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This is provided for informational purposes only. Please do consult with an attorney familiar with your specific circumstances, challenges, and quirks before drawing any conclusions or doing anything rash!

BASIC COPYRIGHT CONCEPTS

1. Current copyright law protects original works of authorship (e.g., literary works, choreography, music, arrangements, song lyrics, photographs, artwork, films, and designs) as soon as the work is fixed in a tangible medium of expression—such as a book, manuscript, sheet music, film, videotape, written outline, draft, CD, etc. The copyright in the work of authorship ***immediately*** becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

2. A copyright right is, literally, the right to make copies. However, it also bestows upon the owner of the copyright a bundle of exclusive rights which the owner may control, license, convey, assign, or retain in any manner and in any combination they wish. These include the right to ***reproduce*** the work; to prepare ***derivative works*** based upon the work; to ***distribute*** copies of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending; to ***perform*** the work publicly, in the case of literary, musical, dramatic, choreographic, audio, audiovisual, or any other works that are capable of being "performed"; and to ***display*** the work publicly, in the case of literary, musical, dramatic, choreographic, audio, audiovisual, or any other works that are capable of being "displayed." Inherent in these rights is the right to edit, alter, amend or change a copyrighted work. In addition, certain authors of works of visual art have the rights of attribution and integrity known as "moral rights."

3. Registration with the Copyright Office is recommended, but not required in order to have a copyright. Copyright registration affords numerous statutory benefits in the event you file an infringement action, including the right to collect attorney's fees. Otherwise, each side pays their own. You also get the right to statutory damages even if the other side does not profit from their infringement.

4. The practice of mailing a copy of one's own work to one's self is sometimes called a "poor man's copyright." There is no provision in the copyright law regarding any such type of protection, and it is not a substitute for registration. This practice is used primarily to establish when the work was created via the postmark on the unopened envelope and is useful only if there is a dispute as to when the work was created.

5. You can place a copyright notice © on your work whether it is registered or not. Accordingly, you cannot assume that material is not protected by copyright just because the material contains no copyright notice.

6. Copyrighted works created after 1978 are protected whether they are published or not.

7. Copyright does **NOT** protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. In other words, if you share your ideas with someone, they can use those ideas without compensating you. Similarly, someone can use your ideas to create their own, independent works.

8. A "license" is the permission to use someone's copyright. Licenses can have few or many restrictions and can be sold or given away for free. An "assignment" is when a copyright holder actually transfers ownership of the copyright to another party.

9. Anytime you use work created by someone else (pictures, images, designs, music, etc.) you have to obtain permission to use that work. If you use someone else's work, such as music, a poem, an image, or any other creative material, into your production or materials without their authorization, you risk being sued and having the release of your project delayed or prohibited. Many producers, distributors, presenters, etc. will not use your work or permit you to perform until they are satisfied that all rights have been licensed or otherwise obtained.

a. In addition to copyrights, using other people's material without their permission could also trigger issues involving trademark, right of publicity, right of privacy and defamation.

10. Obtaining rights can be time-consuming and paper intensive. You must first identify the rights owners. Some materials require permission from multiple parties. For example:
    a. If you want to use a photograph of a contemporary sculpture in your book, you would need permission from the copyright owner of the sculpture as well as the photographer who took the photograph of the sculpture.
    b. If you want to record the performance of an artist, you need the permission of the artist as well as the permission of the composer of the music being performed by the artist.
    c. If you want to use a sound recording on your website, you need the permission of the owner of the sound recordings as well as the permission of the composer of the music performed on the sound recording.

11. When obtaining rights be as specific as possible and always confirm the agreement in writing. U.S. Assignment and exclusive licenses **MUST** be in writing to be enforceable. An oral agreement to purchase a copyright or obtain exclusive rights will be enforced in court only as a non-exclusive license.

12. Determining When You Can Use Copyrighted Material Without Permission
    a. The following are the only situations in which you may use copyrighted material without permission:
        1) Use of public domain material. Copyrights last for a specified period of time. Once the copyright expires, the work falls into the public domain and you can use the work in anyway you like without permission. Here are guidelines on the duration of copyright:

Creation/Publication	Duration of Copyright in the United States
Created in or after 1978	Life of author plus 70 years
Published in 1964 – 1977	28-year initial term plus 67-year automatic extension for a total of 95 years
Published in 1923 – 1963	28 year initial term plus 67-year potential renewal term for a potential total of 95 years
Published prior to 1923	Expired and in the public domain

        2) Use covered by the First Amendment. If the copyrighted work is the only source of information and that information is vital to the public's understanding of certain events, you may be able to use the work without the copyright owner's permission.
        3) Use covered by the Fair Use Doctrine. Fair Use allows you to use a reasonable portion of a copyrighted work without permission. Unfortunately, there is no bright line rule in determining what qualifies as fair use. Courts use a 4-factor test to determine whether a specific use qualifies as a fair use. No single factor is determinative.
            1. What is the purpose and character of the use? (i.e. Was the use for commercial purposes or for non-profit purposes?)
            2. What is the nature of the copyrighted work?
            3. How much of the work is used?
            4. Does the use harm the copyright owner's ability to market the work?

        4) Use that qualifies as a parody. A parody is a form of commentary that borrows liberally from the original work in order to make fun of it. In order to qualify as a parody, the work must be a commentary on the original author's work.

        5) Use of material created by the U.S. government. United States government works created by federal government employees or commissioned as works made for hire are in the public domain. The same does not necessarily hold true for state and local government works which may be protected by copyright.

    b. Just because something is on the Internet does not mean it is in the public domain and up for grabs. You must either obtain permission or determine that the work qualifies for one of the circumstances when permission is not needed.
    c. A "commercial use" is not limited to sales. It includes using material for advertising, marketing, or self-promotion purposes. A "non-commercial use" is limited to putting the material on your shelf or only distributing it to immediate family and "very close" friends.

d. Just because the material is being used by a school, a non-profit organization, a charity, for the benefit of children, or to help the sick, the friendless, and the needy does not mean that it is a "non-commercial use" or that it constitutes "fair use."

e. Just because you are not making a profit or you needed the material artistically does not constitute "fair use."

13. Work For Hire

a. Just because you paid someone for their services does not mean you own the work they produced or have any rights to the work. For example, paying someone to design your website does not mean you also purchased ownership of the design. Without a written agreement specifying the rights you purchased, you may have only paid for the designer's time. Similarly, just because a presenter pays an artist to perform, does not mean that the presenter also has the right to record the performance or use the artist's image to promote the presenter in the future.

b. Hiring someone to provide creative services and produce creative material does not mean that you own that material or have any rights to that material unless it is "work for hire" or the parties have specifically agreed to a license or an assignment.

c. A "work-for-hire" occurs in only one of two scenarios:

1) When an employee creates material for an employer within the scope of the employee's employment, the employer and not the employee is considered to be the author and the employer automatically holds the copyright. The employee gets nothing but a pay check.

2) A work is specially ordered or commissioned for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas **AND** the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.