work.
- 7) Consult your attorney, or in the case of Federal agencies, the Office of the General Counsel for legal guidance.

- 8) Other mass digitization tips include when digitization is performed by a third party.:
- 8.1 Make sure you get a copy in both a preservation format and an access format.
  - 8.2 Make sure you maintain access rights both for yourself and others.
  - 8.3 Be mindful in making decisions regarding rights clearance.
  - 8.4 Follow best practices in metadata creation.
  - 8.5 Avoid restrictions on ownership, access, and distribution – Ensure that public domain materials are available to the public.
  - 8.6 Avoid cherry-picking rather than digitization of whole series or collections.
  - 8.7 Try to retain aggregation/pooling rights.
  - 8.8 Beware gift horses: know the hidden costs to the archives of supporting the digitization.
  - 8.9 Do not reinvent the wheel –talk to others who have entered into similar third-party deals. The National Archives and Records Administration (NARA) is a great role model.
  - 8.10 Consider whether the digitizing party should provide indemnification against any downstream infringement claims.

## **5 Conclusion**

We are providing this paper as a resource of general information that may be applicable to digitization of U.S. Government works, but we cannot provide you with legal guidance. For that, you must seek your own private legal counsel. As this paper indicates, whether the work can be digitized requires a careful analysis of who created the work (i.e., U.S. Government employee versus non-U.S. Government person/organization), the U.S. Government's licensing rights in works created by non-U.S. Government entities and whether other legal restrictions preclude digitization.

## **6 Additional Resources**

ANSI/NISO Z39.87 Data Dictionary - Technical Metadata for Digital Still Images  
[www.niso.org/standards/z39-87-2006/](http://www.niso.org/standards/z39-87-2006/)

Before You Digitize: What Are the Legal Issues?  
[http://www.cendi.gov/presentations/10-07-2010\\_digitization\\_legal\\_issues\\_OKeeffe.pdf](http://www.cendi.gov/presentations/10-07-2010_digitization_legal_issues_OKeeffe.pdf)

Federal Agencies Digitization Guidelines Initiative  
<http://www.digitizationguidelines.gov/>

Formats for Digital Preservation: A Review of Alternatives and Issues (CENDI/2006-1)  
([http://www.cendi.gov/publications/CENDI\\_PresFormats\\_WhitePaper\\_03092007.pdf](http://www.cendi.gov/publications/CENDI_PresFormats_WhitePaper_03092007.pdf))

Frequently Asked Questions About Copyright (CENDI/2008-1)  
(<http://www.cendi.gov/publications/04-8copyright.html>) (Group, 2014)

Information Standards Quarterly (ISQ) Spring 2010, Volume 22, Issue 2; Special Issue:  
Digital Preservation  
(<http://www.niso.org/publications/isq/2010/v22no2/>)

Permissions - Government-Prepared and Non-federal Authored Works: Best Practices  
for U.S. Government Agencies (CENDI/2014-2)  
([http://www.cendi.gov/publications/pub2\\_CENDI-2014-2.pdf](http://www.cendi.gov/publications/pub2_CENDI-2014-2.pdf))

## 7 Appendix A - Definitions

*(Unless otherwise noted, these terms and their definitions are for the purpose of this publication.)*

**Author** -- Under current copyright law, the creator of the original expression in a work is its author. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or entity, such as a publisher. In cases of works made for hire (defined in 17 U.S.C. §101), the employer or commissioning party for limited types of works is considered the author but note, the commissioning agreement must state that the work is a work made for hire. (Note: the proper characterization of the employment relationship may need to be determined.) Under prior copyright law, copyright was held by the person at whose incidence or expense the work was created unless otherwise specified by contract.

**Copyright** -- Refers to the exclusive rights granted to an author or owner of a work, 17 U.S.C. §106. Copyright is a form of protection provided by the laws of the United States to the authors of original works of authorship including literary, dramatic, musical, artistic and related works, 17 U.S.C. §102. Copyright protection arises automatically once an original work of authorship is fixed in a tangible medium of expression, now known or later developed, e.g., written, filmed, or recorded.

**Copyright Notice** -- U.S. law no longer requires the use of a copyright notice, although placing it on the work is often beneficial. Use of the notice informs the public that a work is protected by copyright, identifies the [copyright owner](#), and shows the year of first publication. Prior law did contain such a requirement, and the use of a notice is still relevant to the copyright status of older works. Whenever a work protected under Title 17 is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by section 405 may be placed on publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device. Form of Notice — if a notice appears on the copies, it should consist of the following three elements:

1. the symbol © (the letter C in a circle), or the word “Copyright”, or the abbreviation “Copr.”; and
2. the year of first publication of the work; in the case of compilations, or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles; and

3. the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

**Copyright Owner** -- With respect to any one of the exclusive rights comprised in a copyright, copyright owner refers to the owner of that particular right. The exclusive rights provided by the U.S. Copyright Act are divisible (17 U.S.C. § 201(d)). Copyright in a work vests initially in the [author](#) or authors of the work. Under 17 U.S.C. §§ 101 *et seq.*, when a work is a work made for hire, the employer or other person for whom the work was prepared is considered the [author](#)/owner (but also see, the definition for “Author” shown above).

**Government Employee** -- An officer or employee of the United States Government. An officer's or employee's official duties are the duties assigned to the individual as a result of employment. Generally, official duties would be described in a position description and include other incidental duties. Contractors, including Federally Funded Research and Development Center (FFRDC) employees, and Grantees are not Federal [Government employees](#).

**Government Work** -- Or a "work of the United States Government" is a work prepared by an officer or employee of the U.S. Government as part of that person's official duties, 17 U.S.C. § 101. Copyright protection is not available for any work of the U.S. Government, but the U.S. Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise. When a work protected by copyright is transferred to the U.S. Government, the Government becomes the [copyright owner](#) and the work retains its copyright protection, 17 U.S.C. § 105. Exceptions are available for certain works of the National Institute for Standards and Technology (NIST) and the U.S. Postal Service. Copyright protection may be available for some works of the U.S. government outside the United States.

**License** -- An agreement from a [copyright owner](#), the owner's agent or other authorized representative, allowing another party to exercise one or more of the exclusive rights granted to the copyright owner under Title 17 of the United States Code.

**Public Domain** – Within the context of Title 17, a work is in the Public Domain if it is not protected by copyright. A copyrighted work may enter the public domain when the term of copyright protection for the work has expired; the [copyright owner](#) has expressly dedicated the work to the public domain; or the work was published without a [copyright notice](#) before 1989, or published with a copyright notice between 1923-1963 and not renewed. In addition, some works, such as purely factual works, are ineligible for copyright protection and thus are in the public domain. The term “public domain” is not used in the current Copyright Act, but it was used in the 1909 Copyright Act, and its meaning has been expounded upon in Federal case law, including numerous U.S. Supreme Court cases.