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Fair Use or Public Domain?

In real life, the legal standards and rules for determining fair use or public domain content may seem confusing. These charts should help give you a better idea of the likelihood of whether your use of someone's work will run afoul of copyright law.

Does Your Use of the Work Constitute Fair Use?

The closer your answer is Yes to the following questions, the more likely your use is fair use. The right column illustrates examples of factors that make a finding of fair use more likely vs. copyright infringement.

Factors	Examples
Are you creating something new?	Including excerpts in a commentary piece about the book vs. copying a book word-for-word
Is the copyrighted work factual?	Biography vs. work of fiction
Is the portion of the work used small in amount and significance in relation to the entire work?	Two sentences from a novel vs. a chapter of the book that goes to the heart of the story
Does your use have little or no market impact on the copyrighted work?	Excerpting from a travel book on Rome for a book review vs. copying an entire section for a new travel book on Rome

Is the Work in the Public Domain?

Publication Date	Public Domain?
Works published in the U.S. before 1923	Yes.
Works published in the U.S. in 1923 through 1963	Yes, if the copyright was not renewed during the 28th year after the work was first published.
Works published in the U.S. in 1964 through 1977	No. Automatic copyright renewal protects the work for 95 years.
Works published in 1978 or later	No. Work is protected by copyright for the life of the author plus 70 years. (a longer copyright term may apply)
Works published by the U.S. Federal Government	Yes, regardless of publication date.

Although this chart provides helpful guidance in determining whether a work is in the public domain, there are a few additional steps that will help you in this analysis.

If a work was published **in the U.S. from 1923 through 1963**, the work is likely in the public domain. Even though authors could extend protection of their works by filing a copyright renewal during the 28th year after the work was first published, many authors failed to file the renewal on time. However, you should check the U.S. Copyright Office database to make sure that there is no renewal on file for the 28th year of the published work. For those works published during this time and renewed on time, copyright protection endures for an additional term of 47 years, following the 28-year initial term. A 1998 law changed the additional term from 47 to 67 years; however, works that were already in the public domain in 1998 (e.g. work published in 1932 or earlier, with copyright renewal) remain in the public domain.

For works published **in the U.S. from 1964 through 1977**, the copyright renewal is automatic. This means that works published during this time automatically receive 95 years of copyright protection. Since the new law making copyright

renewals automatic was changed in 1992, any works that were already in the public domain before 1992 remain in the public domain.

Works published **in the U.S. after 1977** enjoy copyright protection for the life of the author plus 70 years after the date of his or her death. If an employee created a work as part of the job ("work made for hire"), then the work is protected for 95 years from the date of first publication or 120 years from the date of creation. This rule also applies if an author uses a pseudonym to create a work.

The protection of life of the author plus 70 years also applies to **unpublished works**. You should note, however, that if an unpublished work is created before 1978, and subsequently published between 1978 and 2003, the copyright lasts through 2047, no matter when the author died.

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