

Copyright Law

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Student journalists in both the print and electronic media confront issues relating to copyright every day. Copyright law was included in the Constitution to serve the interests of free expression. Essentially, copyright protection encourages the production of more works of authorship by granting authors the exclusive right to benefit from their own works.

Copyright Protection

Copyright protects "original works of authorship fixed in any tangible medium of expression." Works of authorship include works of literature, music, drama, choreography, sound recordings, audiovisual works such as motion pictures and architectural works. In the context of student publications this includes editorials and advertising content, photographs, artwork or graphics and fiction or poetry. Furthermore, copyright protection applies to works in both the print and the electronic format (online). *Original works* retain their copyright protection when they are used in *compilations* or *collections* such as newspapers and when they are modified to produce "*derivative works*."

Copyright does not protect titles, short phrases, ideas, procedures, facts, opinions or slogans. Thus while a news story may be copyrighted, the events the story described can not be. Facts themselves are in the public domain; copyright law only protects how a reporter expressed the facts in his writing. An author's *expression* means his words and organization, but again, not the news event the reporter covered. In the same way, two editorial writers may *independently* express the same opinion (even in essentially the same words) without running afoul of copyright law. For a writer to violate someone else's copyright, some form of copying must have been done.
Copyright Statute 17 U.S.C. sec. 102 (1977 & Supp. 1992)

Who Owns the Copyright?

In most cases, the person who created the work owns the copyright. However, an employer can claim the copyright to works created by an employee when they are *works for hire*. Whether someone is an *independent contractor*, who would then retain the copyright to his work, or an employee, thus creating a *work for hire*, depends on many factors. These factors include, among other things, the working relationship between the parties; the amount of direction given by the employer; and the tax treatment of the hired party. *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989).

The best way to avoid a copyright dispute between a student publication and a reporter, artist or photographer is to have an agreement in writing that clearly states who owns the copyright in the works that the students create.

How is a Work Copyrighted?

Copyright protection exists the moment an original work of authorship is placed in some tangible form, such as a photograph, a film, a story on paper or hard drive or music that has been recorded. Formal registration with the U.S. Copyright office, though not required, may be advantageous in some circumstances. A copyright notice for instance (e.g., "© 2000 Student Press Law Center"), is

not required but is always a good idea. (For more information about registration, contact the copyright office at 202-707-3000.)

Duration of Copyrighted Protection

Copyright protection can be bought and sold, assigned or licensed. However, protection lasts for a limited period of time. For works created since 1978, the copyright expires 70 years after the death of the last surviving author or, for works for hire, 95 years after the first publication. After the protection ends, all works become a part of the public domain and can be used freely by anyone. For works published prior to 1978, copyright protection can last for up to 95 years.

Penalties for Copyright Infringement

Copyright infringement can be expensive. An infringer is liable for actual damages, which are what the copyright holder would have gained had the work been legitimately purchased, as well as any profits the infringer made above that. Furthermore, if a work is registered, an infringer can be liable for statutory damages that can run as high as \$200,000.

Using Copyrighted Work**Consent**

Simply giving the copyright owner credit when using his or her work is not enough. Explicit permission must be obtained.

Fair Use

Fair use is a defense against copyright infringement liability. The Copyright Act permits fair use without a copyright holder's permission, and the act gives the following uses as examples: "criticism, comment, news reporting, teaching, scholarship, or research." In addition to these examples the law gives four factors for determining fair use.

- (1) What is the purpose and character of the use? For example is the use for profit or non-profit.
- (2) What is the nature of the copyrighted work? Works containing numerous facts are more likely subject to fair use than highly creative fictitious works.
- (3) How much of the copyrighted work is used? Congress has adopted guidelines for fair use that say under most circumstances, educators may not use more than ten percent of a work without permission.
- (4) What is the potential effect of the use on the market for the original? Can the use be bought as a substitute for the original? If so, then fair use probably can not be used as a defense.

Parody

For a cartoon or a parody to pass as a fair use, the courts have suggested that there are two important considerations.

First, the artist who wants to parody an original must not use more of the original work than is necessary to evoke thoughts of the original in the viewer's mind. Second, the parody must not directly threaten the market value of the original work. *Campbell v. Acuff-Rose*, 114 S.Ct. 1164 (1994).

For more information or questions contact:

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