



About Jay Landrum

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YOURS, MINE OR OURS?

What you can and can't do with copyrighted works.

You want to use someone else's photography, music, writing, or video in something you are creating. Whether you can do so depends on whether it's protected by copyright law. If it is protected, this may limit your ability to use it; if it is not, or if it is now "public domain," then you can use it.

While "Can I use it?" is a frequently asked question, it is not as easy to answer as it might seem. You may need to explore multiple versions of the U.S. Copyright Acts, including the 1909 Act, the 1976 Act, and the 1998 Copyright Term Extension Act.

But that's some very boring reading....so let's try and avoid that and get a basic understanding on the issue.

First things first...what does copyright law protect? Generally speaking, original works of authorship, such as literary works, musical works, dramatic works, pictorial and sculptural works, motion pictures, audiovisual works and architectural works.

What's not protected? Ideas, procedures, processes, systems, methods of operation, and concepts. For example, J.K. Rowling could copyright a Harry Potter book (which is a work of authorship), but she can't keep someone else from writing a book about a young boy who goes to a school to learn magic (which is only a concept or idea).

When does a copyright start and when does it expire? For works created before January 1, 1978, each work was protected by a common law copyright when it was created, which ran until the work was published. After that, the owner had to comply with the 1909 Act requirements (including affixing a copyright notice to the work); if not, the work entered the public domain. If federal copyright protection was

secured, the copyright ran for 28 years, with a potential renewal of another 28 years (with another possible extension under a later Act).

The Copyright Act of 1976 changed the starting point of copyright protection from date of publication to the date of creation. The requirement of affixing a notice in order to secure a copyright also disappeared (but is still worth doing anyway). Under the 1976 Act, copyright protection lasts for the life of the author plus an additional 50 years (and corporations, such as Walt Disney Co., receive 75 years from date of creation).

As if that wasn't confusing enough, the 1998 Copyright Term Extension Act added another twist, extending copyrights (for works copyrighted after January 1, 1923) by an additional 20 years. This meant that works created after 1978 receive "life plus 70 years" rather than the "life plus 50." If a corporation created it, the work is now covered for 95 years. Copyrighted works created after January 1, 1923 but prior to 1978 are shielded for 95 years, regardless of how they were produced.

So, generally speaking,

-- For works created on or after January 1, 1978, copyright protection now lasts for the life of the author plus an additional 70 years (or 95 years from creation for a corporation).

-- A work published before 1923 would have received, at most, 75 years of protection. With that in mind, any work published before 1923 would have entered the public domain by December 31, 1997.

"But wait...I'm not selling anything!" This may be the most common misperception in copyright law. The fact you are not selling anything does not automatically protect you from a claim of infringement. However, there is an exception in copyright law for "fair use" - this may allow you to use portions of copyrighted works depending on a number of factors, such as the type of use, how much of the work is used, and the effect your use has on the market or value of the copyrighted work. Plus, there are also exceptions if you are making a parody (mocking or making fun) of an otherwise protected work.

One last point to keep in mind...although certain works may be public domain, subsequent works incorporating the public domain work into new treatments may still be protected under copyright law in their own

right, such as Andy Warhol's treatment of the Mona Lisa, or Leonard Bernstein's reworking of *Romeo and Juliet* into *West Side Story*.

Before you move forward with someone else's work, it is important to confirm whether it is in the public domain (or if you can rely on an exception). Otherwise, your actions may constitute copyright infringement, which can result in a very expensive mistake.

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