

## DERIVATIVE WORKS

For the sake of this exercise let's assume there are some website owners who own multiple award program related websites.

Some of the owners, (not many thank goodness) after the original website is created, this having proven to be successful at achieving ratings and / or awards, create the remaining award program related websites from the original rating / award successful template displaying a few new images but copying and pasting verbatim from the original website adapting to suit wherever needed. They then create a few different resources and now have other award program related websites that are at least equal to any rating the original award program related website holds.

To add to the mix, the owner/s may then 'self chose' a few so called top award program websites and without any applications or evaluations award these websites with their new award program related websites top award. This in itself creates much embarrassment to the award receivers but what can one do to avoid the animosity caused by refusing the award?

Ratings for the new award program related websites are then applied for: there are 'winners' in the winners list, the awaited rating is practically ensured as the new award programs are little more than clones of the previously successful award program related website currently owned.

These award program related websites ( other then the original one ) have no originality, no effort, no imagination other then in the graphical work and the theme ( if any ) that the award program related websites are wrapped in. They insult all AP owners who struggle daily to be creative and if one is permitted a personal view they undermine the credibility of the entire award community.

Yes, it is accepted that if one finds a successful recipe one would continue with that but somehow doing as has been described above with award program related websites seems like cheating; an effort to grab top ratings with new award program related websites; seems insulting to all of those who work so hard and it even 'feels' unethical somehow (to some of us at least.)

Let us also consider that there are multiple award program related website owners who have been original in each of their creations, who have done the 'hard yards within each award program related website and whose programs are totally credible. These multiple award program related websites owners have overall award community respect.

### **Lets get a bit legal re derivative works and see what we have.**

At <http://www.copyright.gov/title17/92chap1.pdf> it is stated (in part) that – “A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a “derivative work. “.

Then we find <http://www.duhaime.org/LegalDictionary/D/DerivativeWork.aspx> where it is stated (in part) that – “ Derivative works walk a fine line between copyright infringement and eligibility for copyright protection. Generally, the test will be whether there is sufficient originality in the alleged derivative work; that it constitutes an original work in its own right. “

### **Who may prepare a Derivative work?**

Only the owner of copyright in a work has the right to prepare, or to authorize someone else to create, a new version of that work. The owner is generally the author or someone who has obtained rights from the author.

APEX

## Derivative or Copyright?

Unless the "new work doctrine" applies a 'derivative work' which is certainly the right of the original author, it is not copyrightable therefore to suggest that it is copyright is in error.

So this becomes a "moral obligation" rather than one that contains issues of copyright. In this instance APEX would not intervene. However there is an inherit right under the guidelines any other organization may wish to clarify.

## So what have we got?

An author, who as described, merely changes a few graphics and so forth, violates the intent and spirit of copyright law. In some instances, when one does a CopyScape search and finds a particular "original or first award program related website" has been merely copied into a "second or subsequent award program related website/s" en mass, this becomes a matter of copyright violation.

Lets clarify this for there is a long history of case law in this particular area. This practice was expressly prohibited because in so doing, there would be an extension of the holding period under law. In our life time the "Disney" practice came under scrutiny and copyright law under this very doctrine.

An award program related website owner who has a prohibition on using templates is unaware of this practice (probably) and compromises their own award program.

Hard working, caring new award program related website owners have cause to expect that their efforts will take years to accomplish a higher rating and esteem within the award community. They in turn marvel at how easy the effort to create a highly rated award program related website is for some people, while they struggle.

One multiple award achieving multiple award program related websites owner who is named Maxwell (for the sake of this exercise) produced excellent multiple award program related websites through his own efforts the hard, long way. No derivative works here! He served as a model in ones mind for how an owner of multiple award program related websites can stand receiving admiration and giving courage to all of us.

Virtually no award rating organization has provisions to counter this practice, of which this writer is aware.

So if we cannot or do not address the practice and issues which have been brought to our attention, there is no redress except for each organization to take stock of what they have not done but where now knowing they are offered the chance to take remedial action.

## An easy to understand example:

- I create an award program website complete with published criteria that is copyrighted.
- Then I carry forward my originally copyrighted criteria to other multiple award program related websites I have created retaining from 30 to 50 percent of the original award program related websites work and copyright the new multiple award program related websites criteria.
- The second copyright is not valid under the law stated. It never was and never should be.

