

Common But... Not-So-Common-Sense Copyright Misconceptions

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By **Jenna Rader**

On the Internet, on television, in publications, in advertisements, society is bombarded with creative expression. Businesses borrow creative ideas, often without realizing someone's rights might be violated. Because infringement can be costly, businesses should become familiar with basic copyright laws, recognize common misconceptions, and take proactive measures to prevent infringement.

Misconception: If a work has no copyright notice, it is not protected.

Although true years ago, today, original creative works receive copyright protection with or without proper notice (i.e., © owner name and year of first publication). Businesses should assume that current works without copyright notice are, in fact, subject to protection and should carefully review any works created while publication requirements were in effect before assuming they are in the public domain.

Misconception: Crediting the author prevents a violation of copyright law.

As a general rule, in a business context, copying protected material is only allowable with explicit permission from the author. Of course, there are some "fair use" exceptions to this rule. For example, using short quotations for the purpose of criticism, commentary or news reporting may be considered "fair use." The quote, however, should incorporate only a minor portion of the work, and it should not steal the "heart" of the creative expression. In addition to "fair use" exceptions, copyright law does not protect facts and ideas, but only the creative expression of facts and ideas. Also, names, short phrases, titles, slogans, recipes and blank forms are not protected by copyright law, although some of these may be protected under trademark or other laws. As a practical matter, businesses should start with the assumption that copying creative expression is not "fair use" and verify that such use is "fair" or obtain permission prior to use.

Misconception: Material on the Internet is in the public domain.

Fixation of an original and creative work in a tangible medium of expression initiates copyright protection (and computer media is considered tangible). Therefore, all Internet postings including clip art, pictures, Web site content, articles, videos and blogs are protected in the same manner as printed works.

Misconception: If a business commissions a work, it owns the underlying copyright.

It is generally known that hiring a photographer does not ensure copyright ownership of the resultant photographs. This principle is true in other contexts and can affect businesses in unforeseen ways. Businesses often hire independent contractors or agencies to design Web sites and create advertisements or creative works. Without a specific contractual provision stating that the business will own the copyright in a creative work, an independent contractor will likely retain copyright ownership. Infringement issues arise when the business alters the work or uses it for unanticipated purposes. To avoid this problem, copyright ownership provisions should be included in contracts with independent contractors.

Misconception: Copying only a small amount of material is not an infringement.

Often in business settings, portions of creative works are reproduced. Examples include copying a single page from a journal or using a movie clip in a presentation. In a commercial context, reproducing parts of creative works may constitute copyright infringement. While it is possible that such use constitutes "fair use," there is no fixed amount of a work that may be used as a "fair use." Instead, courts examine a variety of factors to determine whether use qualifies as "fair use."

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