



Media Law Presentation:
Copyright Law

[Note to Presenter: The notes that follow work as either a presentation script or as preparatory material for the presenter. If you're reading the notes as a script and allow for moderate discussion, the full presentation should last between 40 and 60 minutes.]

An introduction to common copyright law issues and resources for high school student journalists and their advisers

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possible by a generous grant from:



This presentation provides a brief and basic overview of the most common copyright law issues faced by high school student journalists. Allowing for a few questions or comments along the way, it should last approximately 45 minutes and is designed to help students and their advisers identify and avoid some of the most common legal traps.

Student Press Law Center

Provides free legal help and information on media law issues
to student journalists and their advisers

Web site: www.splc.org

Phone: (703) 807-1904

Monday - Friday 9 a.m. - 6 p.m. Eastern Time

This presentation will not make you a copyright law expert. What it will do, we hope, is help you make more informed decisions and give you a better sense of when you might have a problem or question that requires outside help. For those cases, you may want to keep the contact information for the Student Press Law Center handy. The SPLC is a nonprofit organization based just outside Washington, D.C., that, since 1974, has provided free legal help and information to student journalists and their advisers on a variety of media law issues. Much more information about copyright law is available on the SPLC Web site and in various publications produced by the Center. In addition, “live” help is generally available from the SPLC staff Monday through Friday.

Well, we could talk about all the in’s and out’s of copyright law for days, but we’ve got less than an hour, so we’d better get started.

Copyright Infringement

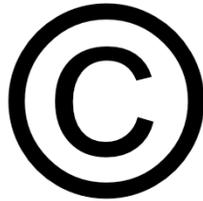
Using someone else's original work
without obtaining the copyright
owner's permission

Copyright seems to be an issue on everyone's mind these days. And for good reason. Especially with the Internet, there has never been a time in human history that we have had so much material — so much *copyrighted* material — available literally at our fingertips. Similarly, new technologies have turned more of us into publishers and creators of our own copyrighted material. Despite the new mediums of expression, however, the same old copyright questions remain: What can I use? What can't I use? What can I prevent others from using?

The truth is, copyright law *can* get a bit complicated. Lawmakers and courts have tinkered with — and muddied — the rules a number of times over the years, and many of the rules weren't so clear to begin with.

Still, the ideas behind copyright law are pretty easy to understand and can help a great deal in recognizing where today's legal boundaries lie.

What is copyright?



Copyright is a set of federal laws that grant authors and artists the exclusive right to benefit from their creations.

Copyright law can be both the friend and foe of student media. While the law protects student journalists against the unauthorized use of their stories, drawings or photographs, it also limits their ability to reproduce the works of others.

Copyright protects property



The basics of copyright are fairly straightforward. A copyright is a property right. A person owns a copyright in much the same way he owns a car. Just as it is against the law to use or borrow someone else's car without the owner's permission, it is generally against the law to use someone's copyrighted work without first obtaining her consent. Additionally, just as no one but the automobile owner can legally sell, give away or change the appearance of a car, no one but the copyright owner, with a few exceptions, may legally transfer or alter a copyrighted work.

Rights protected by a copyright

- Reproduction
- Adaptation
- Distribution
- Public performance
- Public display

A copyright gives its owner five exclusive rights: reproduction, adaptation, distribution, public performance and public display. The popular song “Born in the USA” by Bruce Springsteen can illustrate these rights.

Rights protected by a copyright

- Reproduction
- Adaptation
- Distribution
- Public performance
- Public display



The copyright of the cover art from Bruce Springsteen's 1984 Born in the USA album is just one of several associated with the musical work

"Born in the USA" is the subject of at least three copyrights: one for the lyrics and musical arrangement, one for the actual sound recording and one for the art used to illustrate the package of the album and CD. Assuming that Bruce Springsteen owns each of these copyrights (although, typically, some of those rights may be assigned to his record company), he is the only person who can legally exercise any of copyright's exclusive rights. For example, no one but Springsteen can dub copies of the original sound recording for profit. (Note, though, a provision of copyright law unique to sound recordings does allow someone to make and distribute their own version of an original song without the copyright owner's permission, as long as they pay the owner a fee.) Only Springsteen can legally sell copies of the CD or reprint the song's lyrics on promotional merchandise or sheet music. And he would be the only person who legally could display the art from the CD package in public.

Copyright owners like Bruce Springsteen can, in addition, sell or grant permission to others to use their works. Therefore, someone other than Springsteen could legally reproduce, adapt, distribute, publicly perform or publicly display "Born in the USA" as long as he or she has Springsteen's permission.

Purpose of copyright

- Recognized in U.S. Constitution
 - Encourage progress through advancement of arts & sciences

Creating a system of copyright protection was actually deemed so important to the development of a strong, healthy society that it was specifically included in the U.S. Constitution more than two centuries ago. At its core, copyright law is about encouraging progress. The framers of the Constitution believed that a society can only flourish where there is a steady advancement in its arts and sciences. To bring about such advancement, copyright law — in its most ideal form — tries to balance two sometimes competing interests.

Purpose of copyright

- Recognized in U.S. Constitution
 - Encourage progress through advancement of arts & sciences
 - Reward creative efforts

First, copyright law recognizes that it is important that artists, authors and other “creators” be recognized and fairly compensated for their efforts. Most writers would be unwilling — and financially unable — to spend five years working on the next Great American Novel if, once they were done, anyone could run down to a copy shop, print off or scan 5,000 copies and sell their bootlegged version to others on the Internet.

Copyright promises authors that their investment of time, energy and resources will be protected and ensures that a robust collection of original works is available for public enjoyment and benefit, which, again, is copyright’s main goal.

Purpose of copyright

- Recognized in U.S. Constitution
 - Encourage progress through advancement of arts & sciences
 - Reward creative efforts
 - **Promote societal knowledge**

Second, copyright law recognizes that encouraging people to create new works will do little to benefit society at large if others are not permitted to discuss and learn from them.

For example, a system that requires journalists or others to compensate or seek permission from a scientist or historian before they can talk about or critique their work would be unduly burdensome and stifle progress.

Advancing the arts and sciences requires a system that allows others to share information and to learn from and build on the work of others.

Intellectual Property

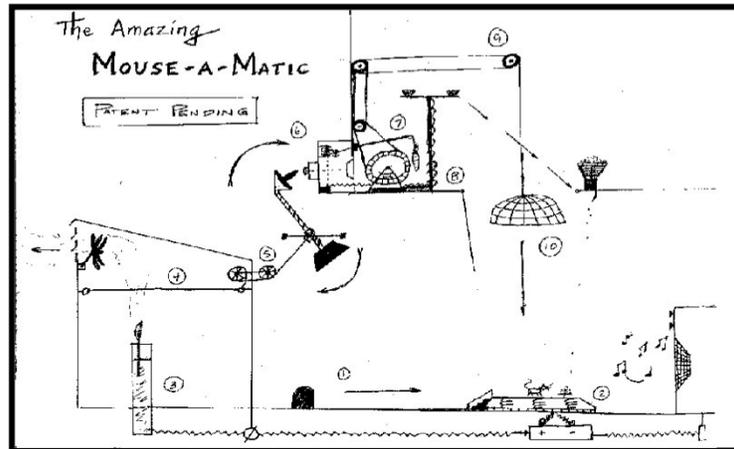
- Copyright
 - Patent
 - Trademark
-

- Plagiarism

Copyright is just one means of providing legal protection for creative works. Patent law protects inventions. Trademark law protects the symbols and slogans that identify businesses to their consumers. Together with copyright, these two comprise the area of the law known as intellectual property.

Another area of concern for student journalists — and one that is often confused with copyright — is plagiarism, which is not really an intellectual property right, but an ethical violation that can occur when one fails to give an author of a work proper credit.

Copyright v. Patent Protection



Patent law issues should cause little or no problem for the student media. You do not, for example, violate a patent by publishing information about a new invention or explaining in a news article — even in very specific detail — how something works.

Copyright v. Trademark



A few examples of some well-known trademarks and service marks

Likewise, trademark law presents relatively few concerns for student media. While copyright protects a creator's rights, trademark law should be viewed more as a protection for consumers. Trademarks — for example, the Apple Computer symbol, the brand name "Coke" or the yellow Kodak film box — and service marks — for example, the "Golden Arches" used to identify a McDonald's restaurant — are unique symbols, names or other "marks" that companies use and consumers rely upon to distinguish one product or service from another. Trademark law is generally only a problem when a trademark or service mark is used in a way that would confuse a potential consumer.

Copyright v. Trademark

Student footwear choice reflects lifestyle

When it comes to what shoes to wear, the decision for students might be more difficult than one would think.

Shoe makers are targeting young people with aggressive ad campaigns, and keeping up with the Joneses when it comes to footwear can be an obsession for many students. Some experts say shoe choices can tell a lot about a student and his/her interests.

Depending on where students buy their shoes — whether it be the mall or at a discount outlet — can speak volumes about the student as well, according to a study by a shoe expert.

"Sometimes students worry too much about what shoes they are going to wear," said John Doe, a shoe specialist based out



The Test:

Is there a likelihood of consumer confusion?

If there is no likelihood that a consumer would be confused by the use of a trademark, there is generally no violation. That's why, for example, there would be no problem in a student publication publishing a photograph of Nike shoes (complete with the well-known Nike "Swoosh" trademark) to illustrate a feature story on popular footwear worn by students. There is, obviously, no likelihood that a consumer would pick up the yearbook thinking it was a Nike shoe — or, if published in the context of a "regular" news story — even an official Nike publication.

Note, however, that some works are protected by both trademark and copyright (and maybe even patent) law at the same time and you will need to analyze your intended use under each. If an editor wanted to use a flashy Nike ad simply to "decorate" an inside page (and not as part of a legitimate news story), the outcome would be different. Again, there would be no trademark problem. No consumer would be confused by the use. However, the ad is also copyrighted and its unauthorized use will be prohibited unless the editor demonstrates a "fair use," which would be unlikely since the advertisement is being used as simply a page design graphic rather than to illustrate an actual news story.

Copyright v. Plagiarism

- Posing as the creator of a work that is not your own
- Not a legal term
- Academic crime with variable definitions

Plagiarism is not a legal term. It is a term for an ethical offense, usually defined by professional or academic bodies. Simply stated, a plagiarist is a person who poses as the creator of words, ideas or methods that are not his own. By contrast, a person infringes another's copyright when he makes *unauthorized* use of material that is protected by copyright. For example, a person could plagiarize Shakespeare's works by not giving the Bard proper credit. He would not, however, be guilty of copyright infringement because all of Shakespeare's works are in the public domain and cannot be protected by copyright. (This fact will be discussed later.) You will not be punished by a court of law if you are found guilty of plagiarizing someone else's work, but you might be subject to punishment or censure by your publication staff. And you should certainly be embarrassed.

What can be copyrighted?

Requirement 1: Originality

Requirement 2: Minimal Creativity

Requirement 3: Fixation

So we have a general idea of what copyright is (and is not), what it does and why it's important. But what types of work can be copyrighted?

There are three main requirements:

First, the work must be original. You cannot copyright a work that already exists or that belongs to someone else without their permission.

Second, the author must have shown at least a small spark of creativity when she made the work. The result does not have to be good and the standard is not an especially high one, but some creative effort must be shown. For example, courts have said that simply alphabetizing a list of names lacks the creativity necessary to qualify for a copyright.

Finally, the work must be "fixed in any tangible medium of expression." This "fixation" requirement means that only works preserved in a tangible form (a book, a newspaper, a video, a CD-ROM disk, etc.) — as opposed to those existing entirely in an artist's mind — will receive copyright protection.

Copyright law protects
material on the Internet!

Got it?

Just because it is now possible to find and download almost any image, text passage or song that exists with one click of the mouse button does not mean it's legal to do so.

You should presume that the same rules apply to the use of online material as govern your use of print-based works.

Copyright can protect:

- Photos
- Stories
- Illustrations
- Cartoons
- Advertisements
- ...even Wallpaper

As long as a work satisfies the three requirements, the list of material eligible for copyright protection is a long one. For example, copyright protects literary works, sound recordings, works of art including paintings and sculptures, musical compositions, choreography, architectural works and some computer programs. Certainly almost everything in a student newspaper, yearbook, television or radio program — photos, stories, cartoons — can all be copyrighted.

In fact, if you are ever able to tour the U.S. Copyright Office in Washington, DC, where many copyrighted works are deposited, you will even find shelves and shelves of wallpaper — which is original, creative and fixed — and protected by copyright.

Still, while the copyright eligibility list is extensive, it is not unlimited. There are certain things that copyright does not protect.

Copyright does *not* prohibit use of:

Ideas

Most importantly, copyright law recognizes a distinction between "expression" and "ideas." Only creative expression, and not merely the creative ideas or thoughts that inspire such expression, qualifies for copyright protection. You might have the "Greatest Idea Ever," but until you record that idea in some more permanent, fixed, expressive form, you can't look to copyright law for protection.

Copyright does *not* prohibit use of:

Facts

Similarly, only the expression of facts — not the facts themselves — are subject to protection. For instance, while *Time* magazine will have a copyright in the exact words and arrangement of an article on teen drug use, the facts and statistics included in *Time's* reporting belong to no one and can therefore be used as a source for other reporters.

Student reporters are free to look to other sources for story ideas of their own or for facts to use in creating their own news stories or news briefs.

Copyright does *not* prohibit use of:

- Most federal government records
- Some state and local government records

Most material created by U.S. government officials or employees is not protected by copyright and can be used without obtaining prior permission.

In addition, all "official" pronouncements (court opinions, statutes, public records and similar official documents) of state and local government are in the public domain. But other works created by state or local government employees (such as a state parks pamphlet) might be protected by copyright.



New York, NY, September 25, 2001 — A rescue worker overlooks the rubble from the collapsed World Trade Center. Photo by Mike Rieger/ FEMA News Photo (www.photolibrary.fema.gov)

For example, this is a photo downloaded from the Federal Emergency Management Agency's (FEMA's) Web site. Such images — produced by federal government employees — cannot be copyrighted and can be used in any context in a student newspaper or yearbook without first having to obtain permission, as would generally be required before using a similar image taken by a news organization or a private photographer. Of course, as has been done here, you should still provide full and accurate attribution.

Copyright does *not* prohibit use of:

- Odds and Ends
 - Titles
 - Slogans
 - Short phrases
 - Names
 - Familiar symbols
 - Lists of ingredients
 - Basic instructions
 - Simple blank forms

The Copyright Office has determined that copyright does not extend to some forms of expression, even though they are arguably original and fixed. Slogans, titles, names, words and short phrases, instructions, lists of ingredients and familiar symbols or designs are generally ineligible for copyright because they lack the necessary originality and creativity necessary to distinguish them from the ideas they represent.

Just do it!

t i t a n i c

days of our lives



The sound of music



Oops, I did it again.

1 c. sugar
 1 c. butter
 1 egg
 3 c. flour
 Mix together. Bake on
 cookie sheet at 325°

For example, the words “days of our lives” cannot be copyrighted and therefore could be used as a theme or section header in a high school yearbook. However, the actual logo from the popular NBC daytime drama (words in special typeface pictured with an hourglass), cannot be used — barring permission or a "fair use" argument — because unlike the four "bare" words, the design of the logo is sufficiently creative and can be copyrighted. References to and use of other features on the show, such as cast photos, scripts or images from the show, could also raise copyright problems.

Similarly, titles of movies or songs, ingredient lists and short phrases and advertising slogans can also be used as long as you stick to just the “bare words.”

Copyright does not prohibit use of:

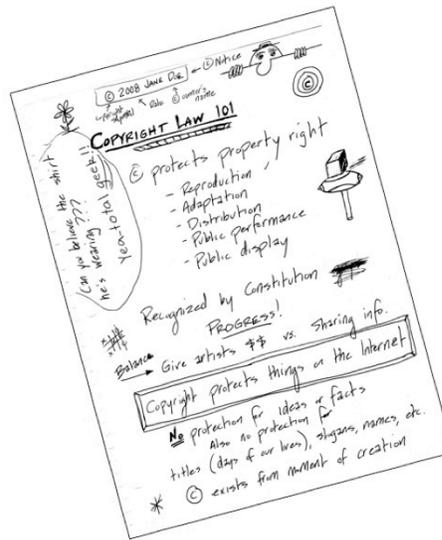
- Works whose copyright has expired



Copyright protection does not last forever. Once a work's copyright expires, it becomes part of the public domain and can be used without permission from the former copyright owner.

How is a work copyrighted?

- Copyright exists from the moment a work is created



Nowadays, you don't need to do anything special to secure copyright protection for your work. Original works are protected by copyright the moment they are "fixed" in a tangible medium of expression.

For example, those of you taking notes right now can probably claim a copyright in your work. You don't need to do anything else. From this moment forward, no one else has the right to use, alter or sell your notes in any way without your express permission.

Copyright MythBuster #1

A work that does not have a copyright notice (e.g., © Copyright 2006 Student Press Law Center) is not protected by copyright and can be used freely.

False: Since 1989, a copyright notice has been optional and its inclusion or omission on a work does not affect the validity of a copyright.

A copyright notice is no longer required.

Notice was mandatory, with some exceptions, for works published before March 1, 1989. For works published after that date, however, a copyright notice is optional and does not determine the validity of a copyright.

Regardless, it remains a good "non-legal" idea to include a copyright notice on all published works to remind others of their obligations and as a courtesy to users who may wish to contact the copyright owner. The use of a copyright notice is the responsibility of the copyright owner and does not require advance permission from or registration with the Copyright Office.

Copyright MythBuster #2

A work must be registered with the U.S. Copyright Office to receive copyright protection.

False: Formal registration of a copyright is not required.

Despite what many people think, the registration of a new copyright with the Copyright Office in Washington, D.C., is voluntary. As mentioned before, a copyright now exists automatically from the moment a work is created and registration — or lack of registration — does not alter the validity of that copyright.

Nonetheless, registering a copyrighted work and obtaining a certificate of registration can be advantageous to the copyright owner. First, registration is the key to the courthouse door. Only a copyright owner who has registered her work with the Copyright Office may sue someone who infringes her copyright. Additionally, while you have the right to register your work at any time while your copyright is in effect, certain damages and reimbursement for your attorney fees are only available to those who formally register their work within three months of publication.

What about registration?

- Form
- Fee
- Submit copies
- Some added benefits



Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov or the Copyright Office, or call (202) 707-3000.

Form TX
Copyright Registration Form

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 PUBLICATION AS A CONTRIBUTION

2 NAME OF AUTHOR

3 DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

4 COPYRIGHT CLASSIFICATION

FORM TX (Rev. 10-2013)

www.copyright.gov

Registration is easy and does not require the help of an attorney. It entails completing a fairly straightforward form, paying a small fee and submitting some copies of your work. Special registration requirements are available for serial publications (newspapers, weekly magazines, etc.) that make registration cheaper and easier to accomplish.

Because of the "hassle" and expense, student newspapers — which are often of limited value soon after they are published — often forego the benefits of registration. Still, if you anticipate that your published work may have value over time (and this probably includes many student yearbooks), you may want to consider registration.

Who owns a copyright?

- “Work for hire” doctrine
 - Work owned by employer
 - Formal employer/employee relationship required
- Most high school student journalists are likely “independent contractors” who own the works they create
- Importance of a copyright agreement

Generally, the creator of a work owns the copyright. However, under the "work for hire" doctrine, an employer owns the copyright of works created by her employees while working in the scope of their employment. The issue of who is an employee is particularly interesting for high school student media where the traditional employee-employer relationship rarely exists. In such cases, the student journalist or photographer that created the work would likely be considered an “independent contractor” and retain copyright ownership rights, though the student publication can probably argue that it has a right to publish the work at least once as originally intended.

Though rare, confusion over copyright ownership can cause serious problems. For example, a student publication that wishes to reuse previously published photos or stories (for example, in an anniversary or alumni issue) or that would like to grant permission to use such material to a third party technically may first be required to contact a long-disappeared student for permission.

To avoid such problems, it is strongly recommended that the parties establish the nature of their relationship and put their agreement in writing before any work begins.

The General Rule

If you didn't create it and/or you don't own the copyright to it, you must get permission to use it

So what are the rules?

Well, for most student journalists, here is the most important one to remember:

If you didn't create the material that you want to use or you don't own the copyright to it yourself, you must obtain permission from the copyright owner before you do.

Copyright MythBuster #3

Including a credit line on a copyrighted work is enough to avoid copyright problems.

False: The law requires actual **permission** from the copyright owner, not just attribution.

Contrary to what many people apparently think, the law requires actual permission from the copyright owner, not just attribution.

The High Schoolian 1987

People in the News: The Year in Review



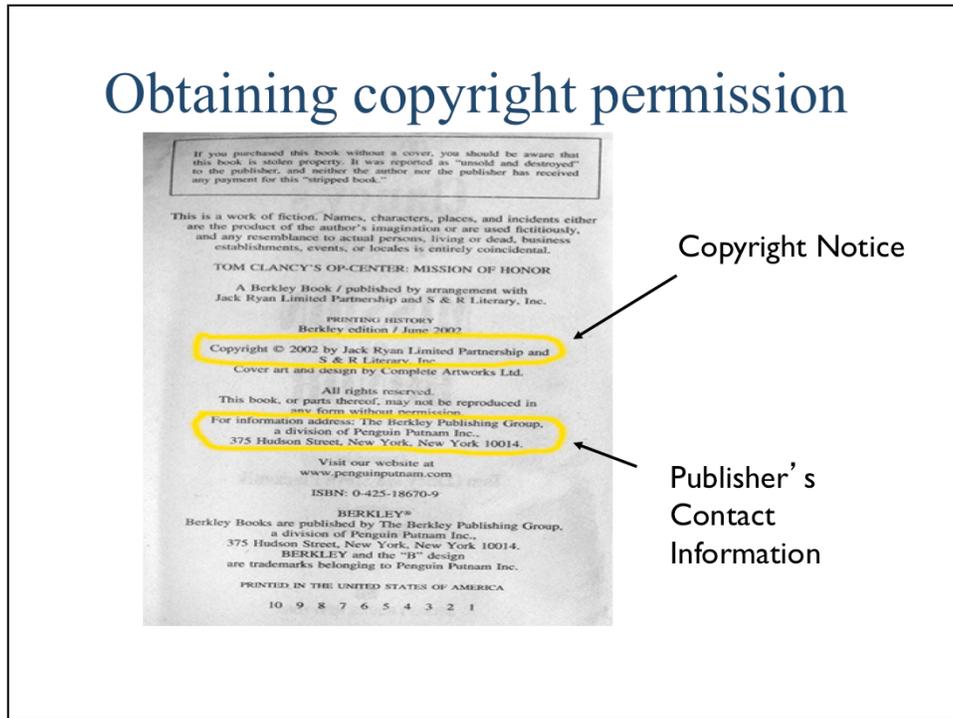
Photo Courtesy of Famous People Magazine

Amidst a throng of photographers, the Queen Mother joins Prince Charles and Princess Diana for the London world premier of the film *84 Charing Cross Road*

Absent actual permission, a credit line will not protect against claims of copyright infringement

Simply including a credit line along with a copyrighted work — without actually contacting the copyright owner and obtaining explicit permission — is not enough to legally use the material.

Obtaining copyright permission



Obtaining copyright permission isn't especially complicated — at least not for the uses most student media require — but it does require some legwork, plenty of time — and even some luck.

The hardest part of obtaining copyright permission is often determining — and finding — who you need to ask. In many cases, the creator of the work is also the copyright owner. At other times, however, the original author has sold or transferred ownership of the copyright to a third-party. The first thing you should do is look for the copyright notice, which identifies the owner of the work at the time of publication. For CD's, books and other published works, the name of the record company or publisher is also usually listed near the copyright notice. In such cases, a good first step is to contact the publishing company's "Copyright Permissions Department."

For works registered or renewed after 1978, you can also search the copyright registration records online at the Copyright Office's Web site.

Obtaining copyright permission

- Written copyright permission request usually required and should include:
 - Contact information
 - Expected publication date
 - Number of copies you intend to produce
 - Publication price (if any)
 - Non-profit statement (if applicable)
 - Clear description of intended use
 - Response deadline
- Written permission response preferred

While it is probably worth an initial telephone call, particularly at a smaller or less formal organization, most copyright owners require a written request. Your request should include your contact information, the expected date of publication, the number of copies you intend to produce and the price, if any, you will charge. If you are a non-profit student publication, be sure to make that absolutely clear. It is also important that you include a precise description of what you want to use and, if possible, a photocopy of your layout or sketch of your plans. Finally, include a (polite) statement regarding your deadline for a response.

It is always a good idea to obtain copyright permission in writing. While verbal permission is valid, it can be more difficult to prove, especially following the passage of time. While copyright permission agreements or licenses for commercial uses can get pretty complicated, running several pages and full of "legalese," most student media uses require much less. A simple statement describing the work and its intended use, signed and dated by the copyright owner or his lawful agent, will generally suffice.

Purchasing copyright licenses



While it is sometimes tough to obtain permission to use a copyrighted work for free, there are a number of companies that are more than happy to give you permission to use copyrighted material — usually for a price.

Photo and wire services make their money by collecting copyright-protected news stories and images and selling them to media publishers. Similar licensing agencies exist that sell the rights to songs and lyrics.

While the high cost of some of these services puts them out of reach of most student media, some are fairly inexpensive — at least for occasional use. For information on the American Society of Newspaper Editors special wire service package for high school publications, go to www.highschooljournalism.org and click the “Wire Service” link.

The General Rule

If you didn't create it and/or you don't own the copyright to it, you must get permission to use it

Except...

So you know the general rule.

But there is an important exception that journalists in particular need to know about.

Remember the balance we talked about earlier between protecting copyright owners' rights and recognizing society's need for readily accessible information?

Fair Use: An Exception to the Rule



An exception to the general copyright rule known as “Fair Use” is where that balancing act really comes into play.

The Fair Use Doctrine is, in effect, a compromise and allows for the use of limited amounts of copyrighted works for important purposes like news reporting, commentary, critiques and education so long as the use does not significantly cut into the commercial value of the original copyrighted work.

Fair Use: An Exception to the Rule

- Using a limited amount of a copyright-protected work for news, educational or informational purposes without consent may be permissible as a “fair use”

For example, a student newspaper can generally reprint a short passage from a new book to accompany a book review and a student TV show is usually safe to run a short clip from a movie to illustrate its discussion or review of the motion picture. Other fair uses probably include: reprinting a tobacco advertisement taken from a national magazine to illustrate a story on the effect of cigarette advertising on minors, reprinting in a news article two lines from a song that has sparked an international controversy or publishing a screen shot of a Web site that is at the center of a censorship battle.

Fair Use: An Exception to the Rule

- Using a limited amount of a copyright-protected work for news, educational or informational purposes without consent may be permissible as a “fair use”
- **Not every use by a student media organization is a fair use**

Keep in mind that student media cannot always claim a fair use. Unless their use meets the fair use criteria, they must first obtain permission.

Unfortunately, determining whether a use would qualify as a fair use can often be a tough call.

Still, it is essential that student journalists understand the basics of fair use and keep this important exception in mind.

In trying to determine whether or not a particular use is a fair use, courts have looked at four different factors.

Fair Use: The Four Factors

- What is the purpose and character of the use?

The first question a court will ask is: What is the purpose and character of the use?

Non-commercial uses for purposes like news reporting, teaching, criticism or commentary are more likely to be fair. Such uses tend to “add something new” and are not merely a substitute for the original.

For example, including a few lines from “Sponge Bob Square Pants,” to illustrate your critique of the popular TV cartoon show would more likely be considered a fair use than publishing those same quotes — by themselves — to “decorate” a yearbook page.

Uses that are primarily intended for private, commercial gain are also less likely to be considered fair.

Fair Use: The Four Factors

- What is the purpose and character of the use?
- What is the nature of the copyright-protected work?

What is the nature of the copyright-protected work?

Uses of works containing mostly factual material like maps or biographies are more likely to be fair than uses of highly creative and original works like cartoons and novels.

Fair Use: The Four Factors

- What is the purpose and character of the use?
- What is the nature of the copyright-protected work?
- How much of the original work is used?

Third, how much of the original work is used?

No more of the work than what is necessary may be used fairly.

The test is both quantitative (how many words of a 250,000 word book are reproduced?) and qualitative. Using the "core" or "heart" of a work — no matter how small — is less likely to be a fair use.

Copyright MythBuster #4

You can safely use up to 250 words of text or up to 30 seconds of a song or movie without violating copyright law.

False: Copyright law does *not* recognize any **absolute** word/time allowances or other “safe harbors” for use of copyright-protected works.

While it would certainly make life easier— and despite what many have heard — there is no established word limit for determining whether a particular use would qualify as a fair use. Neither is there a set amount of a song or a movie that you can safely use as a clip.

Fair Use: The Four Factors

- What is the purpose and character of the use?
- What is the nature of the copyright-protected work?
- How much of the original work is used?
- What is the effect of the use on the potential market value of the original work?

Finally, what is the effect of the use on the potential market value of the original work?

This may be the most important factor. If consumers are likely to buy the use as a substitute for the original, it probably will not qualify as a fair use. The fact that the copyright owner lost the ability to sell the rights to use their work to you (especially if that is their business) could diminish the likelihood of a fair use determination as well.

There are some things that student media can do to minimize the effect of a use on the market value of the original. For example, using an image at a significantly smaller size and a lower resolution or reproducing it in black and white instead of full-color are a few things that would make it less likely a consumer would look upon your use as a substitute for the original.

Now that you have a general understanding of the purpose behind fair use, let's take a look at some examples.

Common fair use examples

Madonna comes out kicking in latest CD

Just when people thought Madonna was getting old, she came out with her biggest dance album yet, "Confessions on a dance floor."

Madonna returns to her roots on the dance floor with this album, and the first single, "Hung Up," will surely be played out in every club in the country. You won't find any ballads on this CD, just a bunch dance beats that will get



Source: www.madonna.com

One of the most frequent questions posed by student media is whether they can use an image from a CD — such as a scanned, “thumbnail” image of the CD’s cover art — to illustrate their review of the CD.

While no court has addressed this issue specifically, a quick application of the four-part fair use test reveals the following: First, the *purpose* of the use would be to aid in criticism and commentary of the CD, while allowing readers to quickly identify the CD being discussed on sight. This argues in favor of fair use. However, the *nature* of the cover art is artistic and the *amount* of the artwork taken would be the entire amount, so the second and third factors would likely weigh against fair use. Still, there would likely be no negative *effect on the market* for the original. In fact, the use would be more likely to encourage sales of the CD itself and it is not likely that there is a market for selling such images to reviewers. Reducing the size of the image can probably help reduce its impact on the market value of the original.

Common fair use examples

Superman flies onto the big screen, again

You may have already had your share of movies with the man in blue, but he's back, and critics are raving about the new look and attitude.

In the film, After a long visit to the lost remains of the planet Krypton, the Man of Steel returns to earth to become the peoples savior once again and reclaim the love of Lois Lane, according to IMDb.com, an online



Source: supermanreturns.warnerbros.com

The same analysis would probably allow for the use of a single still image from a movie — such as one obtained from the movie's official Web site — to illustrate a student newspaper's review of the movie.

However, fair use would not allow for the use of a candid photo taken of one of the movie's stars published in a commercial, celebrity magazine. The candid photo of the star has no direct connection to movie itself, which is the focus of the review. Moreover, photographers are paid large sums of money for such candid shots and your reproduction of their work could have a significant impact on their ability to sell it elsewhere.

Common fair use examples

Peanuts' creator Charles Schulz dies

Charles Monroe Schulz, an iconic American cartoonist best known worldwide for his Peanuts comic strip, died at age 77 on Feb. 12, 2000. He was born in Minneapolis, Minn., in 1922, where he began his cartoon career. After returning from service in World War II, Schulz sold his comic panel "Li'l Folks" to the St. Paul Pioneer Press in 1947. By 1950, he had syndicated what became the Peanuts strip across the nation.



Source: www.snoopy.com

An excellent example of a fair use would be reprinting a single frame from a comic strip to illustrate a news article reporting the retirement or death of the strip's creator.

Most comic strips and cartoon characters are carefully guarded by their owners and any use without permission will often generate a letter of complaint from their lawyers.

However, where the comic strip is part of a bona fide news story, fair use would probably allow for the limited use of the work.

Common fair use examples

Top Five Favorite Cartoon Characters of the Class of 2010

#1 Bart Simpson

#2 Stewie Griffin

#3 Eric Cartman

#4 Homer Simpson

#5 Peter Griffin



Image source: www.thesimpsons.com

**Survey based on poll of 210 members of Central High School Class of 2010 taken on April 11, 2007.*

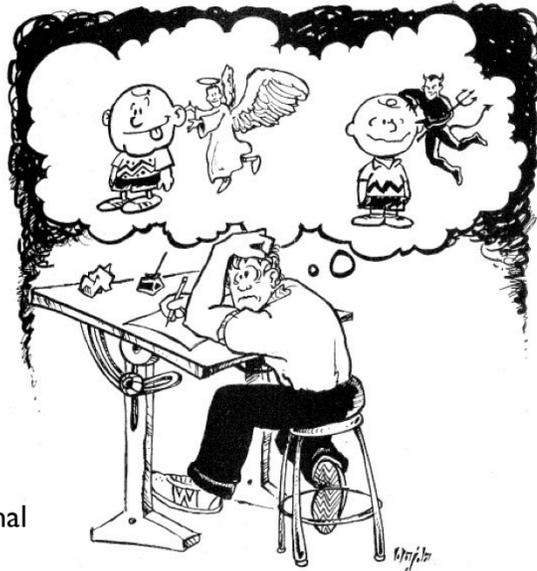
Careful application of the fair use rules may also help you use a copyrighted image that would otherwise be off-limits.

For example, if you simply must include an image of Bart Simpson in your yearbook you generally have two options. First, you can try to obtain permission from the copyright owner. Unfortunately, obtaining such permission *can* sometimes be a frustrating and time-consuming process — and there is no guarantee that such permission will be granted.

Another option, however, would be to use a small, single image of Bart to illustrate, for example, a bona fide news story of the social impact of the TV show, a review of “The Simpson’s,” or a news survey of the popularity of his character.

Copyright and Parody

- Parody of original must be obvious
- “Conjure Up” Test
- Creativity counts
- Minimal impact on market value of original



Fortunately for student media, copyright law gives parodies and spoofs a fair share of breathing room. The key is that the parody must mimic the original to make its point. For example, it is probably not fair use to change the words of a Britney Spear’s song so that it comments on the members of your senior class and print them in your publication – no matter how funny the end result. On the other hand, it probably would be considered a fair use to change small portion of the song’s lyrics to make fun of Britney Spears herself. It is much more difficult to prove fair use if you just borrow from a popular song or cartoon character as a gimmick for satirically attacking something other than the original work.

In order to safely parody a copyrighted work without permission from the copyright owner, the parody must be obvious. The audience must reasonably perceive that the use is a criticism or commentary of the original. Second, an artist who wants to parody an original must not use more of the original work than is necessary to “conjure-up,” or evoke thoughts of the original in the viewer’s mind. If only a mannerism, a classic line of dialog or a physical attribute of a character is necessary to make the parody succeed — for example, Charlie Brown’s bald head and the stripe on his shirt — then only those elements should be used and not more. Creativity also counts. Anything you can do to distinguish your parody from the original and add something new helps. Finally, the parody must not directly threaten the market value of the original work. If the public will buy the parody instead of buying the original, then the use is probably not fair.

Penalties for Copyright Infringement

- Actual damages
- Statutory damages
- Injunctive relief

While threats and lawsuits against high school student media are rare, they could be a big headache — and costly.

A copyright owner can sue for copyright infringement if he or she believes someone has used their work without permission or in a way that would not be considered a fair use. If the copyright owner wins, the court may award either actual or statutory damages. In addition, the judge can order injunctive relief and impoundment of the copyrighted material.

Actual damages are the measure of the actual amount of money lost by the copyright owner due to the unauthorized use plus any profits made by the infringer.

Statutory damages range from \$200 to \$150,000 per infringement depending, in part, on whether the infringement was "innocent" or "willful." The actual amount awarded by the court is in the discretion of the judge.

Injunctive relief, which is normally a court order to stop violating a copyright and an order to impound or confiscate the remaining copyrighted material, are also common remedies.

U.S. Copyright Office Web site:

www.copyright.gov

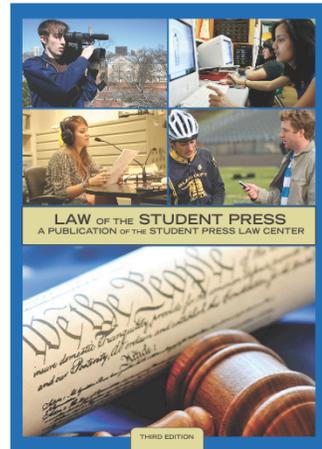
Well, that' s it.

Hopefully, you now feel a little more confident in being able to recognize and navigate some of the most common copyright issues.

Much more information about copyright law is available through the SPLC or at the unusually user-friendly Web site of the U.S. Copyright Office.

Other Student Media Law Resources

Student media newsroom
“Must Have” resource



Another important resource for additional help is the Student Press Law Center’s book, *Law of the Student Press*, which every student newsroom in the country should have on hand. The book includes much more information about the topic of copyright— and many others. It is the only media law book available geared specifically to student journalists and the unique problems they face.

Purchase information is available on the SPLC Web site.

Other Student Media Law Resources

- SPLC monthly podcast (splc.org/podcasts)
- SPLC Report: thrice-yearly magazine
- SPLC News Flashes: news stories about legal issues affecting student media
- News Media and the Law: RCFP's magazine

Other helpful resources — all of which are free and online — include SPLC News Flashes (which can be sent to your e-mail account or read on the Web site), the SPLC's magazine, the *SPLC Report*, and *News Media and the Law*, a magazine published by the Reporters Committee for Freedom of the Press. All of these can help you stay up to date on the very latest developments affecting America's student and professional news media.

Finally, as noted earlier, the SPLC Web site is packed full of resources and information on student press law issues. Of particular interest is the site's Virtual Lawyer, which is available at any time and ready to conduct a short, online interview to answer your questions and help get you pointed in the right direction.

On behalf of the Student Press Law Center and the Newspaper Association of America Foundation, thank you for taking the time to watch this presentation. We hope you have found it helpful. Enjoy your time as a student journalist — and good luck!

Seek help when you need it!

Student Press Law Center

www.splc.org

(703) 807-1904

Monday - Friday, 9 a.m. to 6 p.m. Eastern Time

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