

## Using copyrighted materials from the internet

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You are preparing a slide presentation for a speech or an internal company meeting and want to use some photos you found on a Google Images search in your slides. Is it necessary to ask permission for all the photos you want to use? If you really want to use them and are willing to give credit, what form should this take for your use to be deemed sufficiently appropriate and legitimate?

With the rapid expansion of the internet and the broad transmission of information online, many internet users are convinced that materials found online are free to use. Although everyone perceives that images, videos and writings found online must be owned by someone, the current practice of using others' works on the internet remains ambiguous.

**Right of copyright owner:** Thai copyright law protects the original expression of creative ideas such as songs, artwork, writing, films, software and video games. It provides automatic protection for original works without the prerequisite of registration. This protection can also cover works created in almost all countries. Thus, most materials you find, see or listen to on the internet will be protected and owned by a copyright owner.

The copyright owner enjoys all the rights provided by copyright law including reproduction, adaptation, dissemination and licensing. This means the copyright owner may restrict or even deny public access to the work or charge for access or the right to make copies. It is up to the copyright owner to decide on the conditions for granting the use of the work. As a general rule, the use of someone else's work without their permission can be either a civil or criminal offence or both.

**Copy and paste:** So can you copy and paste material from the internet without the copyright owner's permission? The answer could be "Yes", if such use complies with appropriate practices and strictly falls under the exceptions to copyright infringement.

Strictly speaking, the rights of a copyright owner do not include the "right to use". Thus, the mere use of copyrighted works can sometimes fall under the exceptions to infringement as outlined by the Copyright Act of 1994. The act of "use" is typically inherent in the reproduction, adaptation or dissemination of the works, which are the very rights of the copyright owner. Therefore, any kind of use without informing or acknowledging the copyright owner can constitute copyright infringement.

**Exceptions to copyright infringement:** Thailand's copyright law acknowledges certain exceptions to copyright infringement. The Copyright Act provides general exceptions to infringement for acts that:

- do not conflict with normal exploitation of the copyrighted work by the owner of the copyright; and
- do not unreasonably prejudice the legitimate right of the copyright owner.

Acceptable uses under the law include "use for personal benefit", "research or study of work that is not for profit" and "reasonable citation or quotation in part with an acknowledgment of the ownership of such work".

The most frequent problem for people attempting to meet these requirements is incorrect acknowledgment of the actual copyright owner. Just because a video is posted on YouTube, it does not mean YouTube LLC is the copyright owner. Similarly, if you find images on a website, you cannot automatically conclude the company that owns the website is the owner of such images.

Your attempt to qualify your use as an exception to infringement also must be considered in relation to the nature of each work, the amount of the work that is copied and, most importantly, the potential damage for the actual copyright owner.

**Best practice:** Material that is publicly accessible on the internet should be assumed to have copyright protection and treated accordingly. With that in mind, it is important to seek out the rightful owner before distribution of the work. Whether or not you can freely use the work depends on the copyright holder's intent.

Below are the recommended practices to avoid committing copyright infringement:

- Create your own works. Copyrights do not protect ideas. Therefore, similar works with similar ideas can be created and copyrighted legally, as long as it is your original expression fixed in a tangible medium.
- Use copyright-friendly works from sources that explicitly state the use you are contemplating is permitted. There are many royalty-free works available on the internet.
- Seek permission by contacting the webmaster (administrator or owner of the webpage). If you receive no response but would still like to use their copyrighted materials, consider using them within the requirements of exceptions to infringement discussed above while properly acknowledging the owner. You should also keep evidence of your attempt to request the owner's permission to produce later, if necessary.
- Obtain written permission to use others' copyright works. After receiving permission, make sure such permission is in writing in order to be kept and used as evidence, if necessary.
- Most importantly, your use of others' works must not conflict or compete with the original copyright owner's use, particularly commercially.

In reality, not all copyright owners will demand large royalty fees to use their works. Many authors and artists are willing to have their works disseminated in the public without royalty fees. However, most will prefer their names to be cited as the owners of such works. At the same time, many internet users do not actually have the intention to make a slavish copy of others' works and distribute them commercially.

In essence, the use of others' copyrighted work can fall under exceptions to copyright infringement if such use does not cause conflict with the normal exploitation, or prejudice the legitimate right, of the owner of the copyrighted work. In addition, the appropriate acknowledgment of the actual ownership of the copyright in such works is fundamental.