

## SOME EXAMPLES OF COPYRIGHT AND HOW IT WORKS

Author: Richard Lowe, Jr.

Contact Author: <mailto:articles@internet-tips.net>

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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.  
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**EVERYTHING** original that you write (or draw or paint or whatever), regardless of whether it is an email, a painting, an image, a thesis, a web page, a paragraph on a forum, or anything else is automatically copyright protected by you. It does, of course, have to be recognizable as an original work. Thus, the word "the" in a forum would hardly qualify. The exceptions generally must be spelled out in a contract that is agreed upon. For example, Webmasterworld's Terms Of Service (TOS) modifies the copyright to both webmasterworld and the original author.

One area that is a minefield of possible litigation is when you produce something for someone else. If you are a direct employee, the law is pretty clear: the company you work for owns the copyright. If you are a contractor or have been hired to write something, be sure the contract explicitly states who owns the copyright.

Note that a copyright notice is not required on any work. All works are copyrighted from the moment they are created. In other words, you don't "copyright" something - copyright is something granted by the law.

You can use small excerpts or pieces from copyrighted works as you desire. This is called fair use, and it is a critical part of the copyright laws. How else could a movie reviewer quote lines from a movie or a student use materials from other research papers? Fair use is intentionally vague. The key term is "fair"; in other words, in the context of your document are the excerpts valid, do they make sense and were they of limited scope? Or was it just blatant copying? You should never hesitate for a single nano-second to use small excerpts from other documents under fair use. This is very important - you have that right and rights must be exercised or they cease to exist.

**Here are some examples:**

### Public Domain

Copyright is intended to give incentive for people to create original works. Thus, a person could create a sculpture or write a novel and expect to be able control that work for a certain amount of time. The creator can publish the work, copy it, authorize copies and so on at his or her discretion. Alternately, they can deny permission to make copies for any reason. After a certain amount of time, the copyright expires (although Congress keep changing this to absurd lengths of time) and the work becomes available to the general public. In addition, the copyright owner can sell or give the right to copy to anyone, and they can even state "this work is now in the public domain".

If you photograph a painting by Monet and post it on your web site, you are not violating copyright. The image of the painting is in public domain. The painting itself is owned by someone, but the image may be copied since the copyright expired long ago.

If you get a copy of the Iliad (a poem written several thousand years ago) and post it on your site, you may or may not be violating copyright. The Iliad is certainly public domain, but the specific translation (as well as footnotes) may be copyrighted.

If you get an old Sears catalog from a century ago and scan the pictures, then post these on your web site, you are not violating copyright, as the catalog moved into the public domain some years ago.

## **Government Works**

In the United States, any original works produced by the government (at any level) is by definition in the public domain. Your taxes went towards creating those works and you can copy them all you want - and you don't have to ask, cite references, include a link to the original or anything like that at all.

If you wanted to post a copy of the DCMA on your web site, go ahead. You are not violating any copyright.

Do you want to include the press releases from the Whitehouse web site on your own web site? Feel free - they are in the public domain.

Like the pictures on the U.S. Army web site? Be careful here, as the photos may be owned by individuals. You will be safe if it was taken by, say, a U.S. army staff photographer and the photo belongs to the U.S. Army. However, if a staff photographer took the picture with his own camera on his own time, then he may own the copyright.

I love the photos on the NASA web site. Guess what - these are all public domain. NASA is funded by your taxes. Enjoy.

## **Web Sites**

When you create a web site and make it available on the internet, you are implicitly and automatically granting anyone and everyone a right to view your work. Thus, people have a right to make a temporary copy in their browser in order to view your site (this was clarified by the Digital Millennium Copyright Act, also known as DMCA).

If you find a great picture of an automobile on the internet, grab it and place it on your own web site you are possibly violating copyright. It depends on whether or not the image is in public domain.

If you send an email to the website owner asking permission to grab the image and he is NOT the copyright owner, then when you grab and post the image you are violating copyright.

If you IFRAME or FRAME a page within a site, you are probably violating copyright. This appears to be still up-in-the-air in the courts. it is considered very rude by most ethical webmasters.

If you use one of those off-line browsers to snap a copy of a web page or even a whole site, you are not violating copyright, unless you package up that copy and attempt to redistribute it or sell it. You cannot make this offline copy available to the web: that would violate copyright.

## **Email**

The person who creates an email message owns the copyright on that email message. Note that copyright does not imply privacy - once your email has been sent, you should consider it viewable by anyone. Email is NOT private.

If you receive an email from someone, the person who wrote the email owns the copyright. It does not transfer to you just because you are the recipient.

## **Creating a website for someone else**

It's usually wise to draw up a contract in these cases which states exactly who owns the copyright. The general rule is: if you are a direct employee, your employer owns the copyright. Otherwise, you (the creator) owns the copyright.

If you create a website (not for hire), you own the copyright.

If you create something for someone else, or if you hire someone to create something for you, be sure you have a contract which explicitly states who owns the copyright (generally, the company or person who does the hiring or contracting is granted a license to use or copy the work for the purpose for which it is intended; however, a contract should explicitly state the license terms). This is the safest, most direct method of

settling the issue. One thing that I've done a few times is lowered my rate if I keep the copyright. Thus if they need the copyright they can pay more for it.

Here's an interesting one. If you create a document on your computer at work, your company owns the work and the copyright. That is, unless you have a contract which says otherwise. This is why it is not wise to use company resources for personal projects - you could wind up creating a lot of money for your company without any compensation at all.

## **Open Forums**

You do not give up a copyright just because you post something to a newsgroup, message board, chat room or other forum. You still own the copyright, but it may be impossible to enforce this right.

If you post an original work to a newsgroup, forum, chat room, etc, you still own the copyright. However, it may be a moot point since it is virtually impossible to enforce.

The exception is if the terms and conditions of the message board or chatroom state otherwise. In this case, the message board owner might be granted the copyright, or the words may be released into the public domain. It is always wise to read and understand the terms and conditions of a public board before posting.

## **Scanned images**

Images are one of the most abused things on the internet. It's common and actually widely accepted for people to scan in an image, then put them on their web site, send them in emails and post them to newsgroups at will. Common and accepted does not translate to legal. However, it may not be easy to enforce copyrights that have been violated in this way.

If you take a photo of Heather Locklear from a magazine and scan it, then add it onto your web site, you are violating copyright.

If you take that same picture and run it through a filter and then post it on your web site, you are still violating copyright.

If you take that same picture and modify it heavily, say photo-manipulate Heather into superwoman, you are still violating copyright.

If you take that original scanned image then use your graphics program to heavily modify it into something else, say a fractal image, you are still violating copyright, at least technically, although it would be difficult to enforce.

If you make a thumbnail of the Heather picture and put that on your website with a reference to the original, then you may be allowed to do so under fair use. A citation to the original work (a link or just a note) is optional but highly recommended.

If you link to a legal copy of Heather's picture on the internet using "A HREF", you are not violating copyright.

If you link to a legal copy of Heather's picture on the internet using "IMG SRC" you are violating copyright. Recent court cases (see "NetCopyRightLaw - Kelly v Arriba Soft" for an example) indicate that this type of linking is a copyright violation. You are also being extremely rude - this is called bandwidth theft.

If you take a picture of Heather yourself (as long as she's in a public place), scan it and post it on your web site, you own the copyright and can do with it as you will. Heather has nothing to say about it. Nor does anyone in the background, nor does her agent, modeling firm, shampoo company or anyone else for that matter. It also does not matter if the photo resembles another picture, as long as you took the picture yourself. It does not matter if the photo is unflattering or flattering, or if Heather wants it to be published - she was in public when the picture was taken, so it legally can be published and she has nothing to say about it. On the other hand, if you sneak into her house and take a picture of her in the shower, don't be surprised if you find yourself in jail for trespassing and numerous other charges.

Note, however, that if you use the picture in such a way as to indicate she endorses a product, then you may find yourself the lucky recipient of a lawsuit. If you are doing anything significant with the photo, it is generally wise to get a model release signed by the subject (or subjects) in the photo.

## **Fan Sites**

Fan sites seem to crop up all over the internet by the thousands whenever a show or movie gets popular, and for every famous person that even existed. Is this legal? Well, yes, as long as you don't violate copyright and trademark laws.

If you create a star trek web site which contains only original fan art and stories, then you probably are not violating copyright. However, if these include anything from the series, such as costumes, emblems, weapons, props and so on, then you might get nailed for trademark violation (and possible copyright violation). This is a very gray area but it is very seldom enforced for fan sites. Now, if you go off and start making a large amount of money from that original art or fiction, then you would almost certainly attract the unwelcome attention of the civil courts.

If you post scanned images that you got off alt.binary.startrek onto your website, then you are violating copyright, unless you have permission from the copyright owner. It may be very difficult to determine who the original owner is though.

If you scan an image of 7 of 9 from a star trek fanzine onto your computer and scan an image from Playboy magazine of Miss April, then use Photoshop to merge the two images together into a pornographic picture, then you are violating several copyrights - Playboy, the fanzine and possibly Paramount (the owner of the Star Trek images). It is also possible (although not likely) for you to be successfully sued for defamation of character by the actress who plays 7 of 9.

## **Mechanics**

A browser loading a copy of an image, web page, sound or anything else for display is NOT violating copyright (this was clarified by the DMCA).

Also, the mechanical aspects of displaying something off the internet do not violate copyright. This, according to DMCA, an ISP transmitting the image, the browser storing a cached copy, and so on are not violating copyright even if the work is in violation of copyright.

## **Linking**

The internet (and especially the web) is all about linking. Virtually everyone, except for those who do not have the mental capacity of a small soap dish, has no objections to anyone linking to their home page. Some sites (especially commercial sites dependent upon advertising) would prefer you not deep link (link to anything but the home page), but there is really no accepted legal reason why you cannot.

The general rule is, if it's on the internet you can link to it. It's considered good form to only link to web pages (TEXT, HTML or HTML-like objects). It's considered bad form to link directly to images, sounds, zip files, and so on using A HREF without permission. It is a copyright violation to link using IMG SRC (it is also rude in the extreme and bandwidth theft). This includes linking to pictures on other people's websites from message boards and forums.

If you link to a website, you are not violating any law. You do not need permission to link to the index page of a web site.

If you link to an HTML-type page on a web site, you are not violating any law (although this is a little more hazy legally than linking to the index page). Again, you do not need permission to link to any HTML-type page on a web site. Some sites would like you to believe this is illegal, but it is not and most courts (at least in the United States) seem to be upholding this concept.

If you link to an image or other object using A HREF you are being rude, but you are not violating copyright.

If you link to an image or other object using IMG SRC then you are violating copyright law.

## **Additional Resources**

Hire under the 1976 Copyright Act

<http://www.loc.gov/copyright/circs/circ09.pdf>

U.S. Copyright Office

<http://www.copyright.gov/>

Parody and Fair Use

<http://www.jamesshuggins.com/h/oth1/parody.htm>

Search Engine Disputes

[http://www.jamesshuggins.com/h/oth1/search\\_engine\\_disputes.htm](http://www.jamesshuggins.com/h/oth1/search_engine_disputes.htm)

NetCopyRightLaw - Welcome

<http://www.netcopyrightlaw.com/>

(Special thanks to James S. Huggins for his help in reviewing this article, see his website at <http://www.jamesshuggins.com>)

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