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VOL 1, NO5

Dear Subscriber,

In this issue we're going to discuss something very important for you to understand regarding copyrights and the public domain.

You may be afraid to use a 'work' that is likely in the public domain because it may contain a copyright notice. Some notices are valid, some are *not*.

In order for a copyright notice to be valid on a work that is in the public domain the content that is claimed to be copyrighted must contain the following requirements:

- 1) Fixation
- 2) Originality
- 3) Minimal Creativity

Fixation

The most basic requirement to claim a copyright is that the work must be in a 'fixed' medium of expression... i.e. a written page(s), a tape recording, a CD, a painting, a map, a movie, a photograph, etc...

The important thing to remember is that to claim a copyright the owner must be able to 'see and touch' the copyrighted work (however, some state laws DO protect 'unfixed works', so be careful).

For example here are a few things that cannot be copyrighted:

- Ideas
- What someone 'says' that he or she never wrote down or had recorded

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Page 2...

Originality

This is really important and little understood by the general public: In order for a work to be protected under copyright it **MUST** be original.

If only part of the work is original **ONLY** that part will be protected.

The definition of 'original' for copyright purposes is this: **A work is original if it owes its origin to the author.** Copyright does not care if the work is well done or has aesthetic merit, it only cares that it was created by an individual entity- the author.

For example the letter you send to your mother is protected under copyright law in the same way that the book written (and published) by your next door neighbor is.

This is extremely important to understand when you are searching for public domain works to profit from because someone who simply takes a public domain work and photo copies it cannot claim copyright to the work.

But, many times someone who makes a pure copy (without alterations) of a public domain work claims a copyright to it- even when they are **NOT** entitled to one. These false copyright claims trick a lot of people into thinking that the copyright is valid... after all they include a valid form of copyright (© 2003 by such and such. All rights reserved.) when in fact they have **NO** claim to copyright.

If you find a work that you think might be in the public domain and you come across a copyright notice printed on it, you have every right to be suspicious.

If you think you can **USE** the work in a project you're developing find the original published source of the document to be sure it's in the public domain. **NEVER** copy the copy. Why not? They may have **ADDED** additional material to it that is protected under copyright law and when you copy it you are in violation of their rights. Even if 99% of the work is in the public domain, you may have copied the 1% (for example, the design, typesetting or format of the new work) that **IS** protected and get yourself into trouble.

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Page 3...

ALWAYS FIND and USE THE ORIGINAL PUBLISHED SOURCE DOCUMENT.

Minimal Creativity

This is the most important requirement for entrepreneurs to understand: Works that lack minimal creativity are NOT protected under copyright.

Minimal creativity cannot be strictly defined. A work doesn't have to be completely new or original or unique to be protected under copyright but works that *completely lack creativity* ARE NOT protected under copyright.

An example of works that lack minimal creativity are:

- Recipes (a listing of ingredients), ideas, methods, systems, concepts, and layouts
- Listings in the white pages of a telephone books
- Individual words and short phrases (these may be protected under trademark rights, however)
- Raw data or facts such as name, address, phone numbers

Each of these lack 'minimal creativity' and hence are not eligible for copyright protection.

You would think that the above then would exclude most types of databases from protection as well, but that's not true.

Databases are an entirely different subject and may have complete or limited protection under copyright law. There is copyright protection for "Automated Databases" providing protection for certain collections of information that *meet the minimal creativity test*.

Basically the Copyright Office is saying that if the database is **'compiled' by you and it took some effort and creativity on your part to 'compile' the data, that it is protected under copyright law.**

FYI

Included in this PD Report file is Circular 65 from the Copyright Office that contains additional details on copyrighting compiled databases.

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Page 4...

The 'minimal creativity' requirement is used to prevent someone from taking an exact copy of a work in the public domain (like photocopying a book, or photograph) and claiming copyright.

Making a single change to a work in the public domain also does not meet the 'minimal creativity' requirement. **You must be able to demonstrate effort, skill and/or minimal creative changes to the original work when claiming a copyright to a work in the public domain.**

When you see someone selling *photocopies of works* that are likely to be PD works AND they have claimed copyright on the work you know they are blowing smoke.

It is always best to find the original, if you can, before using any PD work in your projects. Then to protect these works add a minimum amount to creativity to the PD work in order to claim a valid copyright. Change the format, update some of the antiquated language to make it more modern, use a different typestyle, add a few graphics, etc... even edit the text here and there! If anyone should simply copy your work you will have enough documentation (keep records of your changes!) of adding 'minimal creativity' to the PD work that your copyright will probably be valid and enforceable.

Here's one question NO ONE ever asks me, probably because they didn't know to ask it!

What is NOT protected and ALREADY in the public domain when it's created?

In other words, "are there types of 'works' that are in the public domain minutes after they are created?" and "Do you always have to wait for a copyright to expire before a work enters the public domain?"

Even if a work was created today, there are certain types of works that are NOT eligible for protection under copyright and can be used by you or anyone in their projects minutes after they are created!

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Page 5...

I guarantee there are works you see or access every day that may be free for you to use and you didn't even realize they were in the public domain!

Here's a list of items that you may use (these are already in the public domain!):

- Scientific principles, theorems, mathematical formulae, laws of nature, etc.
- Scientific and other research methodologies, statistical techniques and educational processes
- Ideas, concepts, discoveries, theories and hypotheses
- Facts, information not recorded or written down
- Data, know-how and knowledge that has not been recorded
- Laws, regulations, judicial opinions, government documents and legislative reports
(*large business have been developed just to sell this type of information!*)
- Innovations qualifying for intellectual property protection, in which either no rights are claimed or in which rights have expired
- Innovations that fail to qualify for intellectual property protection because they do not meet the requirements for patent, copyright or trademark protection
- Word, names, numbers, symbols, signs, rules of grammar and diction, and punctuation

That's all the news for now!

Until next time,

David Vallieres

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