

LEGAL AND PRIVACY

Copyright considerations for Web developers and content creators

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As a content creator, blogger or Web developer, you have access to an unprecedented amount of easily searchable digital content, seemingly free to use with the click of a button.

However, significant risk looms for those not well informed about copyrights, licenses, fair use and how third-party content may be legally incorporated into new works.

Copy that

Most people who have browsed the Web know how easy it can be to "right-click" a graphic to save it for future use. Even images that are protected from copying can still be lifted using a screen capture of the image.

However, almost all content found online and offline, for that matter is subject to copyright protection. This means that the copyright for almost every pixel you encounter, whether graphic or text, is "owned" by someone else.

Copyright protection gives the owner the exclusive right to reproduce, distribute, perform and/or sell the content that they have created.

Copyright extends to original works of authorship including literary, dramatic, musical and artistic works, such as poetry, novels, movies, songs, photographs, computer software and architecture.

Accordingly, anyone who incorporates someone else's original content into their creation that will be reproduced, shared, performed or sold must ensure that they have acquired the necessary permission from the owner in the form of a license.

Although a concept in copyright law known as "fair use" can exempt certain uses of third-party content from liability, these exemptions are very limited and are very difficult to apply in a commercial context.

Fair use can be a defense based on the consideration of the purpose and character of your use, the nature of the copyrighted work, the amount and substantiality of the portion taken, and the effect of the use upon the potential market.

In other words, there is no "bright line" which delineates between a fair use and an infringing use.

However, certain uses of third-party content made for parody and/or criticism often qualify for fair use but are not easily adopted by content creators such as graphic designers and Web site developers.

Despite the existence of fair use, it is a rather complex concept to apply and can never provide a guarantee that a certain use is permissible without a paid license since the only conclusive determination regarding fair use can be made by a judge.

On point

Even absent fair use, there are things you can do to ensure your use is legal. The first and most effective way is to create the content yourself.

For example, you own the copyright to every photograph you take and can use it for any purpose you choose.

Second, you could contact a Web site's owner directly to seek a license for the element on their site that you would like to use. This is not always possible, and some site owners may not respond.

In addition, it is common for images and other content that you find on a commercial or company Web site to be licensed from a third-party so they may not own any rights to convey.

Third, you can purchase a license from a stock image database such as Getty Images or Shutterstock. Although they require a payment in exchange for the license, you have access to millions of graphics, cartoons, photographs or sounds and, once paid, you will have documented confirmation of your permission to use the content.

With many companies offering these services, it is important to compare them based on cost and also what percentage commission they share with the original artists that upload the content.

One common misconception is that use of another's content in a non-commercial way, or only on a Web site visited by a handful of people, is okay to use without permission.

However, the harsh truth is that even an insignificant or not-for-profit use can violate a copyright.

Further, image search tools made available by Google and others make it increasingly possible and likely that content owners will discover unauthorized uses.

Suit yourself

Another misconception is that merely offering attribution and/or an apology will end an infringement allegation.

Digital rights licensing has become a huge industry and is very aggressive in protecting digital content.

If you are targeted, a settlement payment is almost always demanded and, depending on your use, could require payment of several thousand dollars in lieu of a lawsuit.

A final consideration for content creators and Web developers is that, although you may own the copyright for the specific content or project you create for your client, you can be liable for copyright infringement if you use unauthorized content.

Therefore, as a content creator, you should be careful to confirm your client's ownership, in a written agreement, of content they provide to you so that you have some protection in the event they did not have the appropriate authorization.

You should also confirm that the scope of any rights that they may have purchased allow you to make use of the content in the manner you intended.

AS A CREATOR of content in any medium, you must not only be aware of the limitations to fair use as a defense to alleged copyright infringement, but how to secure appropriate permissions for the content you use.

The cost of a lawsuit and the resulting liability from making an unauthorized use of someone else's content is too expensive to avoid these easy steps.

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