

## Copyright Concerns for Consultants

By Linda Tapp, CSP  
Principal Consultant  
Crown Safety  
Cherry Hill, NJ

Many consultants try to make their training programs as interesting and entertaining as possible. Unfortunately, this may cause the Consultant to unknowingly (or knowingly) break United States copyright law. If you photocopy, distribute, customize, publicly perform or display someone else's original work without permission – you are breaking copyright law. Especially with widespread use of the Internet, it is very easy, and sometimes tempting, to cut and paste or download other people's work without their permission.

It is important to try to stay within United States copyright laws to avoid unnecessary litigation. It may seem that the chance that someone would actually sue you for violating a copyright law is small but of course it is not impossible. You never know when someone in your audience may take offense when you use copyrighted material. Of course, the threat of litigation is not the only reason not to break copyright law. By following copyright laws you are showing yourself to be an ethical professional.

The Copyright Act of 1976 is the basis of U.S. copyright law. Basically, it states that copyright is automatic when an original work is first fixed in a tangible medium of expression. This means that the material is first protected by copyright when it is first printed, captured on film, drawn or saved to a hard drive or disk. There are two main reasons for copyright law – first, to protect the author's rights to benefit financially from their work and second, to protect the author's right to control the use of his or her work.

Have you ever attended a training session where a Dilbert cartoon or clip from a popular song was part of a PowerPoint presentation? In all likelihood, these cartoons were not being used legally. Many people falsely believe that you can use other people's work (including artwork and music) as long as you do not make money by using it. In the case of the consultant, you are likely (and hopefully) getting paid for what you create. If you are not a consultant and only using this information in your own workplace and not charging fees for the training, you would still be violating copyright law every time you showed one of these cartoons. Additionally, if you use copies of other people's trade journal articles or brochures or photographs in your presentations or handouts you're also violating copyright law if you don't have the permission of the "creator".

If you are caught violating copyright law, statutory damages for infringing on copyright can cost \$20,000 per violation and may go as high as \$100,000. A commercial copyright violation involving more than 10 copies and the value of more than \$2500 is now a felony in the United States.

Many people think that if you use other people's material but give full credit you don't need to seek permission. This of course, is incorrect. In addition, a notice of copyright is no longer necessary to affirm protection. Some people may believe that if a work doesn't include the copyright notice, it is okay to use it without permission. Of course, this is incorrect.

Copyright protection lasts for the life of the creator plus –years. After this time, the work becomes part of the public domain and can then be used by anyone without permission. Things created by the US Government are also considered part of the public domain and can be used freely.

Many consultants may refer back to the “Fair Use” doctrine when defending their use of copyrighted materials. Unfortunately, the Fair Use doctrine cannot be used in this way. The Fair Use doctrine was created to allow things such as comedy, parody, news reporting, research and education about copyrighted works without permission of the author. The “fair use” idea was basically put into place to protect people's freedom to express their own remarks. Usually, a consultant or trainer's use of copyrighted material does not fall into these categories.

So how do you stay out of trouble? You must first obtain permission from the copyright owner before you use or copy an original work. This may be difficult since the copyright owner may not be the creator or author. For example, if you submitted a paper for ASSE's PDC Proceedings, you were asked to sign over a copyright ?? form. Once this is done, the author no longer retains copyright – ASSE does so anyone wanting to copy a Proceedings article for use in a training class, for example, would first need to get permission from ASSE.

If you wanted to use a Dilbert cartoon in one of your PowerPoint presentations, you could go to the Dilbert home page ([www.dilbert.com](http://www.dilbert.com)) and click on the “legal issues” button. Here you will find simple but detailed instructions for requesting permission to use a Dilbert cartoon. The web page states that the fee you will be quoted will be anywhere from \$35 to several hundred, depending on what you will use the cartoon for, how many people will see it, etc. Many cartoon web sites have similar links to applicable legal information and policies.

Consultant's can also comply with copyright laws by purchasing “royalty-free” content. This will allow you to pay a one-time fee for unlimited use. There are web sites like the Copyright Clearance Center ([www.copyright.com](http://www.copyright.com)) that make it easier to obtain permission to use copyrighted works. Another useful site is [www.benedict.com](http://www.benedict.com) (The Copyright Website). This site is also useful for consultant's interested in the other side of the equation. If you wish to copyright something you created through the government's copyright office, all the forms and instructions you need can be found here.

Although a consultant's intentions are probably well-placed when using cartoons, music and possibly downloaded items in presentations and hand-outs, it is best to ensure that copyrighted materials are not being used without the permission of the copyright owner.

With more and more entities paying closer attention to the illegal use of their copyrighted materials, making every effort to comply with copyright laws is the smart thing to do.