

Go Ahead And Use That Copyrighted Material, It's Fair Use!

By Stephen Bucaro

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Go Ahead And Use That Copyrighted Material, It's Fair Use!

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Most people would like to use a picture or some textual information they found on the Web, but they assume that copyright law prevents them from doing so. The copyright law provides a "fair use" exception that permits you to legally use copyrighted material for many purposes.

You can legally use copyrighted music, pictures, and textual information that you find on the Web for purposes such as critical review, news reporting, teaching or training materials, or a research report. This type of use is not a copyright infringement.

Copyright law does not precisely define fair use. Determination of whether a use is fair use is made on a case-by-case basis, determined by the following factors:

* The purpose and character of the use.

Examples of fair use are quoting passages for a critical review, a news report, a parody or satire, to illustrate a lesson, or a research report.

Fair use is very liberal for non-profit educational purposes. But using copyrighted material in for-profit

training materials is much more restricted. In this case, you need to get permission to use the material from the copyright owner.

The use of a copyrighted character in a parody of the performance that the character appears in is fair use. Don't use a copyrighted character to parody a different topic.

* The nature of the copyrighted material.

Fair use is very liberal when quoting factual material in editorials, news reports, and research reports. Using quotes from non-fictional or creative material is much more restricted. In that case, stick to short quotes for critical review, or get permission to use the material from the copyright owner.

* The portion used in relation to the material as a whole.

Use of only a small portion of a copyrighted work for the purposes mentioned above is usually fair use. The part of the material you use should also be only a small portion of the new work you are creating.

Make sure that the small portion that you are using is not the most significant part of the copyrighted material. Even though the part you use may be only a small portion of the material, if it is the heart of the work, that would be infringement. There is no clearly defined definition as to what portion of a work the use of is infringement.

* The effect on the value of the copyrighted work.

Make sure that the part of the work you use does not make your new work substitutable for the copyrighted work. If so, that is an infringement because it has reduced the marketability of the copyrighted work.

= Using Pictures of People

Use of a person's picture in a news story is fair use. You can use the person's picture even if that person has only a minimal connection to the news story. You can use a person's picture in an article on a subject of general public interest.

Determining whether you need permission to use a person's name or picture depends on whether it's used to help sell a product or service. You cannot use a person's name, picture, or voice for commercial benefit without obtaining their permission. Sometimes the distinction between use as

news and use for commercial purposes and is blurred. For example, a web site might feature news stories and advertising.

Never position a person's name or picture on a web page in a way that implies that they endorse a product or service without their permission. Never position a person's name or picture on a web page in proximity to a news story with a negative connotation. For example, if you position a person's picture just above a story about homosexuality, you might be sued for character defamation.

= Use of Trademarks

You can use a trademark to advertise that you sell or service products of a particular brand. Don't use a trademark to falsely misrepresent yourself as an authorized agent of that brand's company. You can also use a competitor's trademark in comparative advertising. If you do, make sure your claims are absolutely honest and can be substantiated.

Sometimes a trademark inadvertently shows up in a photograph. For example, an advertisement or a container's label may show up in a photograph. There is rarely a problem using a photograph for noncommercial use that shows a trademark. Never use a photograph showing a trademark in such a way as to imply that the trademark's owner endorses a product or service.

To be absolutely safe, you should get the trademark owner's permission. Many trademark owners will be happy to give you permission without charge. In fact, many companies pay fees to promote their trademark.

= Copyright Infringement

Other than for fair use purposes, don't expect to get away with using copyrighted material from the Web without the owner's permission. Some companies use Web crawlers to search for unauthorized use of their copyrighted material.

Make sure the person who gives you permission to use copyrighted material actually owns the copyright to the material, or the real owner could sue you for infringement. Usually, if the person who gave you permission misrepresented their ownership, you cannot be sued because you would be an "innocent infringer".

In this article you have learned that there are many purposes for which you can legally use copyrighted material from the web. If you follow the copyright law's rules for fair use it is not a copyright infringement.

Disclaimer: This information is provided with the understanding that the author is not a lawyer. If legal advice is required, the services of a competent professional should be sought. By using this material, the user assumes complete responsibility for any and all damages resulting from that use.

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