'Writing your Family History update'

Understanding Copyright, Plagiarism, Referencing, Citations, Fair use and Terms of use…

Since genealogical research inevitably involves copying of information, questions involving copyright often crop up…

The purpose of copyright law is to protect **creativity**[1]; literally, the term copyright means the right to make copies of some product. By law, the right belongs to its creator. In copyright law, the product that's copyrighted is referred to as a "work" and the creator of the work is its author. All that's protected under copyright is the author's original expression. The protected material must have been independently created by the author with at least some minimal amount of creativity. **Facts can't be original expression**[2]**.** No one can claim originality in a fact. At best, a person may discover a fact. If he discovers it and documents it, he has not created it, he has only reported it, and there is no originality.

Census enumerators[3], for instance, didn't create the data that results from their work and they wrote down the facts that they discovered. So, census data, therefore, can't be copyrighted because it's not original. This is a very important fundamental concept in genealogy, since genealogy very much involves the pursuit, discovery, and collection of facts. A pedigree/family tree chart or any other standard genealogy form or format that contains nothing but facts is not copyright protected.

Plagiarism and copyright are not the same[4]**.** Plagiarism is the failure to properly document the source of the information or material that you use and is considered to be unethical, quite simply, passing off other people's work as your own is unacceptable because it is a form of theft – in this case intellectual property and you should cite material you have studied and taken note of when preparing a piece of genealogical work or a family history. Detecting plagiarism is easier now than ever before and is rapidly becoming easier still with good software systems.

Citation and referencing is an antidote to plagiarism, to avoid all possible misunderstandings in anything you write, the message is: **Cite and reference all your sources**[5]**.**

Referencing is quite simply providing details of where you found your information and
Citation takes place within your text and provides a pointer to the reference for the source you have made use of…

So, you must cite and give references for assertions of fact that cannot be presumed to be common knowledge or direct quotations of other writers, and there are three interlocking parts to citing and referencing within your work;

1. Indicate your use of information from another source within your work,

2. Create individual references for each source you've cited within your work,

3. Link the citation of the information within your work (from point 1), through the use of a superscript number, to corresponding individual reference (that you created as point 2) in endnotes collected at the end of the whole document[6]…

The most useful exception to copyright is called **fair use[7] (fair dealing** in the UK, not the same as US Law**)**, to qualify as fair use, what you use must be fair to the copyright owner, which means, among other things, not using too much of their work and not damaging their commercial interests and use of their work, and you must acknowledge the author and give the title of their work. However, what you do use must fall into one of the following categories, such as; **non-commercial research**, **personal research**, **review & critique** or **teaching** – as examples of activities that may qualify as fair use. So, fair use can be a way for us to use copyright-protected works for **teaching** and **research** – the kinds of things we do as genealogists.

Except when we agreed not to, and that's where contracts like terms of use come into play. **Terms of use[8]** (or **terms of service** or **terms and conditions** – whatever they're called) are the limits somebody who owns something you want to see or copy or use puts on whether or not he'll let you see or copy or use it. These are limits that are different from copyright protection, since the law says what is and isn't copyrighted and you can own a thing without owning the copyright. So this isn't **copyright law**; it's **contract law[9]**.

The phrase "terms of use" isn't defined in legal dictionaries however, Wikipedia says terms of use, terms of service and terms & conditions are all the same thing (they are) and define the phrase as "rules by which one must agree to abide by in order to use a service". That's a pretty fair definition. But, you're thinking, if it's rules, how can it be considered a contract? Nobody gave you a choice about the rules when you subscribed to; say, **Ancestry.com**, etc. did they?

Actually, they did. Exactly the same kind of choice you have in a lot of things in life: take it or leave it. When you created your account with one of the many services we use around the web, commercial and non-commercial, there comes a point in joining-up or the subscription process where there's a button or a check box, if you click on it or check the box, you've agreed to be bound by what the terms of use are. Did you read the terms and conditions, I hope you did?

By contract, the agreement between us and a subscription website for example, we can give up any number of rights we might otherwise have – like the right to sue in court rather than arbitrate a dispute – in return for something we want to have – like quick and easy online access to information.

It's the fact that both sides get something (the website, our money; us as users, online access to information or data or records) that makes the contract enforceable. So when we enter into an agreement with a website with terms of use that says we can't use something in a particular way, that contract is generally honoured by the courts.

And that's why, as a general rule, a website's terms of use **can** prohibit users from using the fair use doctrine to use copyright-protected works the website serves up. Not because copyright law says we can't use them, but because we **agreed** we can't use them, when we clicked that box, and accepted the website's terms of use[10].

But, remember, **facts can't be original expression**; no one can claim originality in a fact. At best, a person may discover a fact. If he discovers it and documents it, he has not created it, he has only reported it, and there is no originality however, you should '**cite and reference'** all your sources.

The nature of genealogical research has altered dramatically over the course of the past decade; the digitisation of facts and documents, and their availability online has transformed techniques of research and changed what we understand as the nature of sources.

For references that deal with data found within most online databases, it makes more sense to give just the 'root' URL for that provider. This means giving the URL that takes the user to the home page of the website (akin, to identifying the publisher). 'Short' or 'generic' URL provision covers such databases as: Ancestry, FindMyPast, theGenealogist, MyHertiage, FamilySearch and ScotlandsPeople, and most newspaper and article databases accessed through online providers, or a university website and others[11].

Finally, whatever way you decide to record or write your family's history, it's important to do it for future generations…

CITATION:

1, 2, 3; Goad, Michael P. 2003. ***Copyright Fundamentals for Genealogy.*** http://www.stellar-one.com/copyright.htm

4,5,6,11; Macdonald, Ian G. 2018. ***Referencing for Genealogists Sources and Citation.*** Stroud: The History Press

7,8,9,10; Russell, Judy G. 2018. ***Fair use and terms of use.*** https://www.legalgenealogist.com

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