

Society of American Archivists
Guide to Implementing Rights Statements from *RightsStatements.org*

Prepared by the SAA Intellectual Property Working Group
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About This Guide

This guide to implementing the Rights Statements found at <http://www.rightsstatements.org> is produced by the Society of American Archivists Intellectual Property Working Group for the use of archivists and other cultural heritage professionals making digital materials available online in the United States.

What Are the Rights Statements? Why Are They Important for Archival Repositories?

The statements communicate information about the copyright status of digital objects in order to foster appropriate use and reuse of those objects by the public.

The standardized rights statements developed through a joint project by the Digital Public Library of America (DPLA) and Europeana represent an important development in providing access to digital collections, particularly for materials in major aggregation platforms that are available internationally. If widely adopted, they could standardize how cultural heritage institutions provide information regarding the copyright status of digital objects that they make available online, benefitting both the institution and the user.

What Do You Need to Know to Begin?

To effectively apply the twelve standardized rights statements, archivists should:

1. Understand the Rights Statements and how they work;
2. Have a basic understanding of how copyright applies to archival holdings; and
3. Know or be able to determine the copyright status of the digital works in their repository.¹

Understanding the Rights Statements

Categories

The twelve specific Rights Statements are grouped in three broad categories:

- Works in copyright
- Works not in copyright
- Works where the copyright status is unclear

General

- The Rights Statements serve an informational purpose and do not represent proof of actual copyright status.
- Unlike Creative Commons licenses, the Rights Statements are not a license. They provide only a general description of the copyright status of a work. (*Note:* Archival repositories should be mindful that some users may take some of the statements as a license, even though they are not intended as such.)
- The Rights Statements are meant to be used in cases in which Creative Commons licenses do not apply. An object should not be described with both a Rights Statement and a Creative Commons license.
- The Rights Statements speak only to the copyright status of the work. Use of digital objects may involve other rights not articulated by the statements, including publicity, cultural sensitivity, and trademark.

¹ For help in understanding copyright, see Society of American Archivists. Intellectual Property Working Group. "Selected Copyright Resources," <http://www2.archivists.org/groups/intellectual-property-working-group/selected-copyright-resources>.

- The Rights Statements do not describe the legal rationale for why use is permitted, such as use of an in-copyright work pursuant to an assertion of fair use.
- These guidelines address the issue of which Rights Statement to use. For information on the technical underpinnings to the Statements, see [Requirements for the Technical Infrastructure for Standardized International Rights Statements](#).²

Rights Statements vs. Repository-Level Statements

The Rights Statements are meant to be applied at the item-level. There are circumstances that may require additional or customized rights statements or notes at the repository level.

- Because the Rights Statements are meant to be applied by cultural heritage professionals in a multitude of repositories and legal jurisdictions, the Statements are only a very general description of an object’s copyright status.
- Additional copyright information beyond the Rights Statement may be provided at the repository level. Some digital objects represent multiple copyright owners (for example, a digitized photograph of the Korean War Memorial in Washington D.C.). Both the photographer and the sculptor may have a copyright in the work. The Rights Statement would simply state “In Copyright,” without explaining to which copyright it was referring. These details would be explained in any repository-level notes.
- Repository-imposed contractual restrictions on reuse—the occasional archival practice that requires a user to seek permission from the repository before publishing a work—is not reflected in the Rights Statements. Such a repository-imposed requirement if it exists would be included in repository-specific rights statements. *Note:* See also *Best Practices and Advice* (below) for more about repository-imposed contractual restrictions
- Although repositories cannot reflect in the Rights Statements any limitations that the repository may impose on the reuse of digital works, third parties (often commercial vendors) sometimes insist on restrictions on the subsequent reuse of digital scans that they provide to the repository. There are Rights Statements that express third-party restrictions. See *Implementing and Using the Rights Statements: The Other 8 Rights Statements* (below).

Surrogates vs. Born-Digital

A selected Rights Statement applies to the digital object to which it is attached, whether it is born-digital or digitized. If the object is a digitized surrogate, the rights statement should reflect the copyright status of either the surrogate or the original work, depending on which is more restrictive. Note that there is no copyright in a slavish reproduction of a two-dimensional work, so in most cases the Rights Statement will reflect the copyright status of the original work.³

Copyright Outside of the United States

The Rights Statements are intended to be applied to materials available online, and therefore reach a potentially global user base. Copyright status, however, varies from country to country. The Rights

² International Rights Statements Working Group, *Requirements for the Technical Infrastructure for Standardized International Rights Statements* (October 2015; updated March 2016), http://rightsstatements.org/files/160322requirements_for_the_technical_infrastructure_for_standardized_international_rights_statements_v1.1.pdf.

³ *Bridgeman Art Library v. Corel Corp.*, 36 F. Supp. 2d 191 (S.D.N.Y. 1999).

Statements follow the Creative Commons recommendation of limiting public domain declarations to “works that are free of known copyright around the world.”⁴

Best Practices and Advice

- The selection of Rights Statements should reflect the best information available about copyright status and should strive for a high degree of accuracy. (*Note:* Because the Rights Statements serve an informational purpose and do not represent proof of actual copyright status, archivists should always caution users that they must make their own independent investigations regarding copyright status.)
- The Rights Statements are more effective if repositories *do not* impose their own contractual terms on reuse, and instead adopt the position that digital access “...should not create a new layer of copyright as a matter of policy and choice..., and to the extent that rights are created, those rights are waived.”⁵
- **If the repository owns the copyright** in the digital object, archivists should consider applying a Creative Commons license to the work to facilitate use and reuse.

Implementing and Using the Rights Statements: Four Common Types of Works

We recommend that in most cases, repositories use one of these four Rights Statements with unpublished works: “**No Copyright-United States**,” “**In Copyright**,” “**In Copyright – Rights-holder(s) Unlocatable or Unidentifiable**,” or “**Copyright Undetermined**.” They may also want to use the “Copyright Undetermined” statement with certain published works.

Here are our recommendations on how to apply the Rights Statements to several common types of material.

1. Text-based Works: Unpublished Items

Because the United Kingdom protects the copyright in unpublished works until 2039 and Australia (and possibly Ireland) protects it perpetually, repositories cannot use most of the Rights Statements that apply to objects that are “Not in Copyright.” Nor can the Creative Commons Public Domain Mark (CC PD) be applied to unpublished items because “Creative Commons does not recommend this tool for works that are restricted by copyright laws in one or more jurisdictions.”⁶

- The “No Copyright – United States” designation could be used in many cases. It is applicable to unpublished works created by nationals of any country since works can enter the public domain in the U.S. even when still protected by copyright in their country of origin.⁷ Unpublished works that can receive this designation include:
 - Works whose author(s) died more than 70 years ago;

⁴ Creative Commons “Public Domain Mark,” <https://creativecommons.org/share-your-work/public-domain/pdm/>.

⁵ International Rights Statements Working Group, *Rightsstatements.org white paper: recommendation for standardized international rights statements*, (October 2015; updated January 2016), p. 10. http://rightsstatements.org/files/160208recommendations_for_standardized_international_rights_statements_v1.1.pdf

⁶ <https://creativecommons.org/publicdomain/>.

⁷ Whether repositories must take actions to ensure that users outside of the United States cannot access works that are marked “No Copyright – United States” is a complicated issue dependent in part of an institution’s willingness to accept risk.

- Anonymous and pseudonymous works, and works made for hire (i.e., corporate authorship) 120 years after the date of creation; and
- Works with author(s) whose death date is not known but that are more than 120 years old.
- Unpublished items that do not qualify for U.S. public domain status because their author(s) died less than 70 years ago or are anonymous, pseudonymous, or corporate works that are less than 120 years old should be marked as “In Copyright.” Use the “In Copyright - Rights-holder(s) Unlocatable or Unidentifiable” statement if a reasonable investigation to locate the copyright owner has been made.
 - This means that a repository decided to make the work available either because it received permission from the copyright owner or in accordance with one of the exceptions to or limitations on copyright.
- Unpublished works with unknown authors and unknown creation dates present a special challenge. Here are two common scenarios:
 - An unpublished work that is clearly more than 120 years old. A medieval manuscript might be a good example. Repositories cannot use “No Known Copyright” because it might still be protected in Australia or the United Kingdom. However “No Copyright – United States” or “Copyright Undetermined” could be appropriate choices.
 - An unpublished work that may be more than 120 years old based on internal evidence (paper, handwriting, etc.), but the dating of which is uncertain. Again, repositories cannot use “No Known Copyright” because of the countries that protect all unpublished works. “Copyright Undetermined” is probably the safe choice.
- Sometimes it is difficult to tell if a work has truly never been published. If a repository doesn’t know whether a work is published or unpublished, use the “Copyright Undetermined” rights statement.

In summary, unpublished works are likely to receive the “In Copyright,” “No Known Copyright – United States,” or “Copyright Undetermined” statement. In special circumstances, one might use “In Copyright – Rights-holder(s) Unlocatable or Unidentifiable.”⁸

2. Text-based Works: Published Items

Every repository is likely to digitize some published materials. Here is how to decide among Rights Statements options:

- Published before 1923: Select “No Copyright-United States.” If published before 1835, repositories could consider applying the “No Known Copyright” statement and/or the Creative Commons Public Domain mark.⁹
- Published after 1 March 1989: Select “In Copyright.”
- Published between 1923 and 1 March 1989: Foreign works are likely protected by copyright. U.S. works may be protected by copyright in the U.S. and are more likely to be protected

⁸ Remember, though, that the U.S. does not have any law that explicitly allows the use of what has been variously called a “hostage” or “orphan” work. You will still be making a fair use assessment.

⁹ Why 1835? Currently the longest copyright term for published material is in Mexico. It is life of the author plus 100 years. If we assume that it is unlikely that any author lived for more than 80 years after publishing his or her work, the total copyright term in that would be 180 years.

outside of the country as well. If the repository does the research necessary to establish copyright status, you can mark the work accordingly.¹⁰ Otherwise, you should use “In Copyright – Rights-holder(s) Unlocatable or Unidentifiable” (if you conducted a reasonable search for the rights holder) or “Copyright Undetermined.”

3. Visual Images

For copyright purposes, photographs and other visual images are treated the same as other unpublished and published works. An unpublished family photograph is protected in the U.S. until 70 years after the death of the photographer or, if anonymous or pseudonymous, until 120 years after creation. It is protected through 2039 in the United Kingdom. The “No Known Copyright” statement should not be used for such photographs; employ instead, as appropriate, the “No Copyright-United States,” “Copyright Undetermined,” or “In Copyright” statement.

4. Sound Recordings

Sound recordings made before 15 February 1972 are protected by common law copyright. Repositories should select the “In Copyright” rights statement.

Note that sound recordings often include layers of several different works. For example, a recording of a song may implicate rights in the recording itself, rights in the musical composition, and rights in any lyrics. Even if the underlying composition or lyrics no longer are protected by copyright, the sound recording itself almost certainly will still be protected. Repositories should select the “In Copyright” statement or one of the In-Copyright variations as appropriate.

Implementing and Using the Rights Statements: The Other Eight Rights Statements

What about the other eight rights statements? When might a repository use one of them? Following is a summary.

In Copyright - EU Orphan Work: Not applicable to U.S. institutions.

In Copyright - Educational Use Permitted and **In Copyright - Non-Commercial Use Permitted:** These two statements acknowledge that certain collections may have been donated to a repository with license terms that allow for certain reuses. The copyright owner must have designated that educational or non-commercial uses are to be allowed.

No Copyright - Contractual Restrictions and **No Copyright - Non-Commercial Use Only:** Use one of these rights statements when a) a work is published; b) it is believed to be in the public domain; or c) the repository received the digital object from a third-party that imposed these restrictions on the use of the scans. An example is books that are provided to its library partners by Google. Google imposes

¹⁰ Levine, Melissa, Richard C. Adler, and Justin Bonfiglio. *Finding the Public Domain: Copyright Review Management System Toolkit*. Ann Arbor, Michigan: Michigan Publishing, 13 June 2016. (<http://dx.doi.org/10.3998/crmstoolkit.14616082.0001.001>); Mannapperuma, Menesha A., Brianna L. Schofield, and Andrea K. Yankovsky, et al. *Is it in the Public Domain?* Berkeley, CA: Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley, School of Law, 27 May 2014. (<http://www.law.berkeley.edu/17178.htm>).

some contractual limitations on the use of those scans even though the underlying works are in the public domain. These statements cannot be used with works digitized by the repository itself.

No Copyright - Other Known Legal Restrictions: Use when a published public domain work is restricted by other laws such as cultural heritage or traditional cultural expression protections. An example is the New Zealand law that requires attribution of authorship in any publication or distribution of the *Haka Ka Mate*.¹¹ The U.S. does not have laws that could limit re-use of public domain material in this way, but a repository may wish to think about foreign laws if it is making a culturally sensitive collection available overseas.

Copyright Not Evaluated: This statement is “used for Items for which the copyright status is unknown and for which the data provider has not undertaken an effort to determine the copyright status of the work.” We do not recommend using this statement. One should always conduct some sort of evaluation before making digital objects available.

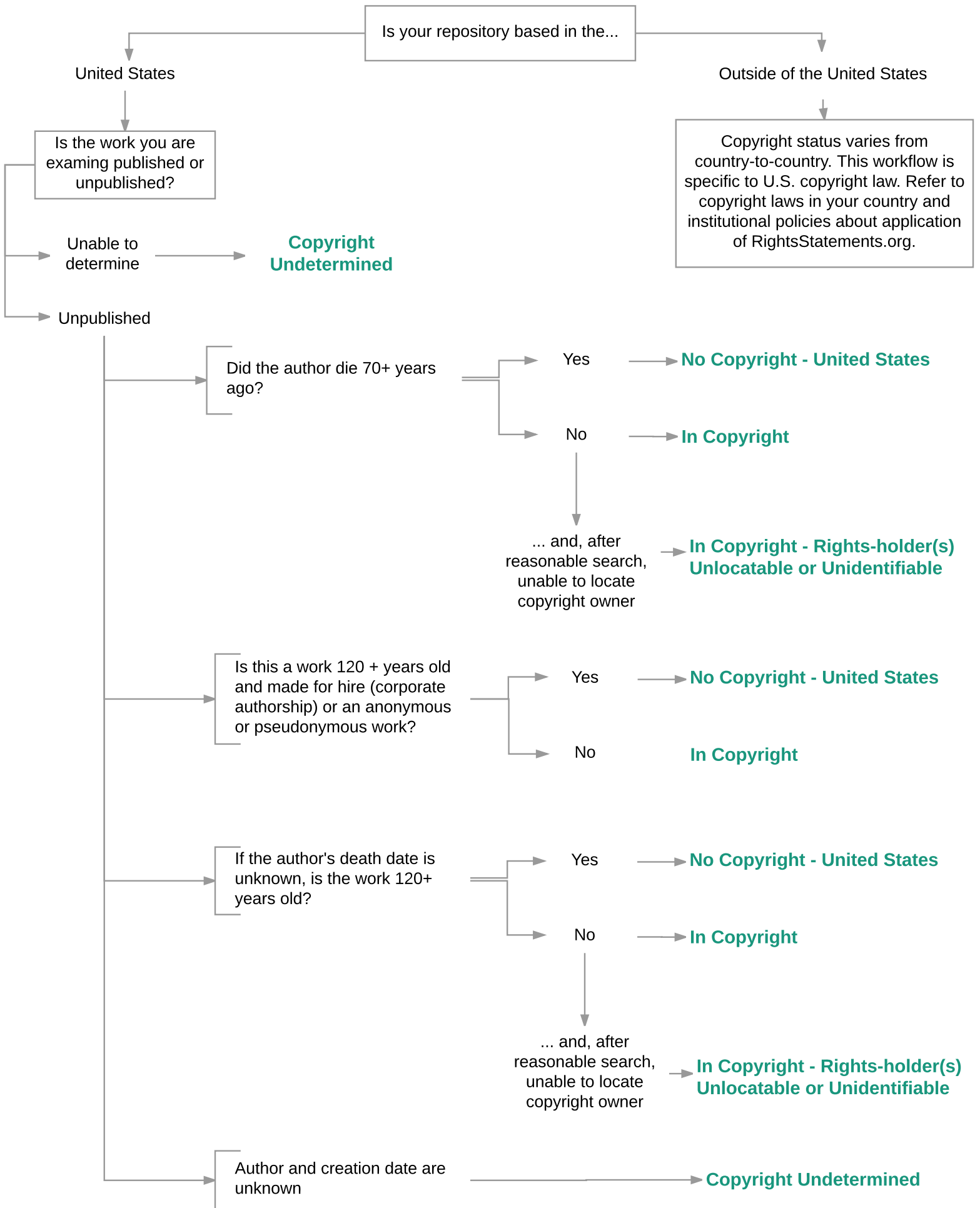
See the appended flowchart to aid in the determination of copyright status in the United States.

To access the Society of American Archivists website: <http://www2.archivists.org/>.

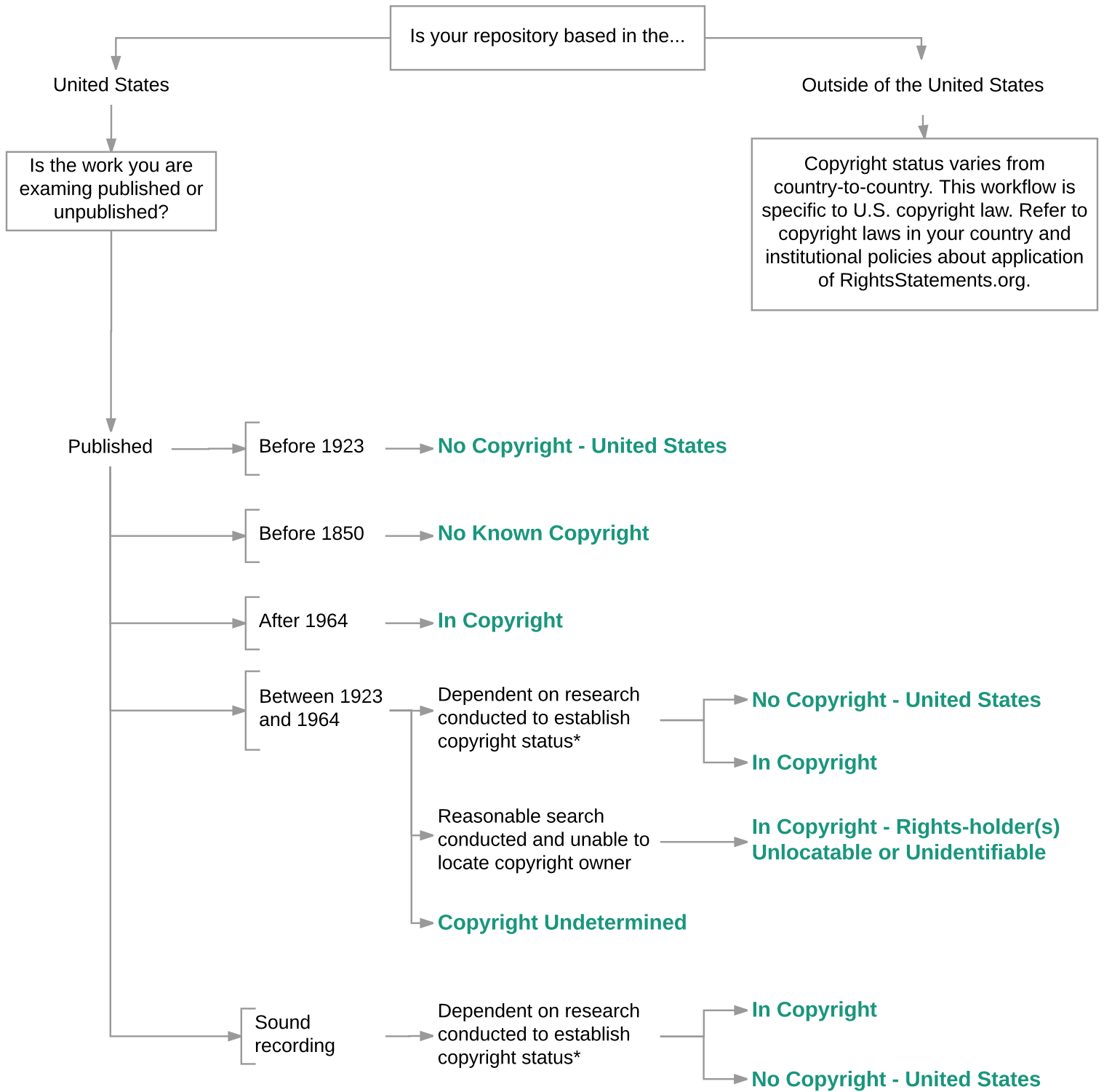
To access the SAA Intellectual Property Working Group’s microsite:
<http://www2.archivists.org/groups/intellectual-property-working-group>.

¹¹ New Zealand. Ministry of Business, Innovation & Employment. *Haka Ka Mate Attribution Act 2014 Guidelines*. <http://www.mbie.govt.nz/info-services/business/intellectual-property/resolveid/e5248df84b8749e58469049a7f7a3c15>.

START HERE



CONTINUED -- PUBLISHED MATERIALS



*Refer to this document to aid in the determination of copyright status in the United States: <http://copyright.cornell.edu/resources/publicdomain.cfm>