



**DON'T KEEP THE PUBLIC GUESSING:
BEST PRACTICES IN NOTICE OF COPYRIGHT AND
TERMS & CONDITIONS OF USE FOR
GOVERNMENT WEBSITE CONTENT**

**CENDI Copyright & Intellectual Property
Working Group**

FINAL

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CENDI is an interagency cooperative organization composed of the scientific and technical information (STI) managers from the Departments of Agriculture, Commerce, Energy, Education, Defense, the Environmental Protection Agency, Health and Human Services, Interior, the National Aeronautics and Space Administration (NASA), the U.S. Government Printing Office, the National Science Foundation, and the National Archives and Records Administration. 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.

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EXECUTIVE SUMMARY

Users often assume that information on Federal agency websites is in the public domain¹ and unprotected by copyright. However, U.S. Government websites may include information subject to terms and conditions of use based on private entity intellectual property rights. Under the law, the burden is on users of the information to identify the copyright and intellectual property status, but identifying the rights or how to obtain permission can be very difficult.

As an initial step, government agencies should inform the public that information on agency websites may be copyrighted or subject to other intellectual property rights and is subject to terms and conditions of use. The rights of the public to the information presented on government websites should be clear and should include any limitations on down-stream use and redistribution. Government agencies should clearly, consistently and prominently provide access to a Copyright Policy statement from their main homepage via a link to a stand-alone web page, similar to other upper level home page notices (e.g., Privacy, Security, 508 Compliance, etc.), or readily apparent as part of an aggregated Notices page. If specific resources or categories of resources can be identified as either being copyrighted or in the public domain, these should be explicitly noted.

In addition, the CENDI Copyright Working Group recommends instituting policies and procedures for government website administration and content management that encourage agencies, upon creation or acquisition of information and prior to posting it on the website, to identify the intellectual property status of the information and any terms and conditions on its use and to place statements about these rights, terms and conditions on their websites. To facilitate this recommendation, agencies should establish policies and procedures whereby their employees, contractors and grantees that create individual works, such as documents, images, etc., must, upon creation, mark such works with the copyright status. This is particularly important for copyrighted materials included in larger government works.

Unless agency websites squarely address the copyright status of their content, the government perpetuates incorrect assumptions and contributes to the confusion over private intellectual property rights.

¹ CENDI Frequently Asked Questions About Copyright. FAQ 2.2.4. <http://www.cendi.gov/publications/04-8copyright.html#224> Public domain refers to works that are not protected by copyright and are publicly available. They may be used by anyone, anywhere, anytime without permission, license or royalty payment.

The Challenge/Need: Provide Better Notices of Copyright and Terms and Conditions of Use for Government Websites

The law places the burden of determining the copyright status of a work on users of the work. Without a copyright notice or a statement of terms and conditions of use, the user must assume the work is copyrighted, investigate its status and seek permission if an intended use is beyond that allowed by law.² Moreover, without a copyright notice or terms and conditions of use statement, users may find it difficult to identify the right person to provide required permissions. A cursory investigation of agency websites shows that few agencies provide copyright notices or terms and conditions of use statements that could help users determine their right to use information on agency websites.

As citizen-centric, E-government initiatives mature, it is important to set a framework for government information dissemination that deals with issues relating to copyright and intellectual property. Capturing and conveying information about rights related to information on government websites should be addressed now, while standards and best practices for website development are being discussed and implemented.

Current Environment

It is a commonly held belief that information published or sponsored by the U.S. Government³ or available from a U.S. government source, such as a government website, is in the public domain. However, a key finding in a 1999 Government Printing Office report is that “fifteen percent of the products surveyed are not in the public domain, for all or part of the product” (see, “[Report on the Assessment of Electronic Government Information Products](#)”⁴). A look at authors and owners of government information suggests that the percentage may be greater and is likely increasing with government’s growing reliance on the private sector to conduct the business of government.⁵

Public domain refers to works that are not protected by copyright and are publicly available. They may be used by anyone, anywhere, anytime without permission, license or royalty

² 17 USC §§ 107 through 120 establish limitations on or exceptions to exclusive rights. (<http://www.copyright.gov/title17/92chap1.html>)

³ “Barriers to the Effective Management of Government Information on the Internet and other Electronic Records,” dated June 28, 2003, by the Electronic Records Policy Working Group of the U.S. Federal Interagency Committee on Government Information. This article contains a discussion of various definitions of government information. (http://www.cio.gov/documents/ICGI/ERPWG_Barriers.pdf)

⁴ [Report on the Assessment of Electronic Government Information Products](#) - March 1999 by Westat, Inc. under a contract issued by the National Commission on Libraries and Information Science and commissioned by the United States Government Printing Office. (http://www.access.gpo.gov/su_docs/nclisassessment/report.html)

⁵ Fact Sheet on the New True Size of Government by Paul C. Light, Brookings Institution, November 2003. (<http://www.brookings.edu/gs/cps/light20030905.htm>)

payment. A work may enter the public domain because the term of copyright protection has expired, because copyright has been abandoned, or in the U.S. because it is a U.S. Government work (a work created by employees or officers of the U.S. Government as part of their official duties) and there is no other statutory basis for the Government to restrict its access (see 17 USC §105)⁶.

A work is not in the public domain simply because it does not have a copyright notice. Additionally, the fact that a privately created work is, with permission, included in a U.S. Government work does not place the private work into the public domain. For example, works produced by contractors and grantees for the government are often protected by copyright. In such cases, the Government is granted a nonexclusive, irrevocable, worldwide, royalty-free license in the work to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, and to allow others to do so, for U.S. Government purposes.⁸ The Government's license does not place these works in the public domain. Additionally, a copyrighted work for which the copyright has been transferred to the Government by assignment or bequest is not in the public domain.

The reality is that government websites may contain a variety of copyrighted and public domain materials with different terms and restrictions for use. The user is responsible for determining whether or not a work is in the public domain. However, the lack of clear, consistent, and prominent copyright statements on government websites and the fact that most information produced by and for the Government is not marked upon creation with its copyright status makes it difficult for users to determine their right to use information on government websites.

In addition:

- Some of these works may include embedded information (e.g., quotation, photograph, chart, drawing, etc.) that is copyrighted but used under license or with permission. The government's license or permitted use of a copyrighted work does not place it in the public domain.
- Government websites may include a copyrighted work licensed to the government by the owner of the copyright. Because the copyright owner retains its exclusive rights under the copyright, the work is not in the public domain.
- Government websites and products may include links to copyrighted information or licensed materials that are provided to the public only upon limited terms and conditions of use.

⁶ 17 USC § 105. Subject matter of copyright: United States Government works. (<http://www.copyright.gov/title17/92chap1.html#105>)

⁷ Civilian agencies are guided in contracting by the Federal Acquisition Regulations (FAR) FAR Subpart 27.4--Rights in Data and Copyrights. The Department of Defense (DoD) is guided by the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.4 and Part 211 and Part 252. Grants to nonprofit organizations are covered by OMB Circular A-110.

- Government websites may provide access to software that is protected by copyright and/or patent. Terms of use should be provided on the government website. Such access does not place the software in the public domain.

Many government agencies give no notice about the copyright status or terms and conditions of use for information and content on agency websites. Even when an agency does provide a statement, it may not be identified as a copyright policy, and it may be buried in the site or incorporated into “Privacy and Security” or “Disclaimer” notices. Additionally, components within agencies may have their own copyright notices, and these may differ from those of the parent organization.

Furthering public misperception, government agencies often advise that in the absence of a copyright notice, users may assume the information is not copyrighted. This contradicts the copyright law as amended in 1989, when the United States joined the Berne Convention for the purpose of harmonizing domestic copyright law with international copyright standards. While use of a copyright notice and registration was once required as a condition of copyright protection in the United States, it is now optional, and a work is not in the public domain simply because it does not have a copyright notice.

What Should Be

As an initial step, government agencies should inform the public that information on agency websites may be copyrighted and may be subject to various terms and conditions of use. Limitations on the rights of the public to use, reproduce, and redistribute any copyrighted information presented on the government website should be clearly stated. This should include any limitations on downstream use and redistribution. If specific resources or categories of resources can be clearly identified as either being copyrighted or in the public domain, these should be explicitly noted.

Government agencies should clearly, consistently and prominently provide access to a Copyright Policy statement from their main homepage via a link to a stand-alone web page, similar to other upper level home page notices (e.g., Privacy, Security, 508 Compliance, etc.). Alternatively, this information should be made readily apparent as part of an aggregated Notices page. Because agency situations may differ, specific wording for copyright policy statements is not provided in this white paper, but some examples considered “best practices” for these statements are provided in Appendix A.

Furthermore, agencies should establish policies and procedures whereby their employees, contractors and grantees that create individual works, such as documents, images, etc., must, upon creation, mark such works with the copyright status. This is particularly important for copyrighted materials included in larger government works.

More specific notices for special collections, categories of material, or licensed products should also be readily accessible within the agency’s website.

Special attention should be given to the agreements for licensed resources, which may contain required wording for terms and conditions and instructions for making these resources available via the Web.

The Copyright and Terms and Conditions of Use statements should be reviewed by appropriate legal counsel, content managers, and librarians.

Additional Recommendations

The recommendations to mark works up-front with their copyright status and to provide Copyright and Terms and Conditions of Use Statements accessible from the main homepage are only initial steps in minimizing confusion for users of government websites. Additional recommendations include:

- Agencies should encourage employees, contractors and grantees to include the year of publication on all works or components of works such as images. Publication dates are critical to determining when copyrighted works move into the public domain.
- Agencies should incorporate user-friendly intellectual property rights management markings and metadata tools when developing requirements for and procuring web content and records management systems. Such markings and metadata would assist users in determining intellectual property rights of website content.

Conclusion

There are both immediate and longer- term guidelines that can more appropriately and consistently convey the rights of the public to information on government websites than those used at present by most agencies.

Unless agency websites clearly and adequately identify the copyright status of their contents, the public will be confused about what use it can make of copyrighted material and so may violate the rights of copyright owners.

Addressing these issues will:

- Safeguard the legal and financial rights of the government and the public;
- Respect and protect the intellectual property rights of others;
- Reduce the burden of rights determination for content use, repurposing, and preservation; and,
- Promote a culture of intellectual property awareness and responsibility within the government and among citizens.

APPENDIX A: Best Practices

Examples of government agency copyright policies and statements are:

Library of Congress

<http://www.loc.gov/homepage/legal.html#COPY>

Learning Page How to Understand Copyright Restrictions

<http://memory.loc.gov/learn/start/cpyrt/>

Digital Preservation. Digital Reproductions: Copyright and Other Restrictions

<http://www.loc.gov/preserv/digital/dp-copyright.html>

Prints and Photographs Division. Copyright and Other Restrictions Which Apply to Publication and Other Forms of Distribution of Images: Sources for Information

http://www.loc.gov/rr/print/195_copr.html

National Archives and Records Administration

<http://www.archives.gov/welcome/index.html>

Bottom left of page, click on:

Privacy and Use http://www.archives.gov/global_pages/privacy_and_use.html

Copyright, Restrictions, and Permissions Notice

http://www.archives.gov/global_pages/privacy_and_use.html#copyright

National Library of Medicine

Generic copyright statement that appears on all major web pages.

<http://www.nlm.nih.gov/copyright.html>

Web pages that incorporate licensed proprietary materials:

<http://www.nlm.nih.gov/medlineplus/faq/imageuse.html>

<http://www.nlm.nih.gov/medlineplus/encyclopedia.html>

<http://householdproducts.nlm.nih.gov/about.htm>

Web pages that contain copyrighted history materials:

Profiles in Science Frequently Asked Questions

<http://profiles.nlm.nih.gov/Help/FAQ/>

Images from the History of Medicine (IHM) Database

<http://www.nlm.nih.gov/pubs/factsheets/ihmfact.html>

National Science Foundation:

Web and Other Policies <http://www.nsf.gov/home/pubinfo/webpolicy.htm>

Guidelines for Reproducing or Using Material from the NSF Website

<http://www.nsf.gov/home/pubinfo/reuse.htm>

Smithsonian Institution: Copyright Terms and Conditions.

<http://www.si.edu/copyright/>

U.S. Mint: Terms of Use – Intellectual Property

<http://www.usmint.gov/policy/index.cfm?action=TermsOfUse>

