

Publications

Ten Common Misconceptions About Copyright and Fair Use

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Misconceptions

Fact

1. Anything on the internet may be freely copied or used as basis for your work.

No. Copyright laws apply to everything on the internet (unless in the public domain or created by U.S. government). Some internet content can be used pursuant to their terms and conditions. Fair Use applies. (See #2)

2. If you are "educating" your employees or putting on a seminar, it is fair use to copy anything.

No. Fair Use is a defense to a law suit, not a safe harbor. Fair Use is an analysis by a *court* using four factors, including whether the use is for an educational purpose. But the "educational" purpose refers to educational institutions (colleges, schools) and is only one factor in the analysis.

3. Fair Use can be determined, definitively, for instance by using a check list.

No. Fair Use factors (purpose of use, nature of work, amount used, economic impact on work) are each a continuum, not an "on/off" analysis. Fair Use determination is very subjective and difficult to determine. A checklist is helpful in analyzing Fair Use but cannot definitively determine Fair Use.

4. If you are a non-profit and it's for a good cause, you can make videos using others' music, and add new words to others music.

No. You need permission to use others' music. See Fair Use, above, which is an analysis of four factors. There is also a limited exception for parodies, but it is narrow. As noted, Fair Use is a defense to a law suit, not a safe harbor.

5. You can download and use in any manner: any video on You-Tube, any music from iTunes, any photo from Getty Images, any article from Reuters or from our company's online subscription services.

Not necessarily. If the use is not a personal use, it may not be permitted. Look at terms and conditions of specific item.

6. You can use the entire work as long as you give attribution or credit to the author and display the copyright notice.

No. Giving "credit" doesn't render the use legal. See Fair Use above.

7. There is a specific number of conference attendees, copies or percentage of the work you can copy and it will not be an infringement.

No. Fair Use analysis includes four factors.

8. You can just paraphrase a work and it won't be an infringement.

No. Paraphrase is also considered an infringement.

9. If a copyright notice doesn't appear, the work is not protected by copyright.

No. Since 1989 a copyright notice is not required to protect a work. The work also does not have to be registered in the Copyright Office to be protected unless a law suit is brought by its owner.

10. When you pay an independent contractor to develop work for you (marketing material, articles, software, artwork, etc.) you own the copyright.

No. The author/artist owns the copyright unless a *written agreement* assigns the work. Otherwise you only have a limited license to use the work exactly as the parties contemplated you would use it when you paid for it. Under limited circumstances, a "work-for-hire" can be owned by the procuring party, but that relationship must be acknowledged in the contract and work-for-hire only applies in eight limited situations – which don't apply in most situations. It's best to get an assignment.

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