The United States' copyright law is based on the U.S. Constitutional provision in Article 1, Section 8 which says that Congress shall have the 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;" The power to regulate copyrights is vested in the Federal Government. Section 1338 of Title 28 of the United States Code confers upon the federal district courts exclusive jurisdiction over claims of copyright infringement. The cost of bringing a lawsuit in the Federal courts can be prohibitive. But there are statutory remedies.

Copyright law is not by any means unique to the United States. There is an international copyright law and 164 countries have signed the treaty creating the law. The law is called the Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention. This international agreement governing copyright, was first accepted in Berne, Switzerland in 1886. See Wikipedia:Berne Convention for the Protection of Literary and Artistic Works. Over 100 years later, on March 1, 1989, the U.S. Berne Convention Implementation Act of 1988 was enacted, and the United States Senate ratified the treaty, making the U.S. a party to the Berne Convention.

Copyright is a good news/bad news type of law. The good news is you have plenty of statutory and case law support to make a copyright claim. The bad news is, as I said above, the cost of doing so may be prohibitive. This is especially true if the copyright violator is outside of your country's jurisdiction. Although copyright registration with the U.S. Copyright Office or the corresponding agency in your country, may not be necessary for protection, it is necessary in the United States as a prerequisite to bringing a copyright infringement suit in the Federal court.

Another major issue with copyright cases is the venue of the case. Although, in the U.S., all of the Federal District Courts have jurisdiction over a copyright case, the real issue is the venue, or which of all the courts will be the one to hear the case. Some cases have held that the venue for hearing a copyright case is the place where the copyright holder resides. See Brayton Purcell, LLP v. Recordon & Recordon v. Apptomix, Inc. and Jonathan Lee, 575 F.3d 981 (9th Cir. 2009). But that is not a universally held decision.

If you are at all contemplating filing legal action as a result of an alleged copyright violation, it is absolutely essential that you obtain competent legal advice. Most of what you read or hear about copyright law is vastly oversimplified and can be misleading. On the other hand, it is just as expensive for the violator to obtain legal counsel to defend against a lawsuit. Unless they are predatory and living in a country that is not a signatory to the Berne Convention, most copyright claims with which I have been familiar end up
with the removal of the publication causing the copyright violation. Although allowed, in my experience, monetary damages are most uncommon unless the copyright holder is willing to go all the way in the court system.

**The origins of Copyright Law in the United States**
- U.S. Constitution, Article 1, Section 8
  - 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;
- Title 17, United States Code (17 USC, Copyrights)
- Copyright Act of 1976
- Berne Convention
- Sonny Bono Copyright Term Extension Act
- Digital Millennium Copyright Act

**Copyright Definitions:**
- **Work:** Copyright requires an original work of authorship to be fixed in a tangible medium of expression from which it can be perceived either directly or with the aid of a machine or device. Works include but are not limited to, original works of authorship including literary, dramatic, musical, artistic, and certain other intellectual works.
- **Author:** Either the person who creates a copyrighted work or the if the copyrighted work is created within the scope of employment, the employer of the person who creates a copyrighted work.
- **Collective Work:** A work such as a periodical issue, anthology, or encyclopedia in which the individual authors create separate or independent works, assembled into a collective whole
- **Derivative Work:** A work that is based on, or modifies, one or more preexisting works. A copyright holder has an exclusive right to prepare or authorize the preparation of derivative works based on the copyrighted work.
- **Joint Work:** A work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.
- **Public Domain:** A slippery term referring to any works not protected by copyright due to age, noncompliance with the copyright act or excessive reproduction without claim of copyright. Works in the public domain are not protected by copyright and are publicly available. They may be used by anyone, anywhere, anytime without permission, license or royalty payment. A work is not in the public domain merely because it does not have a copyright notice.

**A few of the changes to the Copyright Act**
The first Federal Copyright Act was enacted in 1790. The last copyright revision bill was enacted in 1976. In 1988 a number of changes were embraced to permit United States accession to the Berne Convention. **The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886** was finally adopted by the United States in the **Berne Convention Implementation Act**
of 1988. The main effect of adopting the Berne Convention was automatic application of copyrights, no notice necessary. The Sonny Bono Copyright Term Extension Act aka The Mickey Mouse Protection Act extended the copyright protection term to life of the author plus 70 years and for works of corporate authorship to 120 years after creation or 95 years after publication, whichever endpoint is earlier. The Digital Millennium Copyright Act implements the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty deals with electronic copy protection measures.

Limitations of the Act
Facts cannot be copyrighted.
The creative selection, coordination and arrangement of information and materials forming a database or compilation may be protected by copyright.

How long does a copyright last?
All works published before 1923 are now in the public domain. Current copyright law:
For works created by individuals on or after January 1, 1978, is the life of the author plus 70 years. For "works made for hire," the copyright term is 95 years from the date of first publication or 120 years from the date of its creation, whichever is earliest. What about works created before 1978? At this point the law gets really complicated. See Circular 15A of the U.S. Copyright Office called Duration of Copyright. Assume copyright protection unless you can prove otherwise.

Case Studies and Questions
If I upload my family tree to an online database, such as Ancestry. Com’s Family Trees or MyHeritage.com is my information covered by copyright law?
Answer:
What part of the work is
• Original?
• Not purely facts?
• Not derived from or copied from public domain sources?
• Not copied from or derived from government documents or sources?

What if I find an old diary written by my grandmother, can I publish the diary and claim a copyright?
Answer:
You can only claim a copyright to your own original works, the copyright to the diary, if one still exists (not older than 1920), lies with your grandmother or her heirs.

What if I publish the diary and add my own introduction and comments to the original text. Is the diary then covered by copyright?
Answer:
A portion of a work can be copyright protected and other portions may not be. Only the parts of the work that is original with you will be subject to your claim of copyright.

I found a blog post online that has some really good information about my ancestor. Can I copy the article into my genealogical database and then send it out to my family?
Answer:
17 U.S.C. Section 107
…the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.
The concept of fair use comes from U.S. Federal case decisions and is not defined in the Copyright statutes. What is or what is not “fair use” is evaluated on a case-by-case basis.
The factors, which should be considered together when determining fair use, are:
  • Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  • Nature of the copyrighted work;
  • Amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
  • Effect of the use upon the potential market for or value of the copyrighted work.
Copying the entire article, no matter how short, is a violation of the Fair Use Doctrine.

You find a published family history book written in 1940 with lots of good information about your family. You look carefully at the book and find that there is no copyright notice. Can you copy the book for your own use?
Answer:
Current copyright law does not require any kind of notice of claim of copyright. Before 1978, the law granted two sequential terms of copyright protection for publications. Use of the copyright notice gave an initial term of 28 years. At the end of that term the owner was required to file a renewal application with the Copyright Office to receive a continuous and second term of protection. How long was the renewal term? Initially, the renewal was another 28 years but the term was then stretched to 47 years, but in 1998 the Act added 20 more years. So the total may be as long as 95 years.
What about the book published in 1940? Unless the copyright were renewed in 1968, the copyright would have expired under any of the new provisions of the law.
So the answer is…. It depends.

Illustrative Cases
Usually, case law does not resolve the issues, it merely gives you an idea of how the Court may rule in your case. A search of all of the Federal Court cases does not produce one case directly involving genealogical research and the issue of copyright. Let’s continue to stay out of the Courts.
William A. Graham Co. v. Haughey et al., Case No. 10-2762 (3d Cir., May 16, 2011)

Although, I am a licensed attorney practicing in the State of Arizona, what I have written should not be construed to be legal advice about any particular claim or controversy. You are encouraged to seek competent legal advice if you are the victim of a copyright infringement.