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Do I Need Permission to Publish Images From A Movie Referenced In Speech?

[Kristie Prinz](#)

Q.

I work for a non-profit and we are publishing a speech from a speaker whom we hosted. The speaker would like the images used in the live presentation as part of the print publication. I am pursuing permission from the publisher of a book that some of the images came from, but I'm not clear about whether I need permission to print the promotional image of a movie that was referenced in the speech. The movie is from 1950; the image is what appeared on the original poster and, now, the DVD case. The speech will be a limited edition and given away to our members, not sold.

-- *Anonymous*

A.

[Section 106 of the Copyright Act](#) sets forth the general rule that the owner of a copyright has the exclusive right to do or authorize others to use the copyrighted work. Thus, under the general rule, you would not have the right to use the movie image without the permission of the owner of the copyright in the work.

An exception to the general rule is provided through the doctrine of fair use, however, which could apply in this situation. [Section 107 of the Copyright Act](#) codifies the doctrine of fair use, and sets forth the factors to be considered as follows:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work. . . .

Assuming your work met enough of the factors to constitute a fair use, then you would have the right to use

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the work without having to obtain permission.

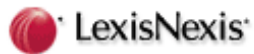
One issue to consider, however, is whether the work is even protected by copyright law. According to the facts you have provided, the work was created in 1950, when the copyright rules were different than they are today. Under the Copyright Act of 1909, which governed copyright law in the United States prior to 1978, copyright was secured either on the date a work was published with a copyright notice or on the date of registration if the work was registered in unpublished form. So, in contrast with works created under current law, if these rules were not followed exactly, then the work would fall outside the protections of the copyright law.

Moreover, even if the work at issue were protected at some point in the past, the copyright protection may have expired and no longer be in effect. Prior to 1978, the first term of copyright protection existed for 28 years following the date it was secured, and then was eligible for copyright renewal for second term of 28 years. The Copyright Act of 1976 extended the renewal term from 28 to 47 years for copyrights that existed on January 1, 1978, and then on October 27, 1998, Public Law 105-298 further extended the renewal term of copyrights existing as of that date by adding an additional period of 20 years. Given the changes in the copyright law over the last decade, it is unclear from the facts provided as to whether or not this work is definitely protected by copyright law at this point in time.

My advice is to consult with a copyright attorney in your jurisdiction regarding the specific work at issue. Such an attorney should be able to research the specific work at issue to determine its current copyright status, and then to next advise you as to whether or not, if it is protected, it would fall within the fair use exception.

-- *Kristie Prinz*

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