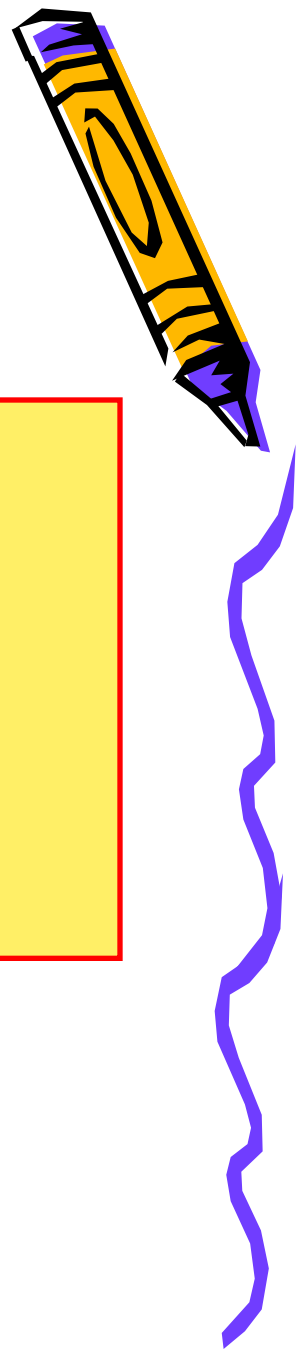


# Copyright and Publication Agreements...

Who owns  
your work?

University of Louisville





# Dwayne K. Buttler

Professor, University Libraries

Evelyn J. Schneider Endowed Chair for Scholarly Communication  
University of Louisville

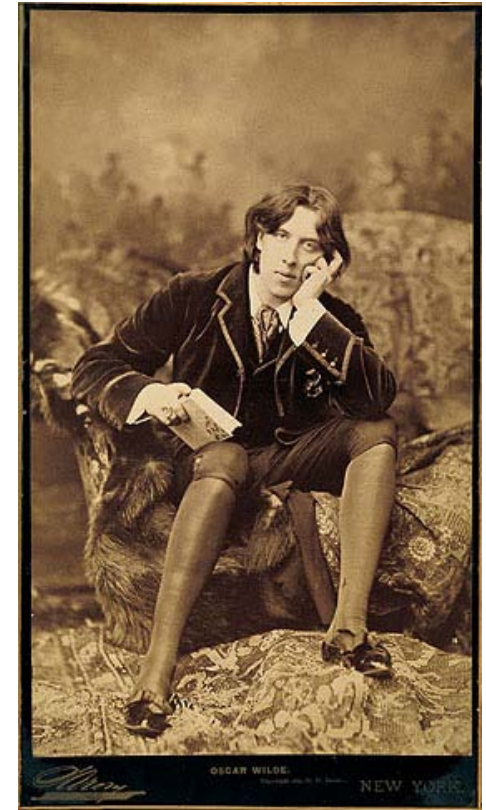
[dwayne.buttler@louisville.edu](mailto:dwayne.buttler@louisville.edu)



# the Curious Case of Oscar Wilde...

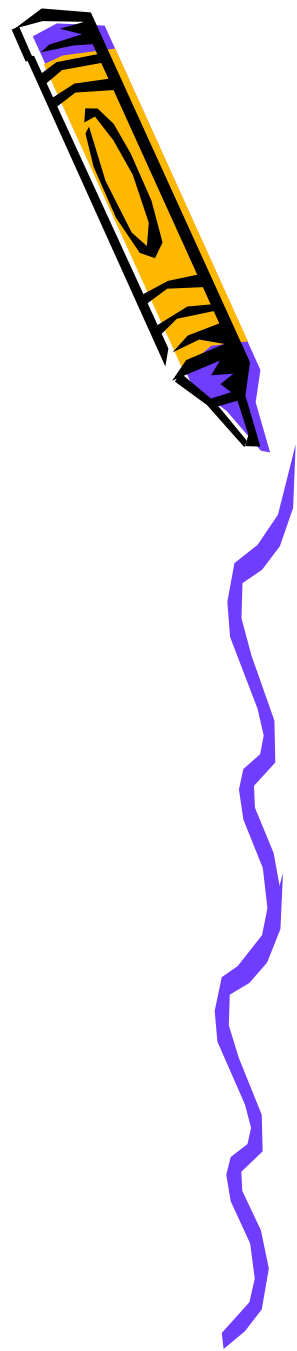
The Congress shall have  
Power To ...*promote* the  
Progress of Science and  
useful Arts, by securing for  
*limited Times* to Authors  
and Inventors the *exclusive  
Right* to their respective  
*Writings* and *Discoveries*...

Art. 1, § 8, Cl. 8.



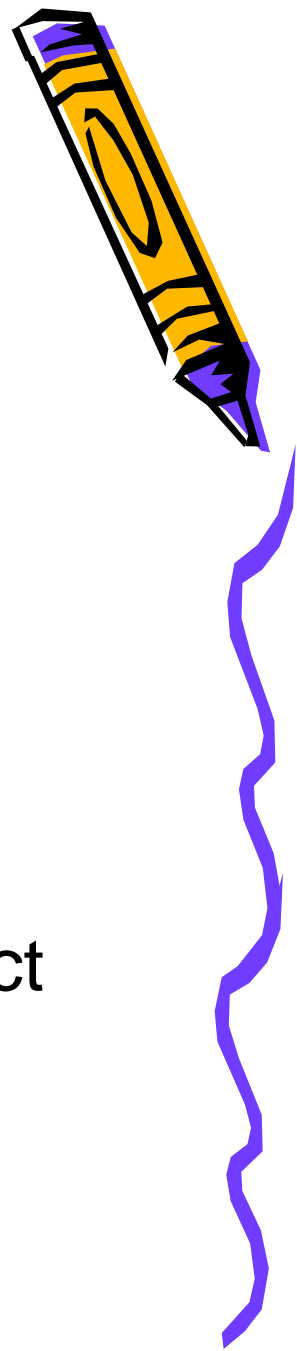
# “Getting” copyright...

- original work of authorship
  - “modicum of creativity”
  - “human” author
- fixed in “tangible medium”
  - infinite range of possibilities
- automatic protection
  - no notice, no registration, no record



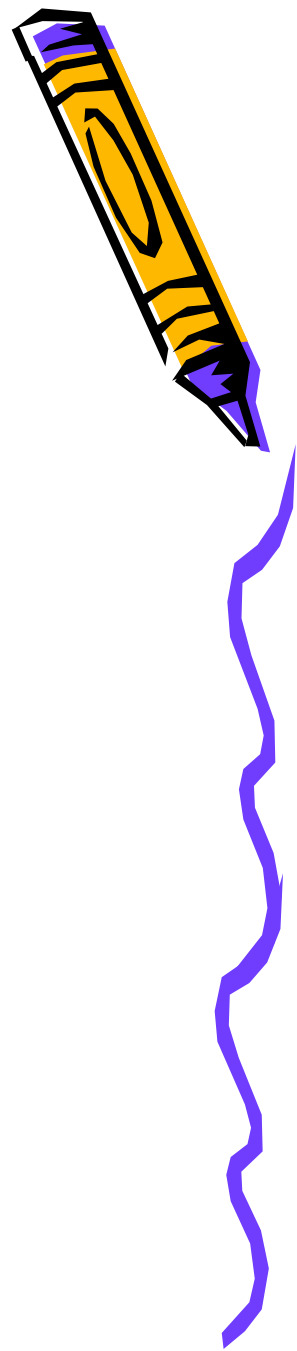
# the Unprotected

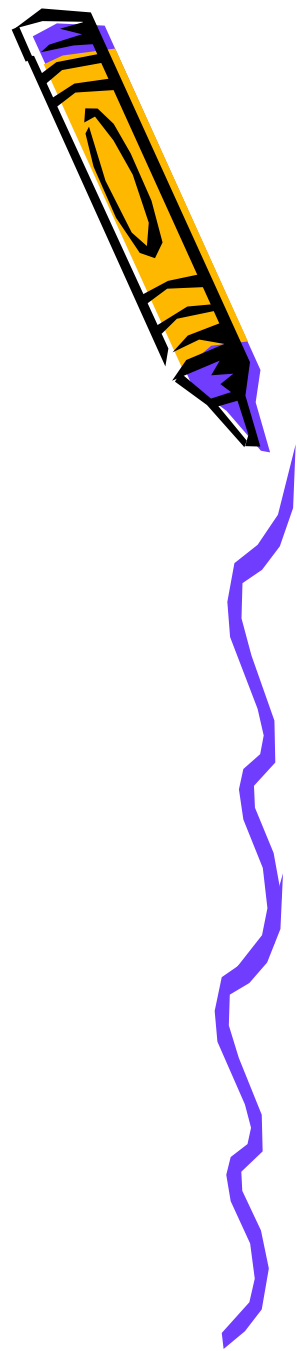
- facts
- ideas
  - “merger” doctrine (idea = expression)
- expired works
- statutory defects
  - notice and renewal under the 1909 Act
- U.S. government works



# the Exclusive Rights

- reproduction
- distribution
- preparation of derivative works
- public performance
- public display
- **PLUS... the Digital Bonus**
  - “anti-circumvention” of TPS sometimes





# Duration, Duration, Dura...

- works created after 1978
  - life of the author plus 70 years
  - “work-for-hire”
    - 95 years from publication date
    - 120 years from creation date
- works created before 1978
  - $28+47+20=95$  UNLESS
  - published w/out notice or not renewed

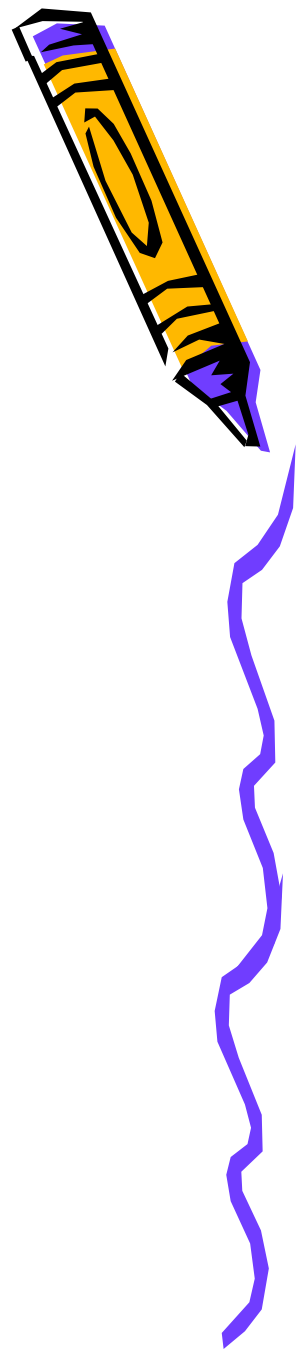


# Yours..Mine...Somebody's....



- Creator  
OR
- “W-M-F-H”  
OR
- “assignee”  
OR
- inherited





# Mine..Mine...Mine....?

- creator of the copyrighted work
  - no other relationships or conditions
  - “operation of law”
  - creator is “author”
  - academia and IP Policies
    - enforceability???
    - patent = university
    - copyright = language of policy...



# what's mine isn't Mine?

- “work-made-for-hire”
  - employee
    - “acting within scope of employment”?
  - employer is “author” and controls rights
- OR
- “specially commissioned works”
  - 9 statutory categories...
  - must expressly agree in writing !!!

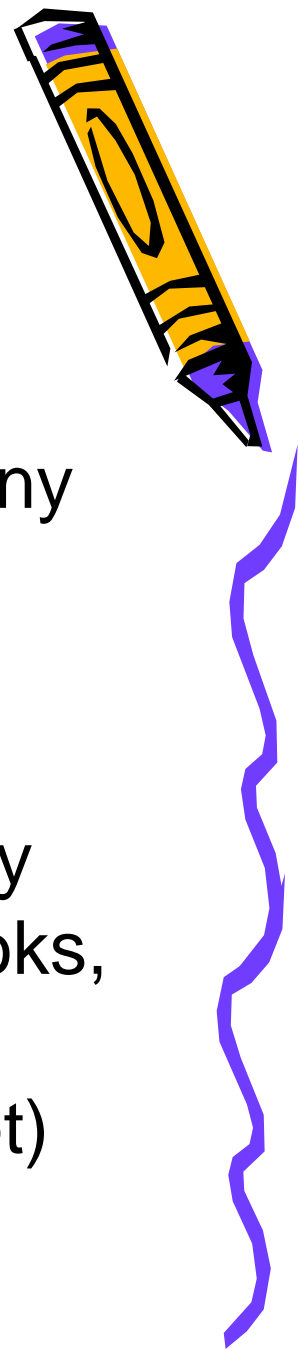


# UofL IP Policy...

Sec. 3(a) **General Rule.** Except as provided in Section 3.b., the University of Louisville Research Foundation...will hold all Legal Rights to all Intellectual Property conceived, first used (in the case of a trademark or service mark), or reduced to practice, discovered, or created, by any employee of the University, during his/her employment by the University.



# UofL IP Policy...



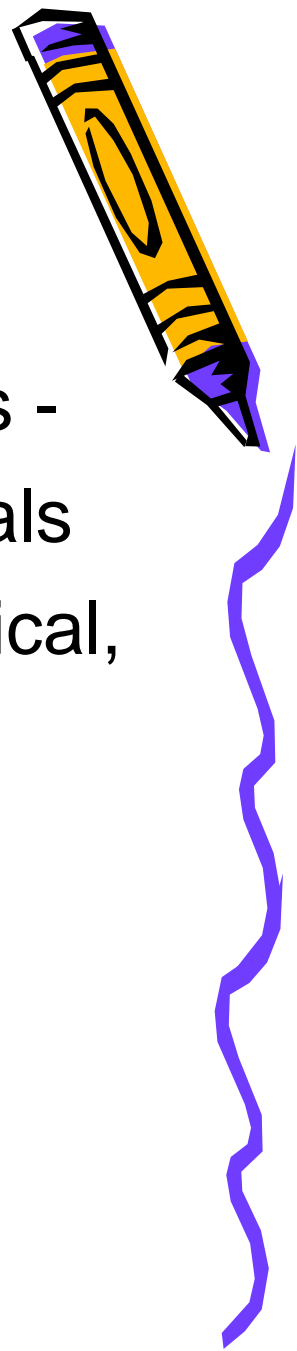
Sec. 3(b) **Exceptions.** Notwithstanding Section 3.a., the University... will not hold any ownership rights in...

iii. ... a Traditional Work, unless the Traditional Work was specifically commissioned by the University (productivity measures as agreed to in a work plan – books, articles, paintings, etc. – unless specifically commissioned by the University, are exempt)



# UofL IP Policy...

Sec. 2 **Definitions** 2(g) g. Traditional Works - include creative works and research materials that are educational, scholarly, artistic, musical, sculptural, or literary works.



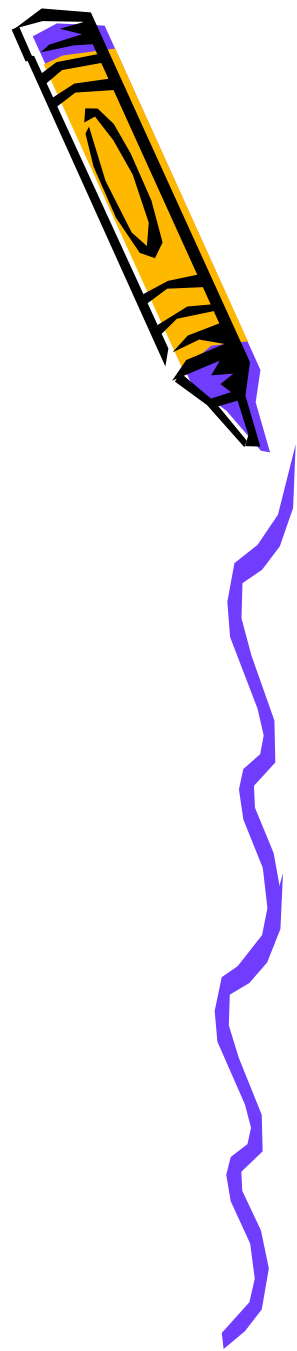
# UofL IP Policy...

2(g) continued... Examples include: books, articles, class notes, theses, dissertations, manuscripts, poems, films, videotapes, digital and analog recordings, musical works, dramatic works including any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, works as outlined in an annual work plan, and other works of the artistic imagination or the kind that are not created as a result of a specific employment assignment or are specifically commissioned by the University....As defined herein, status as a Traditional Work will not be affected by the tangible medium in which it appears.



# what's mine isn't Mine either?

- independent Contractors
  - creator of work
  - Questions to ask. . .
    - who contracts the project?
    - who provides the tools?
    - who provides the work space?
    - payroll taxes deducted?
    - who controls the project?





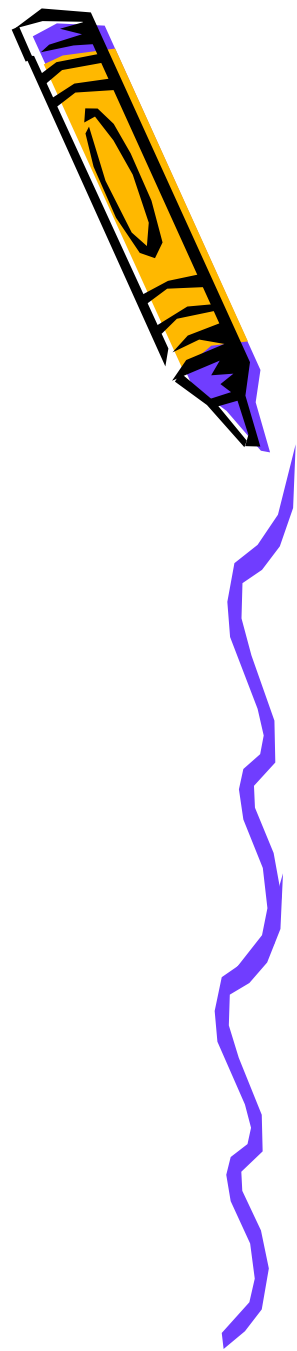
# read what you sign...

- assignment or “license” transfer
  - “assignee” acquires all rights...
  - “licensee “ is exclusive or non-exclusive?
    - exclusive nearly equals “assignment”
    - exclusive requires signed writing
  - nonexclusive (license)
- contracts
  - “publication agreements”



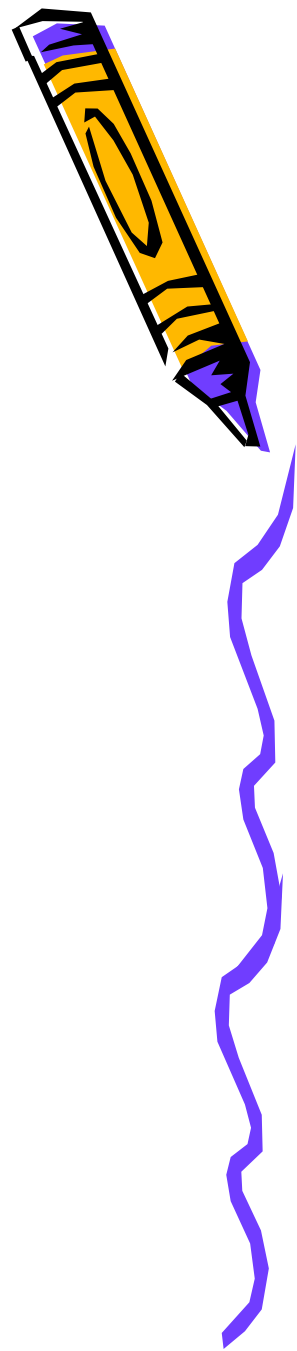
# things to think about ...

- content and quality
- future teaching and scholarship
- “open access”???
- credit
- money???
- language of the agreement...



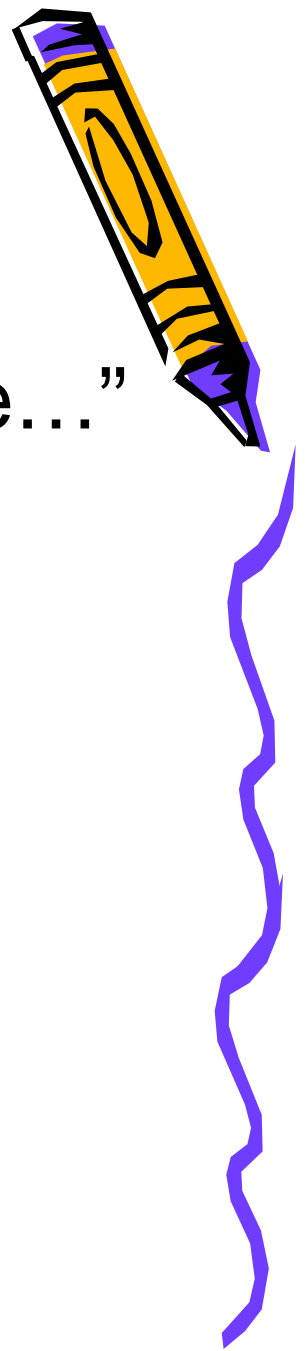
# things to look for...

- assignment or license???
  - license give you more control...
- assignment w/reservations
  - copies for teaching
  - institutional repository
  - your web site
  - other colleagues
  - derivative works...
  - preprints/postprints



# things you ought to know...

- “I hereby transfer, assign, grant, give...”
  - license give you more control...
- “I represent and warrant that...”
  - work is original
  - otherwise infringing of other works
  - defamatory statements
  - invades individual privacy
- “I hereby indemnify and ...”



# things you should do...

- strive to avoid transferring copyright
- read your IP policy
- read your publication agreement
- understand your rights
- negotiate for better agreements
- think about long term possibilities
- share widely but cautiously

