



‘May I Use that Image I Found on the Internet?’

USE GOOGLE TO SEARCH FOR AN IMAGE AND YOU’LL FIND DOZENS OF OPTIONS. ASSUMING THAT THESE ARE FREE TO USE “BECAUSE THEY’RE ON THE INTERNET” COULD BE AN EXPENSIVE MISTAKE.

The same is true for other information that any search engine can reveal. Just about everyone has heard of “fair use” and we like to believe that what we want to do is covered by that law. Section 107 of the United States Copyright Act describes how copyrighted information can be used by someone who isn’t the copyright holder.

I am not a lawyer, but US Copyright Office says four primary factors must be considered.

- The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes.
- The nature of the copyrighted work.
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- The effect of the use upon the potential market for or value of the copyrighted work.
- To this I add one more: Understand that all creative work of every type is the property of the copyright holder whether it has a copyright symbol (©) or not.

The Four Factors

COURTS ARE MORE LENIENT WHEN COPYRIGHTED MATERIALS ARE USED BY NONPROFIT ORGANIZATIONS SUCH AS SCHOOLS. USE IN AN EDUCATIONAL SETTING IS OFTEN PERMITTED.

The nature of the work is important, too. Reusing small amounts of material from news reports, technical articles, and other factual works is safer than using material from a movie, novel, or song.



BEING ON THE WRONG SIDE OF A COPYRIGHT ISSUE CAN BE EMBARRASSING AND EXPENSIVE.

The amount used is a critical concern. Quoting a paragraph or two from a 500-page Stephen King novel is probably safe, particularly if the quotation is part of a review. But quoting a few words from a song lyric is almost certain to land you and your publication or website in legal peril.

What effect the use might have on the copyright holder is also a key consideration. Any use that reduces the value of the copyright holder’s property is more likely to cause problems.

These are just four factors that the US Copyright Office feels are important enough to call out explicitly. A fair-use document on Copyright.gov says “Courts evaluate fair use claims on a case-by-case basis, and the outcome of any case depends on a fact-specific inquiry. This means that there is no formula to ensure that a predetermined percentage or amount of a work — or specific number

of words, lines, pages, copies — may be used without permission.”

The fifth item is so basic that it’s often overlooked. The simple fact is that the creator of a photograph, artwork, or manuscript holds the copyright from the instant the work is created. Creators gain additional protections by formally copyrighting the work and using the copyright symbol, but basic copyright protections are in place regardless.

So how does Stephen King get away with quoting lyrics? If you read King’s books, you know two things about him: He quotes song titles and lyrics in many of his books and he’s a big fan of Sixties rock music — so much of a fan that he and fellow authors Mitch Albom, Dave Barry, Roy Blount Jr., Greg Iles, Matt Groening, James McBride, Ridley Pearson, Amy Tan, and Scott Turow are members of a band called *The Rock Bottom Remainders*. It’s good that they keep their day jobs as authors.

Plagiarism



But how does King do it? That's easy: King pays for the right to use those words. Obtaining the rights to use song lyrics is a complicated process and it's expensive. That's probably why most authors steer clear of lyrics.

An Example Case

LET'S SAY YOU'VE JUST READ AN ARTICLE IN THE NEW YORK TIMES THAT MAKES AN IMPORTANT POINT ABOUT A PRODUCT OR SERVICE THAT YOU SELL. THIS IS FACTUAL ARTICLE, SO CAN YOU COPY THE TEXT AND PLACE IT ON YOUR WEBSITE?

No! You can quote small sections from the article and then provide a link to the newspaper's website.

If that option doesn't appeal to you, could you just paraphrase the article, omit any reference to the newspaper, and place "your" article on the website?

Again, no! That's a clear case of plagiarism, and, while not illegal, it is unethical.

By now, maybe you're thinking *well what can I use?*

You can claim fair use if you quote someone else's work and combine it with commentary, criticism, news reporting, research, teaching, library archiving, or scholarship because the law provides for the "legal, unlicensed citation or incorporation of copyrighted material in another author's work under a four-factor balancing test."

Photographs are the source of many problematic issues. It's easy to find an image, copy it, and use it on your website. Doing so, however may result in a cease-and-desist order and a large claim from the copyright holder. Many sources of licensed images exist on the internet, some with modest prices for images

that might be used by many publications and much higher prices for images that you want to license on an exclusive basis.

Legal and Ethical Standards

FAIR USE IS A LEGAL STANDARD. PLAGIARISM, AN ETHICAL STANDARD, SHOULD ALSO BE CONSIDERED.

Wikipedia says the modern concept of plagiarism emerged in Europe in the 18th Century, particularly with the Romantic movement. This stood the previous system on its head: Authors and artists were once encouraged to "copy the masters as closely as possible" and avoid "unnecessary invention."

Academia and journalism are two sectors of today's society where plagiarism receives the most notice. Plagiarism is academic dishonesty and a breach of journalistic ethics, subject to sanctions such as expulsion from college and, for journalists, termination and other severe career damage. In the arts, copying is still a fundamental practice of the creative process.

Misunderstandings

FAIR USE IS COMPLICATED AND SOMETIMES WHAT APPEARS TO BE THE COMMON-SENSE ANSWER IS WRONG.

In the previous century a suit involving Betamax claimed that recording an entire television program was clearly not fair use, but the court found that it was because those who used recorders were time-shifting programs for their own convenience.

Something that seems like fair use to you may not be. The term *fair use* has a specific legal meaning that differs from the plain-English meaning of the words. Judges have leeway in deciding how to apply fair-use guidelines, so

a use you consider to be fair may not be seen that way by the court.

"I acknowledged the source, so it's fair use." Not true. It's important to acknowledge sources as I have done here, but acknowledgment alone is insufficient. Consider the four factors cited by the US Copyright Office. If you meet all those criteria and you've cited the source, your use is probably fair.

Beware!

JUST AS TYPOGRAPHIC ERRORS CAN CAUSE A WEBSITE VISITOR TO QUESTION THE SITE'S OVERALL BELIEVABILITY AND RELIABILITY, COPYRIGHT VIOLATIONS AND PLAGIARISM CAN TURN A WEBSITE VISITOR FROM SOMEONE WHO BELIEVES YOUR MESSAGE TO ONE WHO DOUBTS YOUR HONESTY.

So for me, the bottom-line guidelines are these:

- When you quote someone, use attributions to make clear whose words you are using.
- Minimize the amount of information that you quote.
- Provide additional information (reviews, comments, suggestions) besides the quoted information.
- When you paraphrase information, clarify that you are paraphrasing another's work and provide links to the original work.

If you write carefully and review thoroughly to ensure that there is no doubt about copyright violations or plagiarism for any information you include on your website or in a publication, you'll reduce the chances that someone will accuse you of copyright violation or plagiarism. **Ω**