

# PRINCIPLES OF WEB DESIGN

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# APPENDIX B:

## An Introduction to Copyright Law\*

Copyright law is complex, has many “gray areas,” and changes frequently. This appendix is a very basic introduction to copyright law with a focus on content being presented on the World Wide Web. It is not intended to serve as legal advice. Furthermore, although copyright issues pertaining to the Web almost always have international implications, this document is written from the perspective of the United States. Before making decisions about copyright and related legal issues, you should consult an intellectual property attorney or, at least, extend your knowledge well beyond what this brief introduction offers. The most authoritative source of copyright information in the United States is the Copyright Office of the U.S. Library of Congress, at [www.loc.gov/copyright](http://www.loc.gov/copyright). There are, however, many other sources of valuable information, print and online, some of which are listed at the end of this appendix. Your particular needs should dictate which resources to use.

### The Basic Idea: Most Content Is Someone’s Intellectual Property

The basic idea is that most of the content you find around you, whether on the Web or not, is the intellectual property of the people who made or acquired it. This includes text, graphics, music, and cinema. Copyright law prohibits you from making use of this material without consent. Very often, the owners of copyrighted material expect to be paid.

In general, copyrighted material has a copyright notice on it, but material without a copyright notice (including, for example, email) is very likely still protected by copyright. Furthermore, altering the copyrighted content, for example scanning a graphic and re-working it, does not, in general, protect you, even if you alter it extensively. If the owner of the content can prove copying, you can be held liable for infringement.

In certain cases, even linking from your website to another website may be illegal, especially if you are linking in such a way as to make another person’s content appear to be your content or if the owner of the copyrighted material loses revenue because of your linking.

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## **Ideas That Can't Be Copyrighted**

Certain ideas can only be expressed in one way, and so they cannot be copyrighted. No one, for example, can copyright a list of the presidents of the United States from George Washington to the present day. However, someone's ranked list of the presidents from the best to the worst could be covered by copyright.

## **Content in the Public Domain**

There are categories of content that no one owns. In legal terms, this material is "in the public domain." For example, songs such as "Swing Low, Sweet Chariot" or "She'll Be Comin' 'Round the Mountain When She Comes" are called "traditional." No one knows exactly who wrote them, and they've never been copyrighted. You could use an audio track of your friend's guitar version of a traditional folk song if you obtain written permission from your friend, who owns the rights to her own performance. It would not be legal, however, to use your friend's version of a current hit song.

Some content, notably government documents, is explicitly placed in the public domain rather than copyrighted as soon as it is created. Furthermore, copyrights expire after a certain length of time. Unfortunately, numerous factors dictate whether a copyright has expired. Here are two reliable rules:

- You can use anything first copyrighted or published in the United States before 1923.
- For works created on or after January 1, 1978, copyright duration is the life of the author plus 70 years; for works created for hire and owned by corporations, copyright duration is 95 years.

## **Creating Your Own Content**

One way to get around the copyright problem is to produce your own original content. This content does not need to be entirely dissimilar from a copyrighted work you would have liked to use. Copyright law protects the expression of ideas, not the ideas themselves. As long as your expression is original, you are not violating copyright. Ideas can be protected by patent law if they take the form of new inventions.

Let's consider in more detail the distinction between ideas and the expression of ideas. You cannot legally copy a movie review published in a newspaper. But if you write your own review and if you, like the newspaper reviewer, make the points that the plot was predictable, the dialogue was clichéd, and the acting was weak, you are not violating copyright as long as you don't say these things with the same or substantially similar expression. If there are strong parallels in the organization of the two movie reviews (you cover the same points in the same order), you are in a gray area. If the copyright owner were to challenge you, only a court case would provide a definite answer to the dispute.

## Licensing and Purchasing Content

If you cannot meet your needs with content in the public domain or content that you create, the best solution is often to license the right to use copyrighted material. There are many vendors who license “stock” (or “clip”) content—images, animation, video, and audio—for reasonable fees. You can also find stock content available for free on the Web. You must, however, pay close attention to the conditions under which you are allowed to use any stock content. It is often possible to license music or portions of a film owned by a major record label or studio; the fee, however, is likely to be high.

If you hire an artist or another kind of content creator, you will generally want to become the copyright holder of the content you purchase. This requires the content creator to sign a “work for hire” agreement.

## Fair Use and Permissions

There are instances in which you may legally use copyrighted material, for example, a passage from a book or newspaper. Copyright law includes a provision for “fair use.” Unfortunately, there is great uncertainty surrounding fair use, and the legal analysis of a fair use defense is very subjective. This explanation must be viewed only as a most general guideline, but the following criteria make a case for fair use. The more that apply, the stronger the case.

1. The use you are making is for purposes of comment, criticism, scholarship, education, or news reporting. Parody (but only genuine parody) falls under this category.
2. You are using a relatively small amount of the total work (the smaller the better) and not the “heart” of the work.
3. The work you are using has been published and is a commercial work.
4. Your use does not affect the potential market or value of the work—most significantly, no one would read or otherwise use your excerpt to avoid buying the copyrighted work.
5. You aren’t making any money from using it, or your purpose is not primarily commercial.

So, for example, if you write movie reviews for your website, you could feel confident about the legality of beginning a review in this manner:

Carmen Reyes, writing in the *New York Times*, states, “The plot of *Nightmare on Elm Street 11* is unsatisfactory. The bad guy in a slasher movie should not come to grief by carelessly revealing his identity in an email message.” In my opinion, Ms. Reyes misjudges how deeply email mistakes resonate with movie viewers.

You are clearly satisfying the first four criteria for fair use, and depending on the purpose of your website, you may be satisfying the fifth.

Often, your use of someone’s copyrighted material actually enhances their reputation or promotes their business, and so they will grant you free permission

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to use their content, most likely with the requirement that you acknowledge the source. Don't expect a national magazine to grant you the right to reproduce a recent cover story, but your local newspaper may allow you to put their review of a recent rock concert on your website.

## **Copyright and Plagiarism**

Don't confuse copyright with plagiarism; they are two entirely different issues. Plagiarism is primarily a breach of ethics and academic regulations. When your work incorporates the words of another person or your own expression of their ideas, you cite this person's work in order to acknowledge their intellectual contribution and to provide a means for readers to examine your sources. Acknowledging an author, however, doesn't give you the intellectual property right to use that author's words in your project—likewise with a photograph or an audio or video sequence.

## **Other Restrictions**

Finally, there are other intellectual property rights and closely related rights that limit what you can create and publish. People have legal rights to their own name, likeness, and image—just because you draw an original image of a rock star, doesn't mean you can sell a T-shirt or mouse pad with this image. Even the likenesses of a few famous buildings, such as the Chrysler Building in New York City, have been registered as trademarks and cannot be freely reproduced. Also, people have privacy rights: If you videotape an individual in private life (as opposed to a public figure) playing with his or her child in a public park, you would want to obtain written permission before putting this video sequence on a website.

## **Sources for More Information**

### **Websites**

The Copyright Crash Course Online Tutorial

[www.utsystem.edu/OGC/IntellectualProperty/faculty.htm](http://www.utsystem.edu/OGC/IntellectualProperty/faculty.htm)

This is a brief, very readable introduction with some special attention to concerns of university faculty members.

The Copyright Website

[www.benedict.com](http://www.benedict.com)

This commercial website offers a great deal of information on all aspects of copyright, along with the site owner's strong opinions. Important copyright disputes are reviewed at length.

Ladera Press

[www.laderapress.com](http://www.laderapress.com)

This legal publisher offers a brief, well-written primer that explains copyright, patent, and trademark law from the perspective of the Web developer. Also look at the "Copyright Myths" section of the website.

Nolo

[www.nolo.com](http://www.nolo.com)

A valuable source of well-written material on almost every area of the law. Browse the "Internet Law" and "Trademarks & Copyrights" law centers. Also includes a legal dictionary and encyclopedia.

The Stanford University Fair Use Website

<http://fairuse.stanford.edu>

This website offers links to many statutes and judicial opinions.

World Intellectual Property Organization

[www.wipo.int/index.html.en](http://www.wipo.int/index.html.en)

A valuable resource that provides a global perspective on intellectual property.

## Books

Brinson, J. Dianne, and Mark F. Radcliffe. 2000. *Internet Law and Business Handbook: A Practical Guide* (with disk). Menlo Park, CA: Ladera Press.

In addition to intellectual property, this book covers such areas of the law as contracts and employment.

Fisherman, Stephen. 1999. *The Copyright Handbook: How to Protect and Use Written Works*. 5th ed. Berkeley, CA: Nolo Press.

A useful book with a "how to" focus. Provides step-by-step guidance and sample forms.

Stim, Richard. 1999. *Copyright Law*. Albany, NY: Delmar Publishers.

A comprehensive, well-written book.

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