

# COPYRIGHT PRIMER PART 3:

*Questions on using the work of others,  
and copyright relating to digital works*

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As part of the Writers' Guild of Alberta's (WGA) project to update its website, I revisited the Intellectual Property FAQ page. In this primer, the third in a series, I provide updated answers to the WGA's FAQ page questions that touch on incorporating the contributions of others into your writing. I also pose and answer other frequent questions about digital publications.

Here are the FAQ page questions and responses:

**DO I NEED PERMISSION TO USE ANOTHER AUTHOR'S WORK IN MY WRITING? WHAT IF IT'S A QUOTATION WITH CREDIT GIVEN?**

Subject to a few exceptions within the *Copyright Act*, you may not use copyright-protected work in your writing, even if with attribution, unless you have been granted permission from the copyright owner.

Here are a few exceptions:

- **Work that is out of copyright.** Copyright in a work subsists for the life of the author plus 50 years (soon to be 70 years once the new law is proclaimed in force). Assuming the author of a work is alive or has not

been deceased for 50 (or 70) years, then the author's or other owner's permission to use that work must be sought and obtained.

- **Fair dealing exceptions.** Consider whether any of the time-honoured exceptions of research, private study, criticism and review, and news reporting, applies to your work. Further, if your work is satire or parody, then you likely fall under a fair dealing exception. Another recently added exception, educational purposes, is more controversial and should not be relied upon. The breadth of this exception has not been determined. You should seek a lawyer's opinion before assuming fair dealing applies. Even if fair dealing applies, "giving credit," or attribution rules, may well apply.
- **Non-commercial user-generated content.** This is sometimes called the "mash-up" exception, so-called to protect "mash-ups" of video and audio clips from many sources. However, it's conceivable that a literary work could also be a "mash-up." Many conditions are attached to this exception—the first one being that no income can be earned from the copyright-protected work. Again, seek a lawyer's opinion before assuming this exception applies.



**I WILL BE CONDUCTING INTERVIEWS AS RESEARCH FOR MY WRITING. WHAT DO I NEED TO KNOW ABOUT THE LEGALITIES OF USING INTERVIEWS AS SOURCE MATERIAL?**

The written permission of the interviewees should always be obtained before interview material is used. The written consent form should set forth the specific uses of the interview material. The law respecting privacy rights is still developing and great caution should be exercised in using interview material.

**MY WRITING IS BASED ON REAL-LIFE EVENTS. HOW DO I PROTECT MYSELF FROM BEING SUED?**

Creators must be mindful of defamation laws, specifically libel with written works. Defamation is a complex area of law, and so the basic premise that "truth is an absolute defence" should not be relied upon. You and your publisher should obtain legal advice before publishing works that could be perceived as reflecting adversely upon another person, or as depriving a person of his or her right to privacy. Even fictional works can be vulnerable to defamation claims.

Here are some frequent questions and answers regarding digital publications:

**HOW DOES COPYRIGHT DEAL WITH DIGITAL PUBLICATIONS WHEN COMPARED WITH PHYSICAL PUBLICATIONS?**

Copyright does not differentiate between types of publication. The law is the same regardless of the method of publication.

**CAN MY PUBLISHER DISTRIBUTE MY BOOK AS AN E-BOOK OR OTHER DIGITAL MEDIA?**

The answer depends upon the wording of the publishing agreement or contract.

If your contract pre-dates the digital era, it's possible your contract doesn't mention electronic publication at all. In that case, there is not likely to be an e-book publication right. However, where the contract refers vaguely to the author granting "electronic rights" to the publisher, or where the contract grants broad publishing rights to the work in any media, the author may then wonder whether that includes e-books.

The law in this area is not well settled. A publisher could be justified in distributing a hard copy work in a digital format so long as the publishing agreement contained some reference to electronic rights, and so long as the publisher did not reproduce the article in a format that differs from the original publication. For example, reproducing a book word-for-word may be permissible assuming the right contractual language, but reproducing a newspaper article without the rest of the newspaper in an online publication may not be permitted.

If you are concerned about e-book publication of your work, make sure you locate your publishing contract and show it to a lawyer for advice. You would also wish to look at the payment section of the contract to determine what royalties you would earn on e-book sales. Typically, the percentage owed to the author should be

higher than for print publication, since e-book publication is much cheaper. Further, your lawyer will look at the reversionary rights paragraph to determine whether your book is out of print and therefore whether all rights in the book, including electronic rights, have reverted to you.

**DOES COPYRIGHT COVER MY SOCIAL MEDIA POSTS?**

Copyright covers social media posts so long as they meet the three conditions for copyright protection: originality (a work must result from your own creativity), expression of an idea (not the idea itself), and fixation (the work must be fixed in a material format, such as paper, video

and audio recordings, or hard drives and memory cards).

Some social media posts are simply re-posting of others' content, with little original words added. Such posts would not likely meet the condition of originality. Most social media platforms dictate how they may use your social media content. Check the "terms and conditions" page of their websites, which may allow re-posting. The media platform usually has a complaint alert mechanism allowing content owners to report infringements. ■

*Jeananne Kirwin, Q.C., a lawyer in Edmonton, practices in the areas of intellectual property and corporate/commercial law with an emphasis on trademark and copyright registration and enforcement (kirwinllp.com).*



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