Can I Post This? Putting Creative Content Online

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Online Content

Made up of copyrighted works
For example
• Music, video, 2D images
• Words that are written and/or spoken
• Choreography, sculptures
All these independent copyrighted works combine to create a new copyrighted work
What is a Copyright?

Copyright protects an original work that is permanently fixed in some way.

Protects works that are:
- Literary works;
- Musical works;
- Dramatic works;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and videos;
- Architectural works.
Rights Granted by Copyright

Exclusive Rights
(1) Reproduce
(2) Prepare Derivative Works
(3) Distribute
(4) Perform
(5) Display
(6) Perform by Digital Audio Transmission
Who Owns the Copyright?

The author (creator) is the claimant (owner)

If an employee creates the work within the scope of his/her employment, the employer owns the copyright as a “Work For Hire”

Work for Hire can also be contracted
Using Others’ Copyrights

How can we use someone else’s copyright in our content?

Get a License!

A license is a specific grant of rights from the owner to another party.
Licensing

**Direct License:** Person A grants Person B the rights to use the content

**Blanket License:** a Company owns the rights to many pieces of content and you get a license to use some or all of that content

A license should **always be in writing**
Blanket Licenses

Generally from online databases

This can be OK if licensed properly

Read the Terms of Use

Ensure that your planned use fits into the terms being offered
Does Posting Grant a License?

When you post something you grant a license

- Terms vary
- You do not give up ownership
- Others cannot use your work (except reposting)

Similarly, you cannot use someone else’s work just because they posted it.
Copyright Term

Copyright last for a set amount of time (the “term”)

Currently, the term is 70 years after the life of the author

Or 95 years after first publication or 120 years after creation, whichever expires first
Public Domain

After the copyright term expires, the work enters the public domain.

Works in the public domain are not protected by copyright and are therefore free to use.

However, it is VERY difficult to determine when things enter the public domain because the law has changed so many times.

Generally, anything created before 1925 will be in the public domain.

Anything after that requires investigation and analysis.
Fair Use

If the use of someone else’s copyright is “fair” then it’s permissible

• But this is a complex analysis!
Fair Use is a defense to infringement

• It is not an affirmative right
It is a case by case analysis
Four Fair Use Factors

Four Factors
• 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.

We DO NOT rely upon fair use regularly

It does apply in certainly scenarios
Music Copyright

Twice as complicated!
Two copyrights in every piece of music

1. Composition (music & lyrics)
2. Sound Recording (aka the "master")
Music Licensing

Including music in connection with a moving image requires a synchronization ("sync") license.

Must get sync licenses for both the composition and the master.

Sync licenses are VERY expensive.
Music Licensing

Also requires a public performance license

- Public performance is normally covered by Performing Rights Organizations (PROs)
- PROs in the US are ASCAP, BMI, and SESAC

May also require a mechanical license

- To mechanically reproduce the composition in a recording
Exceptions

YouTube
• Content ID System

Creative Commons
• Alternate licensing scheme

Live Streams
• Not an exception
Now What?

Think about the copyrights you use in your content

• Do you have the rights?
• Can you get the rights?

Be sure to “clear” the content you are using
Can I Post This?

Yes, if you have the rights
Yes, if you license the rights
Maybe, if someone else posted it
Yes, if it’s public domain
Maybe, if it’s fair use

Always think ahead and respect others’ rights!
Thank You!

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