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PRINtips

A Review of Basics... Copyright for Copywriters

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The digital revolution has made it very easy for us to access material from files, web sites, and the Internet. We all freely copy things we like and send them to others, use them on our social network sites, or add them to our presentations and reports. The ease with which we can claim material for our own use may be obscuring the fact that much of this use could violate copyright laws.

What is copyright?

Copyright is legal protection for authors on how their original works are used. The owner of a copyright has the exclusive right to

- reproduce the work;
- prepare derivative works;
- distribute copies of the work by selling, renting, leasing, or lending; and
- perform or display the work publicly.

Copyright protects a wide variety of original works, from the written word (poetry, stories, books) to entertainment (songs, movies, video games, plays, choreography) to visual arts (paintings, sculpture, photographs, architecture). It also includes software code, derivative work, and compilations.

To qualify for copyright protection, a work has to be tangible (meaning it exists in physical form) and must be original (defined as independently created by the author and stemming from a creative effort). Ideas cannot be copyrighted, nor can facts – even if the author has engaged in significant effort to uncover them.

Copyright exists from the moment a work is created and available in tangible form. A work does not have to be registered with the U.S. Copyright Office for copyright protection to exist, though registration is required to bring a lawsuit for copyright infringement. Copyright lasts for a specific period of time which begins when the work is published – that is, when it is released to the public without restriction.

Names cannot be copyrighted, but they can be trademarked (as can words, phrases, symbols, or designs that identify a brand).

Copyright law

Copyright law, which has its origins in English law dating back to 1662, was written into the Constitution of the United States in 1887. Congress enacted the first federal copyright law (An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of Such Copies) in May 1790 and the first work was registered

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two weeks later. In 1870 copyright functions were placed within the Library of Congress; the Copyright Office became a separate department within the Library of Congress in 1897. The copyright law has been revised repeatedly, in 1831, 1870, 1909 and 1976.

Copyright law applies to seven broad categories:

- Literary works: works of fiction and nonfiction published as books, periodicals, manuscripts, computer programs, manuals, phonograph records, film, audiotapes, and computer disks.
- Musical works: songs, operas, musical plays, and their accompanying words.
- Dramatic works: plays, dramatic readings, and music.
- Pantomimed and choreographed works.
- Pictorial, graphics, and sculptural works: slides, tapes, multimedia presentations, film strips, films, videos
- Motion pictures and audiovisual works: fine and applied arts, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams and models.
- Sound recordings: records, tapes, cassettes, and computer disks.

"There are certain conditions under which a copyrighted work may be used or copied"

Using a copyrighted work

There are certain conditions under which a copyrighted work may be used or copied:

- The work is in the public domain. Any work belonging to the public as a whole, such as work produced by employees of the federal government, works published before 1923, or works whose copyright protection has expired, can be used and copied without restriction.
- The user has been granted permission by the copyright holder. A copyright holder can grant a user permission to use the work. The permission can include limitations and restrictions on use, such as a one-time use in a specific situation. If a copyright owner unconditionally transfers all his rights, the transfer is called an assignment. If only some rights of transferred, it is called a license. An exclusive license is the transfer of rights to a single licensee; a non-exclusive license is the transfer of rights to more than one licensee.
- The use is for criticism and commentary or parody. These uses are spelled out by the doctrine of fair use.

"There are some restrictions to the doctrine of fair use, such as numerical limits on how much of a work may be copied"

The doctrine of fair use is an important limitation on the rights of the copyright owners. It was established in 1976 in recognition that strict application of copyright law would impede the production and distribution of works to the public. The rationale is that the public will benefit if there are uses for copyrighted material that do not constitute copyright infringement.

Fair use allows for use of a copyrighted work, including reproduction, without permission of the owner if the purpose is for criticism, commentary, parody, news reporting, teaching, scholarship, or research. If, for example, you are writing a review that critiques or comments on a copyrighted work, you can reproduce some of the work to make your point. You can quote from the book, article, or song and you can copy a few paragraphs to use as a teaching aid.

The fair use doctrine also applies to parody – a work that ridicules another work by imitating it in a comic way. When the fair use doctrine is applied to parody, it allows for a more extensive use of the original work.

There are some restrictions to the doctrine of fair use, such as numerical limits on how much of a work may be copied; the use must not have a negative effect on the market for the copyrighted work; and the copyright notice must be included on all copies. However, note that including the copyright notice is not a defense if the copyright is deemed to have been infringed, and owning a

copyrighted work does not confer copyright ownership.

The importance of honoring copyright

Setting aside the legal reasons for honoring copyright, writers have a professional obligation to avoid piracy. This is easily accomplished by requesting permission from the author to use the work. Be prepared to specifify the intended use (so you will obtain the full range of rights you need) and the terms of use (exclusivity, duration and territory. Since locating the copyright owner and obtaining permission may take some time, start early so you will have the required permission before you complete your work.

Be aware that the copyright owner may request payment as a condition of granting permission In general, the amount of the payment is a function of the size of your audience and whether it is a commercial or educational use.

Finally, get the permission in writing. An oral agreement for copyright permission is as vulnerable to misunderstanding or misinterpretation as any other oral agreement.

"Be aware that the copyright owner may request payment as a condition of granting permission"

Q. *How long does a copyright remain in force?*

A. The length of a copyright varies depending on the type of work, whether it has been published, and whether it was created by individual or was work-for-hire. In most countries, copyright protection is equal to the life of the author plus either 50 or 70 years.

The length and requirements for copyright can be changed by legislation. In addition, copyright laws can be updated to include protection for new types of original work (such as creation of software programs).

In the United States, copyright extends for a fixed number of years after the creation or publication date, then expires at year-end (i.e., on December 31). All copyrights for works published before 1923 have expired and the works are now in the public domain. Works published between 1923 and 1964 are in the public domain unless the copyright was renewed. Works published before 1978 without including the copyright notice (i.e., the word copyright or the copyright symbol © and the name of the copyright owner) are in the public domain. For works published after March 1, 1989, copyright notice is not required as a condition of establishing copyright protection.

In 1998, legislation was passed that prevents any new works from entering the public domain until 2019. Beginning that year, works published in 1923 will enter the public domain and this will continue in subsequent years for all works published between 1923 and 1977.

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Copyright Myths

IDEA CORNER

"To be in the public domain, the words 'This work is dedicated to the public domain' must be present."

To be sure you are not infringing on someone's copyright, be aware of several myths.

Myth 1: A work must have the copyright notice for copyright protection to be in force. This has not been true since April 1, 1989. Today most countries use the Berne Convention for the Protection of Literary and Artistic Works, an international agreement governing copyright. The Bern Convention requires that copyright must be automatic and prohibits formal registration, so when the United States became a member of the Bern Union in 1988, it had to do away with registration and the copyright notice as a condition of copyright protection.

Myth 2: Anything posted on the WorldWide Web is in the public domain. While works published before 1923 are in the public domain, much of what is available on the web is more recent and will not be in the public domain for decades. To be in the public domain, the words "This work is dedicated to the public domain" must be present. Creative Commons, a nonprofit organization that fosters the public domain, helps authors dedicate their works to the public domain, either immediately or 14 years after publication.

Myth 3: There's no copyright infringement if I'm not selling the copyrighted material. If you use copyrighted material for any reason, you are guilty of infringement, whether or not you profit from the use. The author has the exclusive right to control what is done with the work.

Myth 4: If it doesn't hurt anyone, it isn't copyright infringement. It isn't up to the user to decide whether the owner has been hurt by the copyright infringement. Even if you can't imagine how the owner might be hurt, it isn't your right to decide.