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WHAT IS NOT PROTECTED BY COPYRIGHT?

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have *not* been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting *entirely* of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

PUBLICATION

Publication is no longer the key to obtaining federal copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners. The 1976 Copyright Act defines publication as follows:

"Publication" is the distribution of copies or phono records of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phono records to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

NOTE: Before 1978, federal copyright was generally secured by the act of publication with notice of copyright, assuming compliance with all other relevant statutory conditions. U. S. works in the public domain on January 1, 1978, (for example, works published without satisfying all conditions for securing federal copyright under the Copyright Act of 1909) remain in the public domain under the 1976 Copyright Act.

Certain foreign works originally published without notice had their copyrights restored under the Uruguay Round Agreements Act (URAA). Request [Circular 38b](#) and see the "[Notice of Copyright](#)" section of this publication for further information.

Federal copyright could also be secured before 1978 by the act of registration in the case of certain unpublished works and works eligible for ad interim copyright. The 1976 Copyright Act automatically extends to full term ([section 304](#) sets the term) copyright for all works, including those subject to ad interim copyright if ad interim registration has been made on or before June 30, 1978.

A further discussion of the definition of "publication" can be found in the legislative history of the 1976 Copyright Act. The legislative reports define "to the public" as distribution to persons under no explicit or implicit restrictions with respect to disclosure of the contents. The reports state that the definition makes it clear that the sale of phonorecords constitutes publication of the underlying work, for example, the musical, dramatic, or literary work embodied in a phonorecord. The reports also state that it is clear that any form of dissemination in which the material object does not change hands, for example, performances or displays on television, is *not* a publication no matter how many people are exposed to the work. However, when copies or phonorecords are offered for sale or lease to a group of wholesalers, broadcasters, or motion picture theaters, publication does take place if the purpose is further distribution, public performance, or public display.

Publication is an important concept in the copyright law for several reasons:

- Works that are published in the United States are subject to mandatory deposit with the Library of Congress. See discussion on "[Mandatory Deposit for Works Published in the United States.](#)"
- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in [sections 107 through 121](#) of the law.
- The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.
- Deposit requirements for registration of published works differ from those for registration of unpublished works. See discussion on "[Registration Procedures.](#)"
- When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Copies of works published before March 1, 1989, must bear the notice or risk loss of copyright protection. See discussion on "[Notice of Copyright](#)" below.

What kinds of activities violate the federal law?

Following are some examples of copyright infringement that may be found in a common setting:

- Downloading and sharing MP3 files of music, videos, and games without permission of the copyright owner
- Using corporate logos without permission
- Placing an electronic copy of a standardized test on the department's web site without permission of the copyright owner
- Enhancing a departmental web site with music that is downloaded and artwork that is scanned from a book, all without attribution or permission of the copyright owners
- Scanning a photograph that has been published and using it without permission or attribution as the background of a web site
- Placing a number of full-text articles on a course web page that is not password protected, therefore, the web page is accessible to anyone who can access the Internet
- Downloading licensed software from non-authorized sites without the permission of the copyright or license holder
- Making a movie file or a large segment of a movie available on a web site without permission of the copyright owner

Copyright Infringement and Remedies

What Are Copyright Infringements, 17 USC, Section 501 - Copyright Infringements can occur from several different actions and/or methods. ALL of these aspects must be considered in each case.

The source itself -- is it copyrighted or public domain? If it is copyrighted, who holds the copyright and what are the requirements of that person or entity?

The amount and type of information taken from the copyrighted source.

The market effect of one's use of the information -- it will probably be on this point that someone will eventually be sued for copyright infringement.

The person or entity using the information from the copyrighted source -- because different rules apply to different entities.

The desktop publisher has several choices when faced with the possibility of copyright infringement. It is in our best interest to give serious consideration to how we handle clients who ask to reproduce and distribute material that is known to be protected by copyright, or where the copyright provisions are unclear. Some choices may be:

- Inform the client that there's a risk of being sued for copyright infringement (the client may then decide whether or not to omit the questionable material).
- Inform the client that ABG will do the job only after the client grants you indemnification. (Even then the desktop publisher is always open to a copyright infringement suit.)
- ABG conforms to the policy of not accepting copyrighted material in order to avoid copyright infringement (unless we also receive permission from the copyright holder).

Example:

If you know it's illegal, it's illegal. The fact that only a small number of copies are involved makes no difference. In some instances you may be able to claim innocent copyright infringement. If a client tells you that he has permission from the author to use an article in his newsletter, you might not be held liable if a case of copyright infringement is brought by the author. On the other hand, if a client asks you to incorporate a Charlie Brown or Snoopy graphic into a flier, you should recognize that it is copyright-protected and registered and that permission is needed to use that art.

Sources:

U.S. Copyright Office
Washington, D.C.

Roger Williams University
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