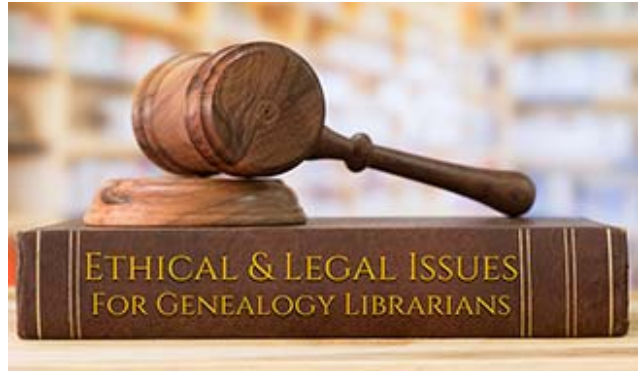


# ETHICAL & LEGAL ISSUES FOR GENEALOGY LIBRARIANS



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**Overview:** Copyright, including the special rules applicable only to libraries – and only to some libraries. Contracts that limit what patrons can do using library computers and in accessing library resources from within or without the library. Records access laws. Ethical considerations. There are enormous issues a genealogy librarian faces in coping with an ever-changing legal and ethical world. No presentation can cover all the bases, so the following are resources genealogy librarians can use to try to learn more about – and stay up to date with – the ethical and legal issues they face on a day-to-day basis.

## COPYRIGHT RESOURCES

### Copyright Law—Generally

Cornell University Library, *Copyright Information Center*. <https://copyright.cornell.edu/>  
Creativecommons.org. <https://creativecommons.org/>.

Cyndi's List. "Intellectual Property." <https://www.cyndislist.com/ip/> [See subcategories for Copyright and Copyright in Genealogy]

Fishman, Stephen. *The Copyright Handbook: What Every Writer Needs to Know*. 13th ed. Berkeley, Cal. : Nolo Press, 2017.

Patry, William F. *Copyright Law and Practice* (Washington, D.C. : Bureau of National Affairs, 2000); online reprint, <http://digital-law-online.info/patry/index.html>

Stanford University Libraries. "Copyright Renewals." (Searchable database for books, 1923-1963) <https://exhibits.stanford.edu/copyrightrenewals>

—. "Searching the Copyright Office and Library of Congress Records." <https://fairuse.stanford.edu/overview/copyright-research/searching-records/>

Stim, Richard. *Getting Permission: How to License & Clear Copyrighted Materials Online & Off*. 7<sup>th</sup> edition. Berkeley, California: Nolo Press, 2019.

Stim, Richard. *Patent, Copyright & Trademark: An Intellectual Property Desk Reference*. 16<sup>th</sup> edition. Berkeley, California: Nolo Press, 2020.

University of Texas. *Copyright Crash Course*. <http://guides.lib.utexas.edu/copyright>

World Intellectual Property Office. "Copyright." <https://www.wipo.int/copyright/en/>

## Copyright Office—US

U.S. Copyright Office. <https://www.copyright.gov>

*Circular 1: Copyright Basics*. <https://www.copyright.gov/circs/circ01.pdf>

*Circular 15a: Duration*. <https://www.copyright.gov/circs/circ15a.pdf>

*Circular 22: How to Investigate the Copyright Status of a Work*.

<https://www.copyright.gov/circs/circ22.pdf>

*Circular 33: Works Not Protected by Copyright*.

<https://www.copyright.gov/circs/circ33.pdf>

---. *Compendium of U.S. Copyright Office Practices*, 3<sup>rd</sup> edition.

<https://www.copyright.gov/comp3/>

---. "Fair Use Index." <https://www.copyright.gov/fair-use/>

---. *Orphan Works and Mass Digitization: A Report of the Register of Copyrights* (2015).

<https://www.copyright.gov/orphan/reports/orphan-works2015.pdf>

---. *Report on Orphan Works: A Report of the Register of Copyrights* (2006).

<https://www.copyright.gov/orphan/orphan-report-full.pdf>

---. "Registration Portal." <https://www.copyright.gov/registration/>

---. Post-1978 copyrights: <http://cocatalog.loc.gov>

## Duration

Hirtle, Peter B. (Cornell Copyright Information Center). *Copyright Term and the Public Domain in the United States*. <https://copyright.cornell.edu/publicdomain>

## Fair Use

American Library Association & Michael Brewer. Fair Use Evaluator (tool for analyzing statutory fair use factors). <https://librarycopyright.net/resources/fairuse/>

Center for Media & Social Impact, American University School of Communication. *Fair Use, Free Speech & Intellectual Property*. <http://cmsimpact.org/program/fair-use/>

Stanford University Libraries. *Copyright & Fair Use*. <https://fairuse.stanford.edu/overview/fair-use/>

University of Texas. "Fair Use," *Copyright Crash Course*. <https://guides.lib.utexas.edu/fairuse/home>

## Plagiarism

Mieszala, Debbie. "Stop, thief! A plagiarism primer." *National Genealogical Society Magazine* 38 (April-June 2012): 17-20.

Mills, Elizabeth Shown. "QuickLesson 15: Plagiarism—Five 'Copywrongs' of Historical Writing." *Evidence Explained: Historical Analysis, Citation & Source Usage*. <http://bit.ly/legalgen0132>

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Philibert-Ortega, Gena. "Plagiarism in the Genealogy Community." *Gena's Genealogy*, posted 16 October 2009. <http://bit.ly/legalgen0136>  
Smith, Drew. "Plagiarism in the Digital World." *Internet Archive Wayback* version (<http://web.archive.org>). <http://bit.ly/legalgen0140>

## Public Domain

Duke University, *Center for the Study of the Public Domain*. Website with news, events and resources on public domain issues. <https://law.duke.edu/cspd/>  
Fishman, Stephen. *The Public Domain : How to Find & Use Copyright-Free Writings, Music, Art & More*. 9th ed. Berkeley, Cal. : Nolo Press, 2020.  
*Public Domain Sherpa*. <http://www.publicdomainsherpa.com/>

## Risk Assessment

Hirtle, Peter B. *Learning to Live with Risk*. (2011). <http://bit.ly/legalgen0024>  
Library of Congress, Prints & Photographs Division. "Copyright and Other Restrictions That Apply to Publication/Distribution of Images: Assessing the Risk of Using a P&P Image." [http://www.loc.gov/rr/print/195\\_copr.html](http://www.loc.gov/rr/print/195_copr.html)  
University of Washington. *Copyright Connection*. "Evaluating Risks." [http://depts.washington.edu/uwcopy/Using\\_Copyright/Evaluating\\_Risks/](http://depts.washington.edu/uwcopy/Using_Copyright/Evaluating_Risks/)

## Section 108, Libraries and Repositories

American Library Association. "Section 108." [Spinner tool for section 108 and recording thought process.] <https://librarycopyright.net/resources/spinner/index.html>  
Crews, Kenneth D. "Digital Libraries and the Application of Section 108 of the U.S. Copyright Act." HTML. <http://dml.indiana.edu/html/crews-sec108/>  
Hirtle, Peter B. "Digital Access to Archival Works: Could 108(b) Be the Solution?" *Copyright & Fair Use*, Stanford University Libraries (24 Sept. 2006) <https://fairuse.stanford.edu/2006/09/24/post/>  
Section 108 Study Group. *Section 108 Study Group Report* (2008). <http://www.section108.gov/docs/Sec108StudyGroupReport.pdf>  
Society of American Archivists. "Issue Brief: Archivists and Section 108 of the Copyright Act." <https://bit.ly/36KxURD>  
U.S. Copyright Office. *Circular 21: Reproduction of Copyrighted Works by Educators and Librarians*. <https://copyright.gov/circs/circ21.pdf>

## CONTRACT / TERMS OF USE RESOURCES

American Library Association. "Library Privacy Guidelines for Vendors." <http://www.ala.org/advocacy/privacy/guidelines/vendors>  
—-. "Rights and Permissions Guidelines." <http://www.ala.org/aboutala/contactus/rights>  
Bayley, Ed. "The Clicks That Bind: Ways Users 'Agree' to Online Terms of Service." *Electronic Frontier Foundation*, 2009, <https://www.eff.org/wp/clicks-bind-ways-users-agree-online-terms-service>. (Also available as PDF for download: <https://www.eff.org/files/eff-terms-of-service-whitepaper.pdf>)

Cunningham, Patricia Bayer, and Erin C. Witkow. "Click with Caution: Liability for Breach of Click-Wrap and Browse-Wrap Agreements." *The Computer & Internet Lawyer Journal* (2006). <https://bit.ly/36HLntr>

Cyndi's List. "Terms of Use." <https://www.cyndislist.com/ip/termsfuse/>

Darden, Laura, and Charles Thorpe. "Forming Contracts Over the Internet: Click-wrap and Browse-wrap Agreements" (Georgia State University, College of Law, Summer 2003). [http://ul451.gsu.edu/lawand/papers/su03/darden\\_thorpe/](http://ul451.gsu.edu/lawand/papers/su03/darden_thorpe/).

Electronic Frontier Foundation. "Terms of (Ab)Use." <https://www.eff.org/issues/terms-of-abuse>

Han, S.S. "Predicting the Enforceability of Browse-Wrap Agreements in Ohio," 36 *Ohio N. U. L. Rev.* 1 (2010).

"How to Write Terms and Conditions." *Termsfeed.com*, posted 23 April 2020. <https://www.termsfeed.com/blog/write-terms-conditions/>

Irvine, Sol. "Browse-Wrap Has Its Day in Court: Are Website Terms of Service Enforceable?" *Laws of the Digital Domain*. <https://medium.com/laws-of-the-digital-domain/7b0bb2437dac>

Meysenburg, Nat, Ross Schulman and Andi Wilson Thompson. *Evaluating the Digital Standard: How to Assess the Security of the Internet of Things*. Washington, DC : New America 2020. <https://www.jstor.org/stable/resrep26361>

Murphy, T. "Browser Beware! Browse Wrap Agreements are Enforceable in Canada." *Murphy & Co. blog*, 28 Oct 2011. <http://www.murphyandcompany.com/browse-wrap-canada/>

National Information Standards Organization. "NISO Consensus Principles on Users' Digital Privacy in Library, Publisher, and Software-Provider Systems (NISO Privacy Principles)." <https://www.niso.org/publications/privacy-principles>

Russell, Judy G. *The Legal Genealogist* blog. Various dates. Category: Terms of use. <https://www.legalgenealogist.com/category/terms-of-use/>

Specialty Technical Publishers, "Internet Law: 'Browse-wrap' Contracts," *Audit, Compliance and Risk Blog*, posted 9 October 2013. <http://blog.stpub.com/bid/188020/Internet-Law-Browse-wrap-Contracts>

Tan, Corinne. *Regulating Content on Social Media: Copyright, Terms of Service and Technological Features*. London : UCL Press, 2018. <https://discovery.ucl.ac.uk/id/eprint/10045814/> [See especially Chapter Three: "Application of the terms of service"]

## RECORDS ACCESS RESOURCES

FOIA Advocates. State Public Records Laws. A guide to public records laws in the states, clickable map for all states and DC. <http://www.foiadvocates.com/records.html>

FOIA.gov. U.S. Department of Justice. <https://www.foia.gov/>

FOIA Wiki. [https://foia.wiki/wiki/Main\\_Page](https://foia.wiki/wiki/Main_Page)

Freedom of Information Act Reference Guide, National Archives and Records Administration, <https://www.archives.gov/foia/foia-guide>

Ganz, Brooke Schreier. *Freedom of Information Laws are Awesome for Genealogy*. IAJGS 2017. Video. <https://www.youtube.com/watch?v=H2VJcJExjQA>

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—-. *Using Freedom of Information Laws for Genealogical and Archival Research*. NGS 2018. <https://bit.ly/legalgen0429>

International Association of Jewish Genealogical Societies (IAJGS). Public Records Access Alerts List. <https://lists.iajgs.org/mailman/listinfo/records-access-alerts>

International Federation of Library Associations. *Access to Genealogical Data: Data Protection Versus Unlocking the Records*. 2008. <https://www.ifla.org/node/722>

National Freedom of Information Coalition. <https://www.nfoic.org/>

—-. FOI Reference and Research (Archive). <https://www.nfoic.org/foi-center>

—-. State FOI. <https://www.nfoic.org/organizations>

—-. State Freedom of Information Laws. <https://www.nfoic.org/coalitions/state-foi-resources/state-freedom-of-information-laws>

New York Records Preservation and Access Coalition. <https://nyrpac.org/>

Records Access and Preservation Committee. <https://www.ngsgenealogy.org/rpac/> and see <https://www.recordsadvocate.org/>

Reporters Committee for Freedom of the Press. <https://www.rcfp.org/>

—-. *Open Government Guide*, <https://www.rcfp.org/open-government-guide>

Reclaim the Records. <https://www.reclaimtherecords.org/>

Russell, Judy G. *The Legal Genealogist*. <https://www.legalgenealogist.com/category/access/>

## GENEALOGY ETHICS RESOURCES

### Courtesy and Etiquette

National Genealogical Society. *Guidelines for Using Records Repositories and Libraries*. <http://bit.ly/legalgen0060>

Stoddard, D'Ann. "Minding Your Manners in Family History: Rules of the Road for All Genealogists." LA FamilySearch Library, via the Internet Archive Wayback Machine. <https://web.archive.org/web/20100623015113/http://www.lafhl.org/begin.htm>

### Ethics Codes for Genealogists

Association of Professional Genealogists. *Code of Ethics and Professional Practices*. Online version. <https://www.apgen.org/cpages/code-of-ethics>

Board for Certification of Genealogists. *Code of Ethics and Conduct*. Online. <https://bcgcertification.org/ethics-standards/code/>

*Genetic Genealogy Standards*. Report of an Ad Hoc Committee on standards governing DNA testing. <https://www.geneticgenealogystandards.com>

International Association of Jewish Genealogical Societies. *Code of Conduct/Ethics*. <https://www.iajgs.org/code-of-conduct/>

### Ethics Generally

Cyndi's List. *Etiquette & Ethics: General Resources*. <https://www.cyndislist.com/etiquette/general/>

Dowell, Dave. "Are you practicing Genealogy Ethically?" *Dr D Digs Up Ancestors*, posted 6 August 2011. <http://blog.ddowell.com/2011/08/are-you-practicing-genealogy-ethically.html>

Estes, Roberta. "No (DNA) Bullying." *DNA-eXplained – Genetic Genealogy*, posted 15 May 2013. <https://dna-explained.com/2013/05/15/no-dna-bullying/>

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Ramage, Michael S. "Ethical Considerations," chapter 5 in Elizabeth Shown Mills, editor, *Professional Genealogy: Preparation, Practice & Standards* (Baltimore, Md. : Genealogical Pub. Co., 2018).

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Szucs, Loretto Dennis and Sandra Hargreaves Luebking. "Etiquette, Ethics, Legalities." *The Source: A Guidebook to American Genealogy*. 3d ed. Provo, UT : Ancestry, 2006, 31-32.

### **Honesty in Genealogy**

Morgan, George. "Truth, Duty, Honor." Internet Archive Wayback version (<http://web.archive.org>). <http://bit.ly/legalgen0134>

National Genealogical Society. *Guidelines for Sound Genealogical Research*. <http://bit.ly/legalgen0135>

### **Privacy**

Danko, Stephen. "Ethics in Publishing Family Histories." Online essay. <http://stephendanko.com/blog/1580>

Gormley, Myra Vanderpool. "Oxymoron: Privacy and the Internet." <http://sites.rootsweb.com/~mistclai/privacy.html>

Mills, Elizabeth Shown. "§2.8. Privacy." *Evidence Explained: Citing History Sources from Artifacts to Cyberspace* (3d ed. rev.). Baltimore, Md. : Genealogical Publishing Co., 2017.

Morgan, George. "The Ethics and Etiquette of Sharing." Internet Archive Wayback version (<http://web.archive.org>). <http://bit.ly/legalgen0133>

National Genealogical Society. *Guidelines for Sharing Information with Others*. <http://bit.ly/legalgen0038>

Taylor, Maureen. "Privacy and the Family Home Page." *Genealogy.com*. Internet Archive Wayback version (<http://web.archive.org>). <http://bit.ly/legalgen0141>

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