

Web Legalities: Fair Use

By Richard Lowe

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Important: This article contains opinions and information about copyright law. Keep in mind that I am not a lawyer and have not been a lawyer in any past life that I am aware of. If you have specific questions about copyright law you should contact the appropriate legal resources.

Think about it for a minute. If no one could ever make a copy of anything without the copyright owner's permission, then commentary, critical articles, news reporting, research papers and education would be much more difficult. It would be much more difficult, for example, to write a book report without including a quote or two from the author. It would be even more difficult to write a thesis, term paper or research article without including quotes from dozens or even hundreds of sources.

Let's say you were writing an article on copyright and you needed to illustrate a point. You could write your own words (and you should), but you would have a much more powerful article if you included some quotes from reputable sources. It makes it appear that you have done your research and gives you additional authority that you might not otherwise be granted.

In fact, it would be downright silly to require people to get permission to make quotes of this nature. Imagine how difficult it would be if you were writing a term paper which included references from a hundred difficult sources. You would have to track down each author and ask permission. Many times the author has given up the copyright to some other entity, so you would have to do further research on who really owns the copyrights. This could conceivably require more time than writing the paper itself!

To enable you to include quotes of other author's works, an exemption to the United States copyright law was created. This allows for "commentary, parody, news reporting, research and education about copyrighted works without the permission of the author (from "10 Big Myths about copyright explained", just to illustrate how this works).

So how does this work? Well, some of the more important considerations are:

- Your intent in copying the work
- How much of the work was copied
- As well as any damage to the commercial value of the work.

So, for example, if you were writing an article about the quality of the movie "The Mummy Returns", you could use brief quotes from the film to illustrate your point. However, if you included the entire script on your web site, well, that would be a copyright violation.

In general, it is a good idea to include a reference to the original source material. This serves many purposes, one of the most important being simple common courtesy (in fact, I often like to let the author know I have borrowed some of his words). It also makes it clear that you have invoked fair use, and it gives your readers a source for additional information. Just as important, you improve your own credibility by showing you have done your research and you are not afraid to allow others to see how you came to your conclusions.

To further illustrate, the following would most likely be covered under fair use:

- Including brief quotes from published papers for your research papers.
- Writing an article on your web site about the Simpsons and including a WAV file quoting Homer. Perhaps something like "Homer's 'Doh' has become famous the world over", with a hyperlink to a WAV file for the "Doh".
- Criticizing a book and including a few quotes to illustrate your point.
- Criticizing a book and including quotes from other critics to reinforce your point.

The following would most likely be considered copyright violations:

- Including, without permission, several pages of material from another research paper.
- Wholesale copying of pages from a website to your own website.
- Scanning photographs of Heather Locklear from Cosmopolitan for your fan site.
- Including dozens of sound clips from the Simpsons series on your web site. It is still a copyright violation regardless of whether you "borrowed" them from the official Simpsons site or you recorded them from your own VCR.
- You are annoyed because your favorite encyclopedia site now charges a monthly fee instead of being ad supported. You include several articles directly on your own site so people will not have to pay the fee to see the articles.

These would not only violate copyright law, but they would also violate bandwidth stealing rules.

- Linking directly to a photo of Heather Locklear on the Cosmopolitan site. You could do this legally

by (a) asking and receiving permission, or (b) creating a link to the HTML document on the Cosmopolitan site which contains the picture.

- Linking directly to sound files from the official Simpsons site. You could legally, however, link to the HTML pages on the Simpsons site which contain the WAV files.

- Linking directly to video clips from the official Star Trek site. Again, you could link to the pages containing the video clips.

IMPORTANT NOTE ABOUT LINKING

Linking to pages within a web site besides the entrance page is still being tested in court. To date it is considered acceptable practice - however, the results of several recent court cases seem to indicate this is changing to "it's okay unless specifically excluded by the web site". My personal opinion is to link to HTML pages to your hearts content, but to never link directly to graphics, sound files, videos and other media.

One of the critical issues with fair use is the definition itself. Many years ago a supreme court justice defined pornography simply as "I know it when I see it", and fair use is governed by a similar concept.

Another important consideration about fair use is the copyright owner does not need to be and should not be asked for permission. Why? Because fair use is one of the most important pieces of the copyright law puzzle. It allows students to write papers, critics to criticize, authors to quote and researchers to research. By asking permission you are not invoking fair use and in fact you are, in a small way, weakening the law. You do have the right to make fair use of any work that exists (well, with the exception of classified government documents and things covered under trade secrets laws and non-disclosure agreements).

If you are an author you have a right to your copyrights, and you also have a right to use other's works fairly. Laws are funny things, they are just words unless they are actively and constantly used, tested and upheld. Rights are even more important - if you don't use them you lose them.

Of course (and this does not violate my point above about not asking), you always have the option of writing to the copyright owner and directly asking for permission to use their works. You should do this if, in your own mind, you get some doubt about if you are using the works fairly. More simply, when you find yourself doing more than including a few brief phrases, lines or a paragraph, then by all means ask.

The standard I like to use is simple. If I am using other's words to help illustrate or reinforce a point that I am making, then it's fair use. If, on the other hand, I am using other's words to make the point itself, well, then perhaps I need to ask permission. Illustration or reinforcement does not generally require many words - making a point often does.

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