

Copyright Law: Fact and Fantasy

By Author John H. Betts

Photographs, text and video are all copyrighted the moment they are created.

No action is required by the creator of photographs, drawings, text or video in order to protect their works. All creative works are protected instantly. Period. No doubt about it.

As an author I have had many instances where my photographs and articles have been reprinted without my permission. I have heard many excuses. They all show a basic misunderstanding of today's copyright law. Following are the excuses most often given along with the actual rules that apply:

Misconception #1:

An article or photograph does not have a "C in a circle" symbol, therefore it is not copyrighted.

Fact:

According to the World Intellectual Property Organization (WIPO) "The laws of almost all countries provide that copyright protection starts as soon as the work is created." You do not need the symbol or the phrase "All rights reserved" in order to protect an article from copyright infringement. These devices will discourage many, but they are not required.

Misconception #2:

An article was less than 250 words, therefore we can use it freely.

Fact:

An article, column, paragraph or sentence are all equally protected by copyright law regardless of length.

Misconception #3:

I credited the original creator that published the article or photograph, therefore we are legal.

Fact:

Giving credit is not a substitute for getting permission. You must contact the creator in advance and get permission. For your protection you should get permission in writing or email.

Misconception #4:

We got permission from another editor to use an article or photograph, therefore we are legal.

Fact:

This is the most abused and misunderstood aspect of copyrights. It is sad, but true, that only the creator can grant permission to reprint an article or photograph. We will discuss later various

strategies for dealing with this problem in the conclusion of this article. But the law is clear, you must get the creator's permission before using an article or photograph. (In professional journals they clearly establish copyright ownership in advance with authors.)

Misconception #5:

The article or photograph won a prize in a competition, and the contest organizer said we can reprint it, therefore it is not protected by copyrights.

Fact:

This is another misunderstanding. Again, only the creator can grant permission to reprint an article or photograph.

Misconception #6:

We are not-for-profit, therefore copyright laws do not apply.

Fact:

Copyright laws apply to everyone. Not-for-profit status does not exempt you from copyright laws.

Misconception #7:

We can distribute Xerox copies of magazine articles or photograph to our members at meetings.

Fact:

Photocopies, transcriptions, or reprinting are all equally treated under copyright law. It is illegal to reproduce for any purpose an article without permission EXCEPT under the provision of "fair use" doctrine. Copyright law does allow fair use of copyrighted material provided only limited copies are made and it is for journalistic, educational or private use. But fair use is limited to the extent that the value of the original article or photograph is not reduced in any way. This is a very murky area of the copyright law and it is important to play it safe. If you are going to rely on the fair use rule you should limit yourself to four or five paragraphs or illustrations and be careful not to take the text out of context so that the meaning is changed.

Misconception #8:

We excerpted only a portion of the original article, this is allowed under copyright laws.

Fact:

This is partially true. Small excerpts can be used, with proper credit to the original author and publisher, in original literary works without infringing on copyrights. As a rule of thumb, keep your excerpts short, and in small proportion to the original article content, and provide complete credit to the citation.

Misconception #9:

The article or photograph is over 25 years old, therefore no longer protected by copyrights.

Fact:

For works created before January 1, 1978, the copyright coverage is generally for 75 years after

publication or 100 years after creation if unpublished, whichever is shorter. There are some subtleties in this law around a 28- year term when first published that is extended to 75 years automatically. Bulletin editors should use the rule that copyrights extend 75 years from date of publication.

Misconception #10:

This article or photograph was from another country, therefore not protected by copyright law.

Fact:

Currently all developed countries have signed either the International Union for the Protection of Literary and Artistic Works (Berne Union) or the International Union for the Protection of Industrial Property (Paris Union). The total count as of April 1, 1998, was 168 countries participating in enforcing reciprocal copyright laws. Country of origin makes no difference. You must still get the author's permission.

Misconception #11:

Another publication reprinted the article or photograph, therefore it is legal for me to reprint the article.

Fact:

Permission granted to reproduce an article or photograph is not transferable. Each subsequent publication must contact the author to get permission.

Misconception #12:

We included the article or photograph on our club internet web site; since we didn't actually publish anything, we have not violated the copyrights.

Fact:

This is one of the most common abuses and is a violation of copyrights. Again, you must get the author's permission to use an article or photograph. If the article or photograph originated on a web site, it is proper netiquette (internet etiquette) to put a description to the article on your page **with a link to the original web site** article. As a courtesy you should ask permission first.

Misconception #13:

I got the author's permission to reprint an article that he wrote for a magazine, therefore it is legal.

Fact:

This may or may not be true. In general, magazines request authors assign their copyrights to the magazine. In this case only the magazine (the copyright holder) can grant permission to use their article. However, knowledgeable authors know that they do not have to assign copyrights to the magazine, they can simply grant the magazine the right to publish the article and retain the copyright for themselves. In this case contacting the author does in fact get legal permission to use the article

Conclusion

By now you might think the situation looks hopeless. But there are solutions. If all you adopt the following standards then we will continue to have a free flow of new articles.

1. Contact the author or magazine before reprinting an article or photograph. In my experience no newspaper, magazine or author has ever refused permission to use an article in a small newsletter when asked in advance.
2. Get permission in writing, or at least email. This is essential to protect yourself from copyright infringement claims in the future, especially from forgetful authors.
3. List the author's address and email for every article or photograph used. This will give other publications the information needed to get legal permission.
4. Make all authors submitting articles or photograph to your publication assign you the copyright. Then you can place a blanket permission statement allowing use of article within. Serious authors are likely to balk at this requirement.

Remember that copyright laws apply to things other than newsletters. Web sites, handouts, videos, etc. are all covered by copyright law. Many infringements have needlessly occurred on web sites where articles, cartoons or photographs are placed on a web site without permission. If the article exists on the author's original web site it is very easy to simply link to the original article. No need to reprint it at all. Otherwise you must get the author's permission.

If you cannot get permission from the author for whatever reason, you can paraphrase. Words can be copyrighted -- but not the ideas. You can rewrite the article in your own words and not infringe on copyrights. Be very careful to avoid accidentally changing the original meaning and it is still proper to cite your sources.

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<http://lcweb.loc.gov/copyright/>

Or visit the World Intellectual Property Organization web site at:

<http://www.wipo.org/eng/index.htm>

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Copyright in General

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What is copyright?

Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works.

What does copyright protect?

Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.

Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. See Circular 1, *Copyright Basics*, section "[What Works Are Protected](#)."

How is a copyright different from a patent or a trademark?

Copyright protects original works of authorship, while a patent protects inventions or discoveries. Ideas and discoveries are not protected by the copyright law, although the way in which they are expressed may be. A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others.

When is my work protected?

Your work is under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device.

Do I have to register with your office to be protected?

No. In general, registration is voluntary. Copyright exists from the moment the work is created. You will have to register, however, if you wish to bring a lawsuit for infringement of a U.S. work. See Circular 1, *Copyright Basics*, section "[Copyright Registration](#)."

Why should I register my work if copyright protection is automatic?

Registration is recommended for a number of reasons. Many choose to register their works because they wish to have the facts of their copyright on the public record and have a certificate of registration. Registered works may be eligible for statutory damages and attorney's fees in successful litigation. Finally, if registration occurs within 5 years of publication, it is considered *prima facie* evidence in a court of law. *of*

What does copyright protect?

Copyright, a form of intellectual property law, protects original works of

authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. See Circular 1, *Copyright Basics*, section "[What Works Are Protected](#)."

Can I copyright my website?

The original authorship appearing on a website may be protected by copyright. This includes writings, artwork, photographs, and other forms of authorship protected by copyright. Procedures for registering the contents of a website may be found in [Circular 66](#), *Copyright Registration for Online Works*.

Can I copyright my domain name?

Copyright law does not protect domain names. The [Internet Corporation for Assigned Names and Numbers](#) (ICANN), a nonprofit organization that has assumed the responsibility for domain name system management, administers the assignment of domain names through accredited registers.