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[Topic Schedule](#)

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[Labor and Employment Law](#)

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- [Lawyers' & Clients' Responsibilities to Each Other](#)

[Ask a Lawyer](#) > [Question & Answer Archive](#)

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Copyright Law: Am I Permitted to Use the Analytical Output of a Website to Create a Separate Work?

[Kristie Prinz](#)

Q.

I have legal use of a web site that analyzes the characteristics of web sites and produces analytical output. The site contains absolutely no terms of use provisions and does not in any way state how the report may or may not be used. Am I permitted to create a derivative work from the output of the site and sell the report?

-- Eric

A.

The short answer to your question is that, while you would not be able to create a derivative work of another copyright owner's work without permission, the possibility exists that you may be able to use the analytical output derived from that website.

Section 106 of Title 17 of the U.S. Code states as follows:

[T]he owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

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As you can see, Section 106 clearly provides that only the copyright owner has the right to authorize the preparation of derivative works. Thus, without the express permission of the copyright owner, you would not have the right to create derivative works of the site.

Having said this, based on your description of the work you seek to create, you may really be creating a compilation of facts rather than a true derivative work. Because facts are not an original work of authorship and contain no original expression, they are not protected under copyright law. Thus, there would be no problem with your creating a new work based on those facts.

My advice is to consult with an attorney in your jurisdiction who practices in the area of copyright law, in order to discuss the specific facts of your situation. This attorney should be able to look at the website in question and the analytical output you describe and advise you definitively as to whether or not you would be creating a derivative work if you implement your plans, or, if instead, the new work you would be creating would simply constitute a compilation of non-copyrightable factual material. Once you have that advice in hand, you will be in a position to decide how best to proceed.

-- Kristie Prinz

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