



DIGITAL COPYRIGHT FOR MAGAZINES

Copyright applies in the digital medium as everyone knows. Digital technology is brilliantly enabling, but magazine professionals must know where the copyright lines are drawn.

Copyright in the Commercial World

Canada's Copyright Modernization Act, which came into force in 2012, introduced a number of new exceptions designed to enable Canadians to use digital works and materials more freely. It brought in new personal use exceptions, expanded fair dealing in education, and introduced a unique exception allowing individuals to use other people's copyright works to create and distribute non-commercial works of their own. Would it be any wonder if this created habits and expectations, in young people especially, that copyright works are there for the taking?

A rude awakening awaits those entering the commercial world, where these exceptions don't apply. The ease of finding and reusing materials online is not matched by the ease of ensuring that one has the right to use them. And it's not as though slips won't be noticed. At the same time as the internet facilitates infringement, it also facilitates detection and exposure through web spiders and search engines. Owners of large collections of copyright works have sophisticated ways of searching for uses made without permission.

Consider the case of photographs

Stock photo agencies, consolidated over the last decade, have enormous archives of still images and illustrations which they license to print and online media publishers. These can be found in their catalogues, but can also be found on websites that have licensed individual photos. You may find the perfect photo on a website, but you can't assume it is free to use. You are liable to hear from stock agencies who regularly sweep the web searching for unlicensed uses of their photographs.

One of the largest stock agencies, Getty Images, systematically sends out "settlement demand letters" to websites who have used its photographs without permission, requiring not only a "cease and desist" but a specified and substantial payment for infringing use. This practice and the set "damages" claimed are controversial; a law firm recently brought an action against Getty for what it called an "[unfair, deceptive scheme](#)" when Getty sent it such a letter. But the best practice is obviously to ensure you have the rights in the first place.

Be aware of the limits of "Fair Dealing"

Professional publishers sometimes rely on fair dealing to use an excerpt for news, or for criticism or review. This requires that you indicate the source and, if given in the source, the author. "Criticism" means criticism of a work as such (rather than quoting it to criticize something else, unless, perhaps, a comparable work). What amounts to "fair" in the context of news or criticism is limited and depends on the facts; you may use no more than what you absolutely need to make the point, and may not use so much as would pre-empt, substitute for or compete with the market for the work. You cannot, for example, quote an entire poem in a review. Other factors apply as well, so informed legal judgment is needed.

Define the rights you need

Your standard contracts and permission request forms should specify exactly the rights you are requesting. These will generally include the right to include the work or excerpt on your website, in your online and digital archive and in your print edition—whether you purchase first serial rights and first electronic rights only, or more extensive web-archive rights permitting the magazine to make it available on the web to visitors long after the article first appears. Where articles are written or photos are taken by employees working in the course of their employment, the magazine owns the copyright automatically. But if these are done by a freelancer, the magazine must acquire the rights it needs by contract in writing. (See Magazines Canada's hotsheet "[Creating an Agreement for Freelance Writers](#)" by Jessica Ross for more on this subject.)



Your rights are only as good as your records

Publishing is a rights-based business and your rights are only as good as your records. Good administration is key. Rights in copyright must be evidenced in writing. Occasionally you'll need to refer to the rights grant, to see what you've got when your use is challenged or you contemplate a re-use, so it's critical to have well-organized, searchable, retrievable records of rights and permissions.

The saving grace of digital technology is that online mistakes can be rapidly fixed, but forming and following—and educating for—best practices for copyright compliance should be the goal.

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