

Borrowing from the Web is Dangerous

You are thinking of looking on the web for just the right article to put on your website, or just a photo or artwork. Or you already found it. “It’s on the web, so that makes it ‘public domain,’ and free for the taking, that’s what my brother in law said.” Your brother in law either didn’t go to law school or he flunked the bar exam.

Public v. Public Domain

That it is on the web makes it *public*, not *public domain*. The latter has a specific nature: never owned by anyone or where the ownership has expired. For example, the Da Vinci *Mona Lisa*, Beethoven’s *Eroica* Symphony, and Shakespeare’s plays are so old they are in the public domain. But caution: a given photo of the *Mona Lisa* as it hangs in the [Musée du Louvre](#) may be copyright protected. So may be a specific performance of *Eroica* or the “Scottish Play.”

Still, what about republishing emailed jokes? That is something this author does. I take the view that it may technically be copyright infringement, but an alleged author/victim would need to prove he or she is the author. These jokes go around the email world so much that would be very hard to do. If you write jokes, I think there is little you can do to keep them for yourself.

Fair Use

But what about “Fair Use” defense? There is a doctrine by that name. In fact, in the United States it was spelled out by Congress in Title 17 of the US Code, section 107. It is quite a word salad, and there are books about what it means, but the short of it means you can’t use someone else’s stuff for your own work and make money off it, but you can teach about it, criticize it, support it or parody it.

So-called Royalty Free

“Yes, but I got the photo or picture off a ‘royalty-free’ site.” First and most importantly, royalty-free does not mean free of cost. These sites all charge some sort of entry fee, usually a monthly or yearly subscription. If you did not pay, or you got the file from someone who did pay but you did not, that is probably an infringement. Also, when you use such a site, you rely on them to “clear” all the copyright-material uses. So make sure you write down your source for each item, the date, any catalog number, etc., so you can pass it to someone else claiming ownership. If you seem to have acted in good faith, the real owner may let you off and go after the site.

What About Emailed Jokes?

We all get jokes in our email, some of them funny. Can we republish them? This is an issue for me, since I republish lawyer jokes. My take is this:

What You May Owe

What if you do infringe? Don't expect to get off free. Without even trying to prove your profits or their harm, the owner can get from \$750 to \$30,000 if they have registered their ownership early enough—within 120 days of the first time their creative was published. If not, they can still get your profits plus any loss they can prove. That loss may be the value of a lost sale of a license at market value. And if they warn you off and you still persist, they can also get you to pay their (outrageously high) attorney fees.

Conclusion

The bottom line: not all creative material on the World Wide Web is free for the taking, so don't be fooled into trying. It could cost you.

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