

Copyright and Compilations

What is a Compilation?

»**The US Copyright Act** defines compilations as “work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” This definition is found in Section 101 of the US Copyright Act.

»**What does that mean?** It means that creation of a work made up of other preexisting bodies of work will earn protection on its own. **Examples** include compilation albums, collections of quotations, or a coffee table book of famous paintings.

How is a Compilation protected?

»**The Copyright Act protects compilations as original works** by stating that “the subject matter of copyright includes compilations and derivative works, **but** protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.” This is found in Section 103 of the US Copyright Act.

»**What does that mean?** It means that if you create a compilation, you will earn copyright ownership of that compilation, but you will not acquire any copyright ownership over the underlying works that were used to make the compilation.

»**The Copyright Act** also states that “the copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.” This is also found in Section 103 of the US Copyright Act.

»**What does that mean?** It means that even though a compilation can earn protection on its own, if the compilation uses an underlying work without permission, such use will still result in copyright infringement.



»A compilation must meet the “originality” requirement of copyright. The compiler must select and arrange pre-existing material or facts in an original and minimally creative way in order for the compilation to be eligible for copyright protection in its own right. This standard was iterated in the landmark case of *Feist Publications, Inc., v. Rural Telephone Service Company, Inc.*

Do I need permission to create a compilation made up of others’ work?

»Yes. Just like any other use of another’s work, you need permission to use someone’s work in creating a compilation.

»However, compilations made up of works that are not protected by copyright do not require permissions. **Examples** of works not protected by copyright include names, slogans, phrases, quotes, or works that are in the public domain.

»**Fair Use** is a limited defense to copyright infringement whereby small portions of another’s work may be used for commentary, criticism, news reporting, or educational purposes without gaining permission from the copyright owner. This defense may or may not apply to any given compilation, and it is always best to ask for permission.

How do I get permission to use another’s work?

»There are several different ways to obtain permission to use another’s copyrighted work:

1. **Ask the copyright owner.** You may contact a copyright owner directly to ask for permission to use their work. Granting such permission is entirely under the discretion of the copyright owner.

2. **Search the Copyright Registration Database.** If you are unsure whether a work is protected under copyright or are unable to find the copyright owner of a work, you may search the Copyright Registration Database where you can find information about registrations, renewals, and recorded transfers of ownership at www.copyright.gov. Additionally, the Copyright Office will conduct a manual



search of their records to find answers to your questions for \$165 per hour (two-hour minimum).

3. Employ resources such as the Copyright Clearance Center (www.copyright.com). The Copyright Clearance Center, a global rights and permissions broker, allows you to search for and gain automatic permissions to popular works and publications (fees vary).

