

Copyright Myths

The copyright quandary

What are the rules when posting to social media?

By Eric Taub



PROFESSIONAL PHOTOGRAPHER Kirsten Kowalski became enamored of Pinterest, the “online pinboard” that encourages its members to “organize and share things you love.” Happy to let others know what moves her, Kowalski created an “inspiration board,” a gathering of photos from around the Web that lifted her spirits and, she hoped, would do the same for others.

But then Kowalski, from Alpharetta, Georgia, read the site's terms and conditions and promptly deleted all her entries. She realized she was running afoul of copyright restrictions.

Kowalski is just one of millions using social media. This rapidly changing arena presents a variety of new challenges in regard to copyright law.

The information here, provided by Cheryl Hodgson, a Santa Monica, California–based trademark and copyright attorney, Pinterest spokeswoman Erica Billups, YouTube spokeswoman Abbi Tatton and Gayle Osterberg of the U.S. Copyright Office, may help clear up some confusion and keep social media participants from becoming enmeshed in legal action.

The rules allowing use of others' works are the same whether you're writing a blog, creating a movie or posting that type of material on a website.

The social media conundrum

Typically, individuals are forbidden from publishing or posting online the creative works of others without their permission.

That puts sites such as Pinterest, Facebook and YouTube in an awkward position; they must abide by the law, but they want to encourage users to come and experience interesting content that others have posted. These sites are awash with photographs, clips from films or TV shows, music and/or written works—much of which has been posted by people who don't own the rights to do so.

Oftentimes, the copyright holders look away, however, pleased that they're able to get free publicity for their work. That's why you can find not just the official TV clip of Susan Boyle's singing debut on YouTube, but scores of other versions as well, posted by individuals. Old toothpaste and car commercials don't get pulled by the companies that made them because, in the end, it's good for business.

What are the rules?

Still, that doesn't absolve users of social websites from following the copyright laws. The rules allowing use of others' works are the same whether you're writing a blog, creating a movie or posting that type of material on a website.

According to the U.S. Copyright Office, someone receives a copyright when he or she creates “an original work of authorship.” That includes plays, movies, photographs, written works, computer software and architecture. Ideas and facts cannot be copyrighted. The work's creator automatically receives a copyright (registration is not necessary) from the moment the work is created until 70 years after the creator's death. So if you make public your travel pictures on TripAdvisor, anyone who wants to post them on another site must ask your permission. If you've posted someone else's photograph or music or writings on any website without the owner's permission, you've broken the law and can be sued.

Social media's response

YouTube has spent \$30 million building its Content ID system, which automatically scans the 72 hours of new content uploaded to the website every minute for content violations. Material that's in violation may be immediately blocked, or the rights holders may decide it's in their interest to allow it to run, perhaps with advertising attached.

YouTube is the exception when it comes to automatic scanning for copyright violations. Sites such as Pinterest and Vimeo depend on complaints from copyright owners before they take action.

As an added precaution, Pinterest offers a small bit of code that owners of copyrighted material can add to their websites; if users try to post that material on the Pinterest website, they won't be able to do so.

Social media sites that allow others to post material do not have to screen that material for copyright violations before, or even after, it is posted.

Under the Digital Millennium Copyright Act, websites are not liable for copyright infringements, and do not have to remove material unless the copyright owner asks them to do so. If the original poster disputes the copyright claim, an appeals process can allow the material to be reposted if the original complainant fails to back up his or her claim.

And even if you're successful in blocking the unauthorized posting of your great photograph of Istanbul's Hagia Sophia mosque on someone else's website, by the time you succeed in getting it removed, it may have been reposted by another user unknown to you, and even used illegally for a print ad.

Which is why Kirsten Kowalski, who specializes in portraits of seniors and children, decided to change her approach.

Rather than policing websites to block her work, she's posting her photographs to get more jobs, as people see her photos and reach out. “Facebook has become my biggest marketing tool,” she says.

Eric Taub writes about the intersection between society and technology for The New York Times and other publications.

COPYRIGHT myths

If I give credit I don't need permission.

Giving credit means you can look at yourself in the mirror and say you are not a plagiarist. However, merely giving credit is not a defense to copyright infringement, which, unlike plagiarism, has legal, not ethical, consequences. Copyright infringement is the unauthorized use of someone else's copyrighted material.

The work I want to use doesn't have a copyright notice, so I don't need permission.

Not true. Since March 1, 1989, copyright notice has been optional.

Since I'm planning to use my work for nonprofit educational purposes, I don't need permission.

Not necessarily. The key factor is not the user, but the nature of the material, how it is used and whether the new use adversely affects the value of the original work. Since even a nonprofit educational use can undercut the value of copyrighted work, such organizations are not immune from copyright infringement lawsuits.

I don't need permission because I'm going to adapt the original work.

Copyright law grants copyright owners the exclusive right to control modifications of their work. If you add a new layer of copyrighted material to a previously existing work, you have created a derivative work. If it's done without the permission of the copyright owner, you may have violated the owner's copyright.

I can always obtain permission later.

If what you need is crucial to your work, it's better to find out now that it is unavailable. The lack of permission can result in your work being blocked or the payment of thousands of dollars in copyright damages and attorneys' fees if you decide to use the material without permission.

The material I want to reproduce was posted anonymously to an online discussion or news group. That means the work is in the public domain. Not true. Neither the ease with which users can upload or download information on the Internet, nor the fact that it is anonymous, places a work in the public domain. In fact, the Copyright Act specifically protects anonymous and pseudonymous works from unauthorized copying. Postings and republications of protected material, if not done with the consent of the copyright owner, may constitute copyright infringement.

The material I want to quote is from an out-of-print book. That means the work is in the public domain.

Not necessarily. Out of print does not mean out of copyright. When a book goes out of print it is a temporary state. The rights generally revert to the author, which means the underlying copyright remains unaffected.

Since the work is in the public domain, I don't have to clear permissions.

Not necessarily. Public domain only refers to the lack of copyright protection. While copyright is very important, a work may be protected by other legal theories that survive after the copyright expires. For example, public domain artwork, particularly distinctive characters (e.g., Beatrix Potter's "Peter Rabbit" illustration), can achieve protection under trademark law and function as a logo or source identifier. Likewise, mere ideas, which are not protected under copyright law, may be protected under trade secret or contract law. Similarly, identifiable people may have the right to control the manner in which their name or likeness is used.