



## Ten Copyright Myths

Here are a few myths regarding copyright laws and the use of material protected by copyright. Although information is provided to explain the specific situations listed below, each new situation needs to be evaluated on the facts and circumstances that surround it.

***Myth #1:*** *I don't need permission because I am only using a "small amount" of the copyrighted work.*

**Fact:** While copying a small amount of a copyrighted work may not be a copyright infringement, there are no clear rules regarding what constitutes permitted use of small amounts of copyrighted materials. In one case, a magazine article that used 300 words from a 200,000-word biography written by President Gerald Ford was found to infringe the copyright on the autobiography. Even though the copied material was only a small part of the autobiography, the copied portions were among the most powerful passages in the autobiography. *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985). See Myth #4 re "fair use."

***Myth #2:*** *I purchased a book, artwork, photograph, compact disc, DVD, or videotape that I'm going to copy, so I already have permission.*

**Fact:** Copyright law distinguishes between ownership of the copyright in a work and ownership of a *copy* of the work, such as a tape, compact disc, videotape, book, or photographic print. Owning a copy of the copyrighted work does not give permission to exercise the exclusive rights of the copyright owner. However, you can, without the permission of the copyright owner, "sell or otherwise dispose of" your copy.

***Myth #3:*** *Because I "innocently" infringed I do not think I need permission.*

**Fact:** Lack of intent to infringe is not a defense to copyright infringement—nor is ignorance of the copyright law.

***Myth #4:*** *Because I am using someone's copyrighted works for non-profit educational use, I don't need permission.*

**Fact:** This is a misinterpretation of the doctrine of "fair use." Copying for educational or non-profit use *may or may not* be fair use. The purpose of the use is only one of the four factors that determine whether the use meets the definition of "fair use." All four factors

of fair use must be considered. Copyright law provides no clear and direct answers about the scope of fair use or its meaning in specific situations. If most factors lean in favor of fair use, the proposed use is probably allowed; if most lean the opposite direction, the use will not fit the fair use exemption and may require permission from the copyright owner. Reliance on a “reasoned” analysis using the *Checklist for Fair Use* is essential to claiming a good-faith effort.

When permission is needed and obtained, many copyright owners/publishers will often give permission to non-profit educational institutions without a fee.

The "fair use" concept varies from country to country, and has different names (such as "fair dealing" in Canada) and other limitations outside the USA.

***Myth #5:*** *The work I want to use doesn't have a copyright notice on it, so it's not protected by copyright and I'm free to use it.*

Fact: Copyright ownership exists as of the moment of *creation* of the work. For works published after March 1, 1989, the use of a copyright notice is optional. If a work is published without a copyright notice it doesn't necessarily mean the work is not protected by copyright. There are benefits to including a copyright notice, but the law now states “a notice of copyright...**may** be placed on publicly distributed copies” but is not required. The correct form of a copyright notice is:

© [or the word “Copyright”] [year of first publication] by [author/owner]

***Myth #6:*** *Since I'm planning to give credit to the authors who created the works I copy, I don't need to get permission.*

Fact: If you give credit to a work's author, you are not a plagiarist. However, attribution is not a defense to copyright infringement. Plagiarism can occur for material either protected or not protected by copyright simply by incorrectly taking credit for it. Copyright infringement occurs when you use material protected by copyright without the copyright owner's permission.

***Myth #7:*** *I don't need permission because I am going to alter the work I copy.*

Fact: You could still be liable for copyright infringement by altering or modifying the work you copy. You can use elements of works not protected by copyright, but if you copy and modify protected elements of a copyrighted work, you could be infringing the copyright owner's right to modify (derivative work) as well as the duplication right.

***Myth #7:*** *The author of the work that I want to use lives outside of the US, so the work is not protected by copyright in the United States.*

Fact: Do not assume a work lacks copyright protection in the United States because its

author is a non-U.S. author. Non U.S. authors who live in countries that belong to the Berne Convention or the Universal Copyright Convention automatically obtain copyright protection in the US. Most major countries are members of at least one of these conventions.

*Myth #8: If there is no charge for the copies then it is not copyright infringement.*

Fact: Not charging for the copies does not automatically make the copying permissible. Since some non-profit educational uses do not qualify as fair use (see Myth #4), such organizations are not immune from liability for copyright infringement.

*Myth #9: Digital material I obtain from the World Wide Web (or otherwise) is in the public domain and no permission is required.*

Fact: This is the most widely abused myth of all. Digital copies on the Internet (or received via email, on a CD, etc) should be treated as if they were printed copies. The copyright owner's rights are identical for print or digital forms of the work.

Works protected by copyright are not in the public domain unless the owner explicitly puts them into the public domain, the copyright protection has expired, or the works were created by employees of the federal government. Placing material protected by copyright on the Internet may imply intent by the copyright owner to make the material more widely available, but this does not mean they have granted permission to further duplicate and/or distribute their material.

On many web sites, the web publisher has indicated the allowed uses. Check for links identified as copyright information, use information, copyright policy, etc. for an explanation of such permitted uses.

*Myth #10: If I don't defend my copyright, I may lose it.*

Fact: Copyright protection is effectively never lost, unless explicitly given away or the copyright has expired. However, if you do not actively defend your copyright, there may be broader unauthorized uses than you would like. It is a good idea to pursue enforcement actions as soon as you discover misuse of your copyright protected material.

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