Copyright FAQ 1.3

By Mel. White & Glen Wooten

Last Updated 5/9/2003

Copyrights - one of the simplest as well as the most misunderstood concepts around today. From the time we write our first book report in school, draw our first picture, or write our first story, we are messing around with copyrights. It can be done correctly, it can be done incorrectly. Let's look at them, shall we?

First off, the legal stuff. This FAQ is a distillation of some of the talks that Mel. White & Glen Wooten have done at many conventions, as well as some of the on-line discussions we've had, from BBS's, to GEnie, and on to the wide world of the Internet. We have been giving these lectures at conventions since 1993. We have also written a series of articles for ASFA (Association of Science Fiction and Fantasy Artists).

Mel. White has had experience with copyrights in the fields of artwork (having had several books published); as well as computer programming (working in the public sector). Glen Wooten has had experience with copyrights in the fields of books, music, and non-print material (making copyright policy for a large college library system); software (in a programming company making proprietary industrial machining software); and in artwork (handling affairs for a relatively successful illustrator & comic artist). For the record, we are not lawyers, this is not binding legal advice (**ONLY** a lawyer can give you that).

At the end of this FAQ, there are several links that will lead you to more information. Some are quite detailed (which is why we're not going into specific detail here - why re-invent the wheel), some are general. The first one you should check out would be the U.S. Copyright Office - that is your prime information source in the U.S. on copyrights.

It's all really pretty basic (despite what you might think). Whether you apply it to print, music, movies, music, software, the Internet - it all still boils down to the same thing. We'll point out a few of the more common questions, but just because we may be treating it as a case related to music (for example), it will still probably work the same way if we were to talk about the internet.

When you have a copyright question that will impact you directly, get what advice you can from the Internet, from friends, from people you know have gone through the same sort of thing, but if it's really important, you need to check with an expert. Consult a copyright lawyer, or possibly the legal clinic of your nearby law school. Consult the U.S. Copyright Office (or, if in another country, the appropriate department there). And so we begin...

WHAT ARE COPYRIGHTS?

Basically, a copyright gives you the "right to reproduce (copy)." Whatever it is. Artwork, written material, music, software - if you can imagine it in your head, and place it in the real world in some form, you can control what happens to it. It is your creation, you determine its fate.

They define the ownership of the work and prevent others from using the work in a manner not intended by the author. Copyrights allow you to create your work AND allow you to share them with the world, with at least some assurance that you will receive credit and possibly some compensation (either monetary or in accolades). Not only that, but it allows you some measure of protection against someone else taking your creation and using it in a manner that you would not approve of. These laws also put the control of the income in your hands - to give away or to use to earn your living, as you prefer.

In the United States, there are 7 basic rights that the copyright code recognizes - and that the copyright holder ALONE controls:

1) The reproductive right: the right to control reproduction of the work in whatever form it would copy.
2) The distribution right: that is the right to control distribution of copies of the work (in whatever form you include or exclude).
3) The adaptive right: the right to produce (or allow others to produce) derivative works based on the copyrighted work.
4) The performance right: that is the right to perform the copyrighted work publicly (generally reserved for music, plays, operas, etc...)
5) The display right: that is the right to display the copyrighted work publicly (which separately refers to display of an original OR display of reproductions).
6) The integrity right: that is the right of an author to prevent the use of his or her name as the author of a distorted version of the work, to prevent intentional distortion of the work, and to prevent destruction of the work (in reference to one of a kind or extremely limited edition works, generally artistic. When dealing with destruction, special conditions apply, check with the Copyright Office.)
7) The attribution right (also referred to as the paternity right): that is the right of the author to claim authorship of the work and to prevent the use of his or her name as the author of a work he or she did not create (or in reference to an altered work).

A copyright allows you control of all of these rights, and they cannot be taken from you (except in VERY LIMITED legal actions). Only you have the right to control how these are applied.

WHAT IS PUBLIC DOMAIN?

Public domain is the opposite of a copyright. If you place your work in the public domain, then you have waived all the rights to it, and no longer have any say in what happens to it. People may alter it in whatever way they choose, people may profit off it in any manner, people may reproduce it in any possible media available.

Be aware of all that public domain implies before you consider placing your work in the public domain. No one can place your work in the public domain without your express WRITTEN consent (except in VERY limited circumstances). If you find that your copyrighted work is being used “in the public domain,” then you can take action against them.

Items that are part of a group can be put into public domain with the rest of the group going into public domain. A current case about this is in regards to the early Mickey Mouse works by Disney. Although

being argued about now, the early Mickey Mouse films (Steamboat Willy, for one) were slated to go into public domain before the last set of copyright extensions. Not getting into any of the arguments for or against this, if Steamboat Willy does fall into the public domain, it would not affect any of Disney's current projects. The trademark on Mickey would not be affected (as long as Disney continues to use the Mickey Mouse character, then the trademark is still in force). However, the Mickey of today has changed a good bit since the Mickey of Steamboat Willy. The character has evolved, and it can be argued that the original design could be placed in public domain (while still retaining the trademarked name of Mickey Mouse). And the films themselves would almost certainly fall into public domain, but only those that were released before the cutoff date.

You cannot place your work partially in public domain. You must either give up all rights, or none. And once a work goes into public domain, it can never be copyrighted again.

SO ONCE I HAVE A COPYRIGHT, I CAN NEVER LOSE IT?

Yes, and no. There are time limitations on copyrights. Currently, copyrights last for 70 years past the life of the author, then they automatically revert to public domain (for works made after January 1, 1978). There are exceptions to this rule; check about your particular case. When dealing with "Work For Hire," corporate ownership, or anonymous publications, different rules apply.

Some copyrights MAY be held in perpetuity, if they are maintained (such as Peter Pan), as arrangements made previously could possibly keep them out of public domain essentially forever (in the form of Grandfather Laws). But these are very much the exception to the rule. These type of copyrights are being challenged today - not in the country of origin (where the Grandfather Laws would apply fully), but in other countries that have copyright agreements with that country. The argument is that while a country may pass a law that widens or narrows copyrights for a particular work, such a deviation from the norm need not be carried to other countries via Berne or other conventions - that is, there is no provision in international copyright agreements to support such a deviation.

During the life of your copyright, it cannot be taken away from you without permission except in very special cases. One such case would be if you knew there were rampant violations occurring that you did nothing about. That by itself would not cause a loss. But if you discovered someone doing something you didn't like, and they could prove that you never lifted a finger to stop or even inform the multitude of other infringers, then they could press a case that you had let the work fall into public domain. This is extremely rare, and few have won, but it is theoretically possible. This is a reason to always sign your work, and keep a record of it's first publication - for if it was never attributed to you, and there was no way to tell that you had not released it to public domain, then how strongly could you defend it years down the line if after allowing a multitude of infringements when an infringement came along that you wanted to stop? If you always treated it as though you had put it in public domain, and people were aware of this, then the logical assumption is that you HAD put it in public domain.

A recent international case dealt with this: a Cuban photographer (Alberto Korda) took many pictures of Ché Guevara (never taking public credit for them), and for years allowed anyone who wanted to use them to do so (because he felt that it immortalized Ché, as well as the Cuban revolution). A few years ago, Smirnoff vodka used some of these images in an ad campaign; the photographer did not like this, and complained about copyright infringement. Seagram's (the company that makes Smirnoff) countered that the photographer had allowed the copyrights to fall into public domain because he had made no attempt to stop the many people who had used the images before without asking permission. By strictest interpretation,

they were right (the pictures were made pre-Berne, they were never registered, no notice of copyright had ever been given, and world-wide use had been allowed with no attempt to stop or even notify the infringers), but the government of Cuba put some pressure on the English government to protect the copyrights. In a purely political move, Seagram's backed down, but all this says is that if you don't have the backing of a large governmental agency, you can possibly lose your copyrights to public domain.

Unlikely that this would happen to you, but why take the chance? Your best way to prevent this is to make the minimal attempt to contact all infringers that you are aware of, showing an attempt to control your copyright. If you were not aware of the violation, you would of course not be held responsible for it.

I JUST CREATED SOMETHING WONDERFUL! HOW DO I COPYRIGHT IT?

Well, under the current laws (in the United States), you already have. The Berne Convention, which the U.S. is a signatory to, states that the mere creation of the work places it under copyright protection. It would not hurt to place the standard copyright symbol on the work, that is the "C-in-a-circle" (©) with your REAL name, and the date (or year) of creation. It takes almost no time; there is no reason not to put a notice on anything you do, and it will invalidate the excuse of "Innocent Infringement".

ALWAYS use your real name, or if you must, a registered pen name. NEVER use a "fan" name, or some silly name you came up with. If you cannot prove that you are that person, then you cannot claim the copyright on the creation. The Copyright Office does not require you to use your real name, but if you must take legal action, you must be able to prove that you were the one that created the work. The use of a registered "D.B.A." or "pen name" should work, but if you use a "fan name", you might have difficulty.

If you want to go one step further, you can register it with the U.S. Copyright Office. Basically, you fill out a form, pay a fee, and send them 2 copies of the "best" reproduction of your work (if a book, the hardback version vs. the paperback, etc...) You will then receive notice that you have it registered. Basically, what this means is that it's now on file in the Library of Congress, and that is the best proof that on a certain date, you created that work before any other.

Registering it also allows you to sue for statutory damages as well as attorney's fees in case of infringement, as opposed to basic "actual losses", which may be difficult to calculate.

The mythical "mail myself a copy and don't open it" method offers little more protection than the non-registered copyright, and is generally a waste of a stamp. In the U.S., only registration with the Copyright Office is acknowledged as legal registration.

BERNE CONVENTION? WHAT'S THAT?

The Berne Convention is the latest multi-national agreement on copyrights. The United States signed to the convention in 1988, and basically it allows a certain minimum level of copyright protection in all signatory countries for any person with a copyright. While some laws & levels may be different in other countries, you are guaranteed at least certain protections. Countries that have not signed to the convention offer no reciprocal agreements, and they are often referred to as "copyright jungles" - there is often rampant copyright violations in those countries.

WHAT CAN I COPYRIGHT?

You can copyright literary works, musical works, dramatic works, & choreographic works. You also can protect pictorial, graphic & sculptural works, motion pictures & audiovisual works, sound recordings, as well as architectural works. Software would be registered as "literary works," maps & architectural plans would be registered as "pictorial, graphic & sculptural works".

You CANNOT copyright works that have not been fixed in a tangible form (that is, you have an idea, but haven't written it down), titles, names, or slogans. You cannot copyright ideas, procedures, methods, concepts, principles (although in limited forms these MIGHT be patented, such as a manufacturing method). You cannot copyright readily available information (standard calendars with dates, lunar information, or public holidays; tables of information available publicly, etc...)

Works by the U.S. Government cannot be copyrighted (as they are generally produced for public use, or "public domain"), although in certain cases, proper notice must be given as to the source if you use large portions in a work you wish to copyright.

HOW CAN I GET AN INTERNATIONAL COPYRIGHT?

There is no such thing as an international copyright, you either depend on cooperation with a Berne Convention country for protection, or you get a separate copyright in a particular country. Realize that protection in other countries, while it might be of the same level, may take a different form. Some countries may allow a certain level of duplication, with some form of remuneration going into a general fund: you would have to apply to that fund for reimbursement. Some may allow limited duplication if the work has been out of print for a certain time. And remember that if you are aware of a copyright violation in another country, you must follow that country's rules in dealing with the situation.

I WANT TO COPYRIGHT A CHARACTER I JUST MADE - HOW DO I DO IT?

Well, you can't copyright a character - although you can copyright his image. You can compile images of that character in a book, and register that. There is generally no need to register the specific character - the general copyright does that. If someone uses an exact (or reasonably similar facsimile) image of the character (that is, you could look at the picture and say "That's <blank>!"), then they have violated your copyright. If the character is vaguely similar, yet not the same, there is not a violation.

Best protection would be to get the character's image published somewhere (comic, fanzine with a wide circulation, etc...), so that the image is fixed in hard copy, and can be referenced later. Registering this book (as above) would show that you created the character first, and would make someone else attempting to use your creation look very bad.

You can trademark a character, although that is more complicated and costly than a copyright. If you have trademarked a character, then no one may use that character without your permission. The one advantage of a trademark is that it is obviously trademarked (you must use the ® or ™ with every notice), and the law plainly states that the infringer must prove that the character is NOT trademarked (or the mark has lapsed), otherwise he is automatically at fault – with a copyright, you must prove that he has caused damage before a judgement can be set against the infringer.

FAIR USE LETS ME DO ANYTHING I WANT WITHOUT GETTING PERMISSION, RIGHT?

Wrong. Fair use is one of the most abused concepts of copyrights. Fair use allows you to use excerpts for journalistic review or educational inclusion. It is generally considered valid in educational or journalistic settings, generally not so in a "for profit" setting.

Fair use does not allow you to take a drawn image and scan it, then post it on a web site. That is a violation of the creator's right to reproduce. Nor does it allow you to create an image of another's copyrighted character for "public use." That is a violation of their right of derivative work. Neither can you make a scan of an image (or large excerpt from a literary work) for use as advertising - this violates at least 3 of the creator's rights. Unless you are using it in an educational or journalistic manner, be very careful about using "Fair Use" as an excuse to violate someone's copyright. There are very limited uses outside of educational or journalistic endeavors.

A major copy company recently was severely fined for attempting to classify the wholesale lifting of material for publication for ultimate use on college campuses as "Fair Use." While the initial violations were by the many teachers & professors that used the copy company to make their class readers (without getting permission from the copyright holders initially), it was ruled that since the copy company knew the rules and did it anyway, they were held responsible. It could be argued that it was for educational use, but it was not excerpts, it was whole articles, and it was in a "for profit" manner.

WHAT IS THIS "WORK FOR HIRE" THING? SOMEONE WANTS ME TO SIGN AN AGREEMENT - SHOULD I BE CONCERNED?

Yes. Read any agreements VERY carefully. Work For Hire is a condition that whatever you produce while in the employ of someone belongs to them. ALL rights belong to them. The general limitations would be "all work produced while on the clock," although some can be "24 hours a day - 7 days a week - 52 weeks a year." Be very careful of Work For Hire contracts as you can assign all the rights to your creations away. Read any contract you are asked to sign carefully. There is no "implied" Work For Hire these days, it must be in writing, and both parties must sign to it. If there is any language like this in a contract, understand fully what it implies, and if you disagree with it, renegotiate the contract.

If you are a staff artist (or a programmer) for a company, much of what you will do "on the clock" will be Work For Hire. This is normal. Be fully aware of the limitation of the contract, and what is "yours" on your off time.

IF SOMEONE VIOLATES MY COPYRIGHT, IS THAT A CIVIL OR A CRIMINAL MATTER?

Copyright violation is always at least a civil matter. If, however, the infringement is willful and for the purposes of financial gain, it can be pursued as a criminal matter. Depending on the level of violation, the time incurred, and the amount illegally made, it can be a misdemeanor or a felony. The statute of limitations of copyright infringement is generally 3 years.

AS LONG AS I DON'T CHARGE ANYTHING FOR IT, IT'S NOT A VIOLATION, RIGHT?

Wrong. The fact that money does or does not pass between doesn't alter anything. If you violate any one of the rights a copyright holder has, it's still a copyright violation. For many creators, it's not about money,

it's about what happens to their creations. They want to have a say in what happens to their work, so that it doesn't turn into something that offends them.

ANYTHING ON THE NET IS PUBLIC DOMAIN, RIGHT? I MEAN, IT'S IN A PUBLIC AREA, RIGHT?

Very much wrong. If someone posts his own stuff to the net, unless it's stated as "public domain," he still retains all rights to it. If someone else posts something of that person's without their permission, it's still a violation. Much of what is on the Internet is potentially in violation, so never assume that just because you found it on the net is it in public domain.

WELL, I'M HELPING THE ARTIST (WRITER) BY PUTTING HIS STUFF ON THE NET FOR HIM. I JUST WANT TO HELP - I LIKE HIS WORK. I'M GIVING HIM EXPOSURE.

You're not helping him, you're violating his copyright. If you want to help him, ask him first. If you can't contact him, don't violate his copyrights. If he says no, that means no. Not much simpler than that...

I WANT TO SET UP A WEB PAGE TO HIGHLIGHT MY FAVOURITE ARTIST (WRITER, MUSICIAN, MOVIE, BOOK, ETC...) ALL I WANT TO DO IS SHOW EVERYONE HOW MUCH I LIKE MY FAVOURITE <BLANK>. THERE'S NO PROBLEM - IT FALLS UNDER FAIR USE, SO I DON'T NEED TO GET PERMISSION, RIGHT?

No, you still need to ask permission. Even if they lose no money, you are dealing with their copyrighted material, and they may have strict ideas on what they want to do with their copyright. Many web sites have been shut down for not getting permission first.

Fair use has (as yet) never been found to be a valid excuse, as the "journalistic review" part is generally limited to regularly published papers & magazines. No web site (that we are aware of) has been able to defend their use of copyrighted material with fair use.

Never assume that the images, words, or music pieces you desire to use are in the public domain, and can be used without permission. Unless you know for certain it's public domain, always ask first.

I WANT TO MAKE A CD-ROM (BOOK, COLLECTION) OF MANY PEOPLE'S ART & STORIES - I DON'T NEED TO GET PERMISSION, JUST MAKE A STATEMENT TO THE EFFECT OF "ALL COPYRIGHTS BY THEIR CREATORS," RIGHT?

Wrong. If you can't (or don't) get permission, you can't use the work. As a publisher, it would be your responsibility to verify that all work included in your collection was legal. If others submit work that may use a third party's copyrights, it is still your responsibility to verify the copyrights. The courts have ruled against publishers in these sorts of cases. If you want to publish ANYTHING, you must be certain of ALL copyrights contained in any collection you might produce. You can be fined, your production run confiscated & destroyed, all sorts of unpleasant things...

OKAY, I JUST WANT TO MAKE A CD-ROM (BOOK, COLLECTION) NOT OF PEOPLE'S ART, BUT OF THEIR COSTUMES (PHOTOS, LIKENESSES).

That's fine - as long as you have written permission to use their image (known as a "photo release"). Otherwise, they can prevent you from using the image - or sue you. A major late-night talk show got sued recently by someone who's picture was taken and used on the air - with no attempt to gain permission. Permission has to be secured before a photograph can be used in a "public" manner - book, newspaper, TV, magazine, CD-ROM - anything like that.

Now, if you happen to be in the background of a picture taken by a news photographer of a "news story" (traffic accident, fire, large event, etc...), then you are incidental to the picture - and permission is not needed. But if someone comes up to you and says "CHEESE!", snaps your picture, and you see it on the cover of a magazine - they've got a nice lawsuit on their hands...

I SHARE A COPYRIGHT WITH SOMEONE ELSE ON A PROPERTY - I WANT TO PUBLISH AND THEY DON'T. CAN I GO AHEAD AND PUBLISH ANYWAY, SINCE I OWN PART OF THE COPYRIGHT?

Well, yes and no. If you share a copyright (with one or more people), all do not have to agree to the use of the property(s) for publication. This is based on a ruling in the 19th century where one party did not want a scientific paper published, and the court decreed that a jointly-held copyright cannot be prevented from being published simply because one party did not want the other to publish (feeling that to do so would impede the free flow of scientific information). This is generally applied to literary works, items of scientific content, and engineering (or architectural) plans - as a rule, it does not apply to musical or pictorial works (items that are generally held to be of entertainment value only, although movies can occasionally pass).

However, if a jointly-held property is used by one party (with or without the permission of the others), proper credit must still be given to all the creators (failure to do so is a violation of the attribution right), and royalties must still be divided among all the creators equally (as the property still remains the property of ALL the copyright holders, all must jointly share in any profits). If one of the creators feels strongly enough that they desire a pseudonym be used instead of their real name, they have that right (this happens in the movies all the time). And if you are attempting to shop the property around to publishers, a shared copyright that does not have permission of ALL the copyright holders may just be seen as poison by a prospective publisher - since legal action could be taken by one of the other copyright holders, and a publishing company would generally want nothing to do with a property that may drag them into a lawsuit.

The best way to get all the legalities straight is with a Letter Of Agreement. This is basically a document that outlines the methods in which the properties will be used, how royalties (if any) will be split, and most importantly, if there is a split or a death in the partnership, how will that affect the properties. This is not the same as a registered copyright; that is just a confirmation of creatorship, what the various creators do among themselves is not the concern of the Copyright Office (at this point, it becomes a matter of contract law, the copyright being the item of contention).

ALRIGHT, I'VE DECIDED TO BUY OUT MY PARTNER FOR HIS SHARE OF OUR JOINTLY-HELD COPYRIGHT SO I CAN DO WHAT I WANT WITHOUT HAVING HIM INVOLVED. DO I "RE-COPYRIGHT" THE PROPERTY UNDER MY NAME?

No, the Copyright Office is only concerned with the creation date - they are not concerned with what is done with the property thereafter (except in the case of a voluntary revision to public domain - then its status is changed, and the copyright is voided). If a change in the ownership occurs (either by one partner buying out

the other, or a third party purchasing a copyright), then a legal contract needs to be drawn up outlining the transfer of ownership, defining the new partners and conditions (if any). Again, this is a case of contract law, since it is a transfer of property.

I DON'T AGREE WITH THE WHOLE COPYRIGHT CONCEPT - IT'S HORRIBLY RESTRICTIVE. I WANT TO MAKE EVERYTHING I DO PUBLIC DOMAIN - EVERYONE SHOULD.

That's nice. This is a choice the creator has. You have the right to place anything you create in public domain - you created it, you can do what you want with it. But simply because you disagree with the concept, you cannot apply your beliefs on others who are using copyrights. By default, the second you create your work, you have a copyright. You can choose to waive the copyright - but unless the creator does so, that copyright is still in effect.

IT'S PARODY (SPOOF, SATIRE), SO I CAN DO WHAT I WANT!

Uh, no. The whole concept of parody when related to someone else's creation came about from the old English paper Punch!, which lampooned the politicals of the day. You'll find many parodies in today's papers. There is a very fine line between parody and libel; the closer you are, the better you make your point. You generally have protection when you are using it in a journalistic manner. When you attempt to apply it to a commercial venture, it very seldom works. If you parody a CONCEPT, you are not in violation, since you are not using specific identifying elements from the original work.

One exception is MAD Magazine, who publishes parodies month after month. But they have a staff of lawyers constantly going over the content, so they know EXACTLY where the line is, and it can be argued that they are doing it in a journalistic manner. They never repeat the exact same routine twice with the same parodied character.

I ASKED SOMEONE TO DRAW ME A PICTURE OF A BEAR - I'VE GOT ALL THE RIGHTS ON IT, RIGHT? IT'S A WORK-FOR-HIRE SITUATION, YES?

No. Work For Hire is never in effect unless a written contract states it.

As for rights, by default, the artist retains all rights except for the display right. If you just asked them to create something totally on their own, they did the majority of the work, they retain the majority of the rights. You own the right to the original, that's all.

If, however, you supply a detailed description (and/or pictures as drawn by you or others) for them to work from, then you would share certain rights. Neither could reprint without the other's permission (as the content would belong to the person commissioning the work, but the actual artwork would be considered the artist's creation). This would include scanning it and putting it on a web page.

If there are any questions, always work out an agreement beforehand - in this sort of case, it is NOT easier to get forgiveness than permission.

I'VE MODIFIED WHAT SOMEONE ELSE DID, SO IT'S A DERIVATIVE WORK NOW - I CAN COPYRIGHT THAT, YES?

Not at all. You have violated their copyright. The right to assign derivative works rests SOLELY with the copyright holder - you cannot assume that you can do it. If it's sufficiently different, you might be able to get a copyright, but if it's obviously taken from another copyrighted work - it's infringement. Plain and simple.

IT'S ONLY FOR PERSONAL USE - SO IT'S LEGAL, RIGHT?

Maybe. Technically speaking, if you violate any of the rights, it is a violation. But if it's for your own personal use, there would generally never be prosecution - it wouldn't be worth it. If you decide to give or sell or publicly display your "violation," then you may be in trouble.

You can make a copy of your favourite CD onto a cassette - although technically you should have bought the cassette. You can scan the artwork you just got and put it on your computer - although you should have gotten permission first. But if you decide to make gifts or (or sell) these duplicates - you are in blatant violation, and CAN be prosecuted. "Personal Use" is an umbrella for one, not for two (or more).

One limited exception is for "archival" use, which you would be allowed to make a copy of something that might be expected to suffer wear & tear through regular use. A floppy disk of software, a set of sheet music, something that might be damaged under normal usage. An exact copy can be made (with no change in format - a print could not be scanned, etc...), and the original is to be put away safely and not used. The copy would be used, and if damaged, reconstructed from the original. Making 2 copies of program for use by you, and by a friend (for "off-site storage" - it's been tried) would not be legal.

BUT, IN THE ELECTRONIC AGE, THE ONLY WAY TO BE KNOWN IS TO PUT (ALL YOUR) STUFF ON THE NET FOR EVERYONE TO SEE!

That's one possibility. But many artists and writers who do that find that it doesn't help them - especially if everyone can just download their stuff for free. For the time being, the physical world still works best for most people, and the "old methods" of distribution are far from dead.

If you place a majority of your work on the net, remember that you've already done the hard work for a potential violator - he doesn't have to work at putting it in electronic form, you've done that for him. He can modify it at his leisure now. You've made it much easier for him to take the story or artwork and publish it in a book, or put it on a CD-ROM and sell that (this has happened more than once). Be very careful of what you release. Know the dangers: it can help you - it can hurt you.

Remember, a large portion of the people who tell you that you have to put everything you have on the net generally would never pay for it - so if you want to possibly do something with your work later, be very careful. We have heard from many people "Everyone says they want to see me do a particular piece, but when I do, they don't buy it!" But they didn't say they wanted to buy it, they said they wanted to see you do it... If sales are what you are looking for, putting ALL your work on the web may be a big mistake...

I FOUND SOMETHING ON THE NET THAT I THINK MAY NOT HAVE THE AUTHOR'S PERMISSION - DO I HAVE TO LET THE AUTHOR KNOW?

No, you are not legally obligated - but it would be the right thing to do. If it was authorized, then it lets the author know that the work is getting good distribution. If it's not authorized, then you would be helping

them control copyright violations. Either way, you'd be helping the creator, and they generally appreciate that.

BUT I REALLY WANT TO PUT MY ART ON MY WEBSITE - IS THERE ANYTHING I CAN DO TO PROTECT MYSELF?

Well, if you absolutely insist, don't put ALL of your art on the web page. Not if you want to do anything with it again. Use older artwork (to show what you CAN do, not ALL that you do). Do NOT use high-rez images, use 72 dpi or lesser. If you are doing work in full colour, consider using a 4-bit (16 colour) image, NOT a 24-bit image. If you can, lay a "watermark" in the background, something that will be very difficult to remove (such as the network identifiers most TV shows have in the lower right-corner).

Consider this analogy: If you're a furniture store, putting pictures of all the furniture you have for sale on a web page would be good business. If you're an artist, selling low-cost (that is, NOT fine art) prints, putting full-colour, high resolution images of ALL the images available on your site would be stupid - you just gave them what they might have bought...

BUT, INFORMATION YEARNS TO BE FREE! IT'S CRIMINAL TO SUPPRESS THE FREE FLOW OF IDEAS AND CONCEPTS!

Not getting AT ALL into the philosophical debate on that subject, I will agree that it is wrong to suppress the free flow of information. **BUT**, what is information? Information is facts and figures. The capital of North Carolina is Raleigh, that is a fact. The fact that there are 100 counties in North Carolina, that is a figure. But, if you were to draw a map of North Carolina, showing the 100 counties, with the county seats in each of them, with the capital of Raleigh in Wake county, that is not a fact, figure, or even information: that is a personal expression of facts **AND** figures, created by a person. The map did not spring forth of itself, it was created. The map conveys information, but is not information in and of itself.

BEING information and **PROVIDING** information are often 2 entirely different things. The information (that is, the facts and figures that are freely available) is available to everyone, to do with as they please. They may create anything out of it. **BUT**, if someone has already created something out of that information (be it a book, a picture, a musical piece, a video, a computer program, etc...), that is a unique creation that conveys the information used to create it. It is not just a pile of information, it is the creator's vision of what the information means to them. It is the product of that person's intellect, hence it is "intellectual property".

So no, you cannot own information, information is free to the world. But the expressions of that information, as shaped by an individual's vision and experiences, is no longer basic information, it is the product of information and personal creativity, hence it is a unique creation that did not exist before the individual put his or her mind to it and generated this new work of creativity, be it a poem, a book, music, art, architectural design, etc...

We are all information. We are the expression of our genetic code. But we are not just information, that information was simply used in our construction. Your parents combined their information to create a new item, one that is unique. Their creation is like none before. Likewise, the expression of an idea by one person is unique, and like none other. In pre-school terms, if the teacher gives the class a box of crayons, a sheet of paper, puts an apple on her desk and says "Draw the apple", everyone has the same tools and the same information to work from. In most every instance, their creations will be different and unique, because of the way they see the apple.

SO, is information free? Absolutely, without a doubt, no question. Is someone's expression of that information, shaped by their experiences, their mindset, their unique outlook on life free? No, it is not - not unless that is their desire. Everyone's expressions are their unique property, to do with as they please - and are NOT the property of the world. If the world wants something like they created, they can negotiate with the creator for the rights to it, or let them take the same base materials and information and come up with something on their own - that is their right. But the creation of an individual is absolutely unique, and is the property of no one save those that the creator desires.

ALRIGHT, I'VE FOUND SOMEONE VIOLATING MY COPYRIGHT - WHAT'S THE FIRST THING I SHOULD DO?

The first thing to do is to simply notify them. They may not know that it is your work, and that it's illegal to have it displayed without permission. In many cases, a simple notification will do it. If not, a cease-and-desist letter is required, ordering them to stop using your copyrighted material (you can write it, or a lawyer can). If that doesn't work, you may have to take legal action against them, depending on the situation. But starting off with a simple notification is best - don't go immediately to a lawsuit. Subtlety is best - but have a big stick (figuratively speaking) handy, just in case.

WHAT'S THE BIG DEAL IF I WANT TO SELL SOMETHING WITH A DISNEY CHARACTER ON IT? THEY'RE BIG ENOUGH AS IT IS - WHAT WOULD IT HURT IF I TOOK SOMETHING FROM THEM?

Using that logic, if it's ethical for you to swipe from them, then it's as equally ethical for them to swipe from you. The large and the small are protected in the same manner - if it's good enough for you, it's good enough for them. The law applies equally to the largest corporation down to the lowliest writer.

Copyrights are really pretty basic - if you have a copyright, you control what can be done with it. If you do not have control of the copyright, then you can't do with it as you please (with certain VERY LIMITED exceptions). Generally, if you ask permission, you'd be surprised what you can get. If you don't, don't be surprised at what you get.

And, so you could get to the specifics before you had to mess with the history lesson:

HOW DID COPYRIGHTS BEGIN?

The seeds of our modern copyright system appear to have germinated in the 13th century, when any nobleman, high official (or in fact anyone with power over the mere serfs) could essentially confiscate someone else's creation, and claim it for themselves. If you had more power, you could do as you pleased (a common problem in the Dark Ages). In France (or possibly Belgium), a duke or baron was being besieged by the common people to protect their right to create things. He rather flippantly granted them the rights to their own products, not quite realizing what he had done. His noble friends soon told him what he had done, and how much they would lose by his magnanimous actions, but it was too late for him to retract his decree - the people now loved him. It wouldn't be very wise to make them unlove him...

The first concrete laws regarding copyrights came immediately after Gutenberg put his printing press into operation. In 1476, the city of Venice set up a series of privileges to enable booksellers to print certain books. Soon after, many more countries set up similar regulations. But the early laws bore little resemblance to our current laws, since they protected only the entrepreneur and not the creator.

For about the next 200 years, most of the granting of copyrights were to official printers, as decreed by the ruling body. The author often times had little say in the matter, and in fact saw little gain from these new laws. The printer gained from this, since they could claim an exclusive right to print something. The state gained a fairly tight rein on exactly what got printed, as well as getting a good bit of revenue from the granting of exclusive rights. They controlled the flow of information, leading to the opportunity to exercise political or religious control.

Our modern concept of copyrights began when the British parliament instituted the Statutes of Anne (1710), which declared that the creator of a work owned said work and granted a limited term of protection for the work. As before, this concept soon altered all copyright laws, and formed the foundations for our system today. Our current laws protect those who produce new works, as opposed to older laws that protect those who would REPRODUCE the work.

MORE INFORMATION:

This FAQ - online
http://www.rexx.com/~jaguar/copyright.html

U.S. Copyright Office - your FIRST, **BEST** source for U.S. information
http://www.loc.gov/copyright

Terry Carroll's Copyright FAQ - An excellent FAQ, and many fine links
http://www.tjc.com/copyright/FAQ

Canadian Intellectual Property Office
http://opic.gc.ca

United Kingdom Intellectual Property Office
http://www.hmso.gov.uk

U.S. Patent & Trademark Office
http://www.uspto.gov

Stanford's Fair Use / Copyright Page
http://fairuse.stanford.edu

Cornell University
http://www.law.cornell.edu/topics/copyright.html

Nolo Legal Encyclopedia
http://www.nolo.com/encyclopedia/pct_ency.html

American Library Association
http://www.ala.org

Associations Of Research Libraries
http://arl.cni.org/info/frn/copy/copytoc.html

Software Publishers Association
http://www.spa.org

Business Software Alliance
http://www.bsa.org

World Intellectual Property Organization
http://www.wipo.org

International Federation of Reprographics Rights Organisations - various countries copyrights clearance offices (*usually private companies, but with good information on licensing in a particular country*).
http://www.ifrro.org

Do you have links to non U.S. copyright agencies (preferably the official governmental office in that country)? If so, please pass them along to us for inclusion in this listing.

HOW TO CONTACT US:

Mel. White: mel@coyotedancing.com

Glen Wooten: art-show@sbcglobal.net

Please save paper - this FAQ is formatted for double-sided printing