



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Copyright Law and Nonprofits:
The Do's and Don'ts of Using Materials from the Internet
R. Lee Strasburger, Jr. Morris, Manning & Martin, LLP

When a volunteer (or an employee) pulls together materials for an organization, it is easy to expose both the volunteer and the organization to liability for copyright infringement. To avoid copyright infringement in this digital age, where the internet makes access to and copying of materials ever easier, a basic understanding of copyright law may be helpful.

Copyright Law Basics

Copyright law protects the expression of an idea but not the idea itself. What exactly does that mean? To be eligible for copyright protection, a "work" must satisfy three criteria. Specifically, it should be:

- FIXED in tangible form (e.g., paper, hard drive, 8-track, etc.);
- ORIGINAL (i.e., not a copy of someone else's work); and
- CREATIVE (i.e., not a fact).

While these three criteria may seem simple enough, the application of these concepts is not necessarily straightforward. Possibly the best way to clarify their application is to provide a few examples of what is and is not eligible for copyright protection.

Eligible:

- Painting of a Landscape
- Recording of a Musical Performance
- Score of a Musical
- Clipart
- PowerPoint Presentation
- Article from a Website
- Image, Artwork, or Photograph from a Website

Not Eligible:

- Facts recited in the PowerPoint Presentation (not creative)
- Quotes in an Article (not original)

With a basic understanding of what can and cannot be protected by copyright, the next natural question is: how does a work get copyright protection? In the United States, a work automatically receives copyright protection from the moment of creation. For example, the first brushstroke, sentence, or slide receives copyright protection. It is important to understand that the artist/author does not have to register the work or place a copyright notice to receive protection. Registering the work with the United States Copyright Office (and including the ©

Dated: 6/10/2015

www.pbpatl.org

© 2015 Pro Bono Partnership of Atlanta, Inc. All rights reserved.

notice that you may have overlooked at the latest festival) provides the artist/author with additional protection in litigation. Therefore, even if something looks like it is not subject to copyright protection because it lacks the © notice, it may still be protected and further inquiry is necessary.

Knowing what is eligible for copyright protection and how it receives that protection only goes so far, however, unless you also know what copyright protection provides to the author/artist. Generally, copyright protections allows the artist/author to make unlimited use of their own work (e.g., reproduction, adaption, distribution, etc.) while preventing others from using or copying their work. Except for a few situations that will be discussed in the next section, if you did not create something, then you cannot use it without the permission of the author/artist.

The Do's and Don'ts of Using Materials from the Internet

Generally, a volunteer should avoid blindly copying materials from the internet under the assumption that it will cause no harm or that no one will sue a nonprofit. The safest course of action is to always assume that materials on the Internet are covered by copyright protection. Accordingly, it is important to review materials before copying them to assure that the copying will not expose the volunteer or the organization to liability. The following is intended to be exemplary considerations regarding copying materials:

- **Don't** use fonts, clipart, pictures, GIFs, etc. without the permission of their owners.
 - **Don't** copy images or pictures from websites like Pinterest®, Facebook®, etc.
 - **Don't** copy materials without first checking for a copyright notice (e.g., © or other disclaimers discussing the copyright status of the materials).
 - **Don't** copy materials without first checking U.S. Copyright Office records for a copyright registration that covers the materials (e.g., www.copyright.gov has easily searchable databases that can provide additional information regarding certain materials).
 - **Don't** copy creative aspects of the materials (e.g., color schemes, characters, plots).
 - **Don't** directly copy smaller portions of a larger set of materials.
 - **Don't** assume that because the materials have been around for a long time or because they do not have a copyright notice that they are not covered by copyright protection.
 - **Don't** assume that something within the materials is too insignificant to be covered by copyright protection.
 - **Don't** make minimal changes to the materials to try and avoid creating liability for copyright infringement.
 - **Don't** use materials if you are unsure whether your use will create liability for copyright infringement.
-
- **Do** get permission, in writing, to use the materials (e.g., by contacting a listed owner of the materials or the website that is hosting the materials; the U.S. Copyright Office also has records that can help you get in touch with owners of registered materials).
 - **Do** copy facts from the materials (e.g., statistics, dates, etc.).
 - **Do** copy quotes attributable to third parties from the materials.
 - **Do** use materials that are clearly listed as being in the “public domain” and are not subject to copyright protection.
 - **Do** talk to legal counsel if you are unsure whether your use of the materials will create liability for copyright infringement.

Dated: 6/10/2015

www.pbpatl.org

© 2015 Pro Bono Partnership of Atlanta, Inc. All rights reserved.

****Note Regarding Getty Images and Other Aggregators****

Often, images on websites such as Pinterest®, Facebook®, and Instagram® actually belong to image aggregators (e.g., Getty Images) that have not granted permission to use the images to the users that have posted them. It is likely that the image aggregators are in the process of pursuing the individual user for the unauthorized use. Thus, you should **never** copy images from these websites. Image aggregators include digital watermarks within their images that allow them to track the use of the images and pursue individuals (or organizations) that are using their images without their permission. If you use an image that belongs to an image aggregator without permission and receive a letter from the image aggregator regarding that use, you should immediately consult with an attorney.

Conclusion

Of course, there are always exceptions to the rules, and the above will probably not be helpful or applicable all the time. Thus, if you have any complicated issues (e.g., you want to use the materials for educational purposes), then it is probably best to consult with an attorney regarding your concerns. Or, if you are in doubt, then **do not** copy the materials and, instead, create your own content.

Dated: 6/10/2015

www.pbpatl.org

© 2015 Pro Bono Partnership of Atlanta, Inc. All rights reserved.