



 **ACT** | The App Association

App Developer Guide to Using and Protecting Copyright and Trademark





The emergence of the app economy has provided software developers with vast opportunities to create innovative new services that entertain, educate, and enhance everyday life for consumers. The industry has grown tremendously since it began in 2007 and is expected to top \$150 billion by 2017. Creating intellectual property (IP) is key to app companies' livelihood and they, therefore, have tremendous respect for the IP of others. However, navigating the copyright and trademark systems can be challenging. These guidelines will help app companies understand the basics of copyright and trademark law and take appropriate steps to ensure they legally use and protect intellectual property.

STEP 1: WHAT IS IT?

The first step is to know what type of intellectual property is being used or created. This dictates the next steps, making what seems complex much easier.

Is it a copyrighted work? Copyright protection is for original works fixed in any tangible medium of expression. Categories include literary works, musical works, pictorial and graphic works, motion pictures, and sound recordings. More specific to an app developer, copyright protects code, characters, graphics, photos, video, and embedded sound files. Copyright does not protect ideas, procedures, or concepts.

Is it a trademark? A trademark is a brand name. The trademark includes any word, name, symbol, device, or any combination used or "intended to be used to identify the goods/services of a seller from those of others." Trademarks are usually the name and logo used by a seller or provider to identify their company and/or product. Coca-Cola® and Dora the Explorer® are both trademarks.



STEP 2: HOW TO LICENSE AND USE TRADEMARKED OR COPYRIGHTED WORKS

You can use the music, movie or television clips, photographs, characters, code, trademarks, or graphics created by another party if you first obtain a license or get permission. Licensing content can seem like a daunting task with different procedures used by different industries, companies, and individuals. However, as consumers increasingly use digital media, products, and services, content owners and third parties have created a variety of ways to more easily license their works.

These basics can help you legally use content in your app:

Do:

- Assume that if you didn't create it, someone else owns the rights to the copyright or trademark.
- Review the terms of your license to make sure the use is within the scope of the license. For example, streaming music videos from YouTube may be OK if it complies with YouTube's terms of service and YouTube has the authorization to provide the license to you. Ripping and downloading the audio or video is generally not allowed.
- Investigate alternative content sources that may offer simpler or less expensive options.
- Review the copyright law of fair use to better know if your planned use of the content is legal without a license or permission. The fair use of a copyrighted work for purposes of criticism, comment, news reporting, teaching, scholarship, or research is not an infringement of copyright. Determined on a case-by-case basis, the factors considered include: 1) the purpose and character of the use whether it is commercial or nonprofit educational; 2) the nature of the work; 3) the amount and substantiality of the portion used; and 4) the effect of the use on the potential market for the work.

Do Not:

- Make an app that enables users to search for sites and services providing unauthorized access to content or content ripping.
- Claim an exemption such as fair use without taking steps, like getting legal advice, to confirm that an exemption does apply to your use.



In the sharing/gig economy, the options available are more numerous than they have ever been. You'll find that, similar to booking a flight, your costs (in time and money) when licensing content will be directly proportional to the specificity of your requirements. More often than not, there's an alternative that will probably suffice.

Images

Creative Commons Licensed Images: There are a whole lot of images that are available for your use for free, under a license called Creative Commons, which was created to give artists a legal way to more easily share their work. Nearly every site on which you search for images has some option to filter for images that are available for re-use. For example, if you're looking for yoga pose images for your yoga app, you would do an image search on Flickr, Google, Bing, etc., and then filter based on the license.

Public Images: There are millions of images paid for by tax dollars. These are free or relatively inexpensive to use. Examples include images from NASA (<http://go.nasa.gov/1hQrikB>) and the BBC (<http://www.bbc.com/>).

Stock Images: Stock libraries are becoming more and liberal all the time to accommodate bloggers and other small users. For example, Getty has a program whereby you can use their images for free on the web if you use their embed code (<http://gtty.im/1GXgcoT>) and there are hundreds of stock sites (<http://bit.ly/1NqjqGc>) with more affordable images such as iStockPhoto.com and Pond5.com.

All Rights Reserved Images: Finally, if there's a photo or illustration you must have, you can contact the copyright owner and make an offer directly. There are no rules here so it's about capturing their imagination.



Music

Getting a Specific Track: Several services are available to help navigate the waters of digital content licensing for a specific sound recording, including <http://www.crunchdigital.com>, <https://www.songfreedom.com/>, and <http://rumblefish.com/>. These type of services either have certain tracks available for license and/or help connect app developers with record labels and music publishers to enable licensing and royalty reporting.

Identifying Other Recorded Songs Available for License or Use. In addition to the above, the Creative Commons site (<http://bit.ly/1eMYQxJ>) provides information on services that identify songs available for use under a creative commons or similar license.

Cover License: If you can't obtain a license to a popular song you want to use or find a reasonable alternative, you might consider hiring a local band to re-record the song, and obtaining ownership of the sound recording. This frees you from one step in the music licensing process by giving you rights in the sound recording. Note, however, that you'll still need to obtain the appropriate licenses in the underlying musical work, depending upon your intended use.

Independent Composer Sites: There are also hundreds of composers who have created their own sites to license music to you, either free or inexpensively. One of the best known is Incompetech.com but there are hundreds of others such as MusOpen.com for classical works.

Hire a Composer: This is easier than you might imagine. Do a search for composer reels on YouTube, Vimeo and Fiverr, and you'll find hundreds of talented composers who would be interested in partnering with you.

Public Audio Recordings: If it's audio recordings you're after, once again governments have produced a whole lot of them such as those from NASA (<http://go.nasa.gov/1FQbLy1>).



Video

Search Engines: As with images and music, the relevant search engines have license filters for their content. For example, on Vimeo, go here: <http://bit.ly/1GtzxDg>.

Free Video Resources: There are also some sites which offer free video clips for a number of different uses including historic footage (<http://bit.ly/1PDWnuX>), <http://worldclips.tv>, and general subjects (<http://bit.ly/1M8O2sr>).

Stock Video: There are hundreds of stock video sites including iStockPhoto and Pond5 from which you can license video relatively inexpensively.

Shoot it Yourself: Again, as with the music, it's perfectly reasonable to hire someone to shoot video you need and it can be quite affordable. Go to Vimeo and search for "cinematography reels" and get in touch. You'll be surprised how easy it is to generate the footage you need. You're a small business. Why not support one?

Getting Specific Video: Finally, you can get the footage you want by approaching the studio that produced it. It's easier with news content than it is with a commercial film but the pathways exist. For example, NBCUniversal has an easy-to-use site (<http://bit.ly/1NWJdZI>) where you can get clips from news, sports, weather, TV archives, etc. A few clicks and you will get pricing for a license.

Publications

The Copyright Clearance Center offers a variety of copyright licenses for access to published materials. The pay-per-use permission product offers a means for app developers to connect with publishers to negotiate a license.

Trademark

Use the Trademark Electronic Search System (TESS) to find out if a name or logo is in use. Contact the trademark owner for permission to use the mark before using it in your app. If you wish to use a trademark that is not in use, consider filing for a trademark to protect your intellectual property.



STEP 3: HOW APPS ARE PIRATED AND HOW TO PREVENT IT

If you have created an app, you are a copyright owner and have certain exclusive rights to copy, modify, and distribute the code, graphics, trademarks, and content. App piracy is increasing along with the growth of the industry. It is important to understand how apps are pirated and the steps to take to prevent the unauthorized use of your app.

Common ways an app is pirated or counterfeited:

- **Copy the App Itself:** Pirates remove the digital rights management (DRM) from an app and publish it on illegitimate websites or legitimate app stores.
- **Extract the Content:** Pirates extract assets—images, sounds, animation, or video—and use them elsewhere.
- **Disable Locks or Advertising Keys:** Pirates change the advertising keys of an app to redirect ad revenue or remove locked functionality such as in-app purchases.
- **“Brand-jack” an App:** Pirates inject malicious code into an app that collects private information and then republish the app. This use of the app name, logos, or graphics trades on the brand value to trick consumers in to using counterfeit and dangerous apps.

Ways to combat app piracy and counterfeit apps:

- **Use App Store Procedures:** Several online service providers have a “notice and take-down” or abuse procedure to address apps that deal in infringement. Each app store has instructions on how to notify them of an unauthorized use, and procedures for having the pirate or counterfeit app taken down. The stores will also respond to notices of trademark violations.

Go to:

Apple App Store: <http://www.apple.com/legal/internet-services/itunes/appstorenotices/>

Google Play (copyright): https://support.google.com/legal/contact/lr_dmca?&product=googleplay

Google Play (trademark): https://support.google.com/legal/contact/lr_trademark?product=googleplay

Amazon: <https://www.amazon.com/gp/help/reports/infringement>



- **Pursue Legal Options.** In limited circumstances, it might be worth hiring an attorney to pursue app piracy and counterfeits, particularly if the violation is blatant, the perpetrator is within your reach, and the damages are large enough to justify the legal expense. An attorney can send cease-and-desist letters and initiate legal proceedings.
- **Register the Trademark.** While there are state common law rights in trademarks, owners often elect to obtain federal protection through a trademark registration. The name and logo of your app company can then have protection domestically and internationally. Go to www.uspto.gov/trademarks to research your options and registration process.



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