



The Fine Print: Best Practices for Using External Trademarks and Copyrights

When preparing content for a presentation or public communications, you may wish to include images, video clips, or refer to well-known brands. Because trademark and copyright laws may protect those materials, it is essential to understand what copyrights and trademarks are, the rights of their owners, and how to use these materials responsibly.

Copyrights vs. Trademarks. Below is a general summary of copyrights versus trademarks:

Copyrights	Trademarks
Copyrights protect original creative works that are fixed in a tangible form. Copyrights encompass various works, including photos, illustrations, music, books, blogs, movies, plays, etc. Copyrights give owners exclusive rights to copy, sell, share, display, or perform their works.	Trademarks help consumers recognize brands, reduce the risk of consumer confusion, and minimize fraud. Trademarks can take the form of a word, slogan, logo, or a combination of those elements. Trademark owners have exclusive rights to use their trademarks in connection with their goods or services.

Fair Use Doctrine. “Fair use” is a legal defense that only applies in specific situations and only after someone is accused of infringement. Fair use is not a legal right. Accordingly, people should be cautious about relying on it. The best approach is to obtain permission or a license before using someone else’s work.

Fair use allows for limited use of copyrighted material for activities such as criticism, commentary, teaching, scholarship, and research. Whether a particular use qualifies as fair use depends on four factors: (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used, and (4) the effect of the use on the work’s potential market or value.

Descriptive fair use lets you use a trademark in its ordinary meaning if you do not confuse consumers about the source (e.g., an “apple-scented” candle). Nominative fair use allows you to use a trademark to refer to a company’s products or services (e.g., “We repair Ford cars”) if three conditions are met: (1) the product/service cannot be reasonably identified without the trademark, (2) only a minimum portion of the mark is used, and (3) the use does not imply endorsement or sponsorship.



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Best Practices. To use external content, images, and other materials responsibly, Wine Institute has best practices to ensure compliance with copyright and trademark laws. If you have any questions, please consult the Legal Department at legal@wineinstitute.org.

Responsible Use Checklist: Copyrights & Trademarks	
<input type="checkbox"/> Permission	<ul style="list-style-type: none"> • Did you receive permission to use the content? If you receive permission or a limited license, be sure to ask about and follow the owner’s guidelines (i.e., credits). If you’re unsure who owns the material or did not ask for permission, it’s safe to assume the material is protected. In that case, follow these best practices below to avoid misuse. • <u>Tip:</u> Whenever possible, use licensed materials. Many materials are openly licensed or in the public domain. For example, consider using images licensed under Creative Commons or explore written works in Project Gutenberg, which offers free e-books of works with expired copyrights.
<input type="checkbox"/> Purpose	<ul style="list-style-type: none"> • Are you using the materials in a limited and necessary way to support an educational goal, such as teaching, research, or commentary? Or will the material be used for commercial purposes (e.g., selling a product)? Non-commercial and educational uses are viewed more favorably under the fair use doctrine. If you’re using materials for commercial purposes, please contact the Legal Department.
<input type="checkbox"/> Amount	<ul style="list-style-type: none"> • How much of the content are you using? Ensure you only use the portion needed to achieve your educational objective (e.g., a video clip or brief excerpt). Keep it minimal. Using more content than needed can raise concerns.
<input type="checkbox"/> Modification and/or Alterations	<ul style="list-style-type: none"> • Did you change any of the content (e.g., modified the color of a trademark or altered content from a blog)? Unless you receive permission from the owner, do not modify or alter content from external sources.



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Responsible Use Checklist: Copyrights & Trademarks	
<input type="checkbox"/> Distribution	<ul style="list-style-type: none"> • Are you distributing the materials? If so, where? If the content is public or widely shared, take extra precautions to ensure compliance.
<input type="checkbox"/> Endorsement and/or Sponsorship	<ul style="list-style-type: none"> • Does your use of the material(s) imply endorsement, sponsorship, or affiliation by the owners (e.g., featuring a well-known brand’s logo on a flyer to make it seem like the event is sponsored when it isn’t)? Avoid implying sponsorship or affiliation if none exists. If you are in doubt, consult the Legal Department. We can review your use and, if necessary, create a disclaimer clearly stating that no sponsorship, endorsement, or affiliation is intended.
<input type="checkbox"/> Legal Disclaimer	<ul style="list-style-type: none"> • Have you reviewed and included the Wine Institute’s legal disclaimer (below)? Including a legal disclaimer is not legally required, but it demonstrates a good-faith effort to acknowledge the rights of others when using copyrighted or trademarked materials. Make sure the legal disclaimer is clearly visible—choose an appropriate font, size, and placement so it is not buried by other content. For example, if you are preparing a presentation, place the disclaimer at the very beginning on a single slide. • <u>Wine Institute’s Legal Disclaimer</u>: “This presentation may include copyrighted or trademarked materials that Wine Institute and/or third parties own and is intended solely for educational purposes. Any third-party content is used in accordance with the fair use provisions of 17 U.S.C. § 107 and 15 U.S.C. § 1115(b)(4), as well as other applicable copyright and trademark laws. All rights to such materials remain with their respective copyright and/or trademark holders.”