

COPYRIGHT

Copyright and trademark infringement can result in lawsuits. Copyright law was created to protect the artist, the creator or the holder of the copyright from unlawful use of their material. The responsible student journalist needs to understand copyright law in order to avoid costly fines and/or delays in publication.

What is a Copyright?

Copyright law protects the individual's right to control the use of their intellectual property. Copyright law applies to literature, music, lyrics, plays, choreography, pictures, photos, sculptures, graphics, movies, audiovisual works and sound recordings. In the past, copyrighted works needed to display the copyright symbol. Since 1989, however, works published without the statutory notice are still protected by copyright, although there are legal benefits to using statutory notice, which consists of the © symbol, the name of the author of the work and date of publication. Without written consent, you should assume that all published works, including works posted on the internet, and even some unpublished works, are protected by copyright law, although you can safely assume that pre-100 works are in the public domain and thus unprotected by copyright.

Copyright law protects the following:

- The expression of ideas, but not the ideas. You can't copyright 'freedom' or 'environmentalism'. If an author presents a unique definition of freedom or has a new way of describing environmentalism, it can be protected by copyright. Copyright also protects artistic creation, but not the underlying concept. While drawing a cat to look like Garfield may constitute copyright infringement, merely creating a new drawing of a generic cat is not copyright infringement.
- The selection and arrangement of facts may be protected by copyright, but not the facts themselves. If you read a newspaper story about a rock star's wedding, subject to exceptions noted below, you can't copy the newspaper's description of the wedding, but you can include the marriage date in an article in your yearbook.

Copyright law does not protect:

- titles
- phrases
- procedures, processes, systems
- any work of the United States Government

Copyright on Student Work

Student work is also subject to copyright restrictions. Whether students own the rights in their work product depends on circumstance. Work-for-hire is material produced while employed by a person or company as part of your employment. Such material belongs to the employer. If the student wrote an article or drew an illustration in a work-for-hire situation, the employer owns the copyright.

Some college newspaper and yearbook staff employees regularly contribute work to the publication and receive payment for their work. Unless they have a written agreement with their editors, the work belongs to the publisher. On the other hand, a free-lance photographer or journalist who only contributes occasionally to a publication would likely not be considered an employee, and the copyright in their work product would therefore generally not be owned by the employer. Freelance work in general is only available for use in one specific publication. The free-lancer continues to own the copyright on his/her material unless there is specific work-for-hire contract or assignment of such rights to the employer.

Most high school journalists do not receive payment for their work. If they submit a story, poem, drawing, photograph, etc., to the newspaper or yearbook, they have given permission for the work to be used only once in that specific issue. Any re-use of the work or use in a different medium e.g., the internet, would require a separate request for permission. It's a good idea to get written permission from students before you include their work in your publication. That way, you avoid any possible controversy.

Public Domain

Copyright doesn't last forever. Any work whose copyright has expired is considered to be in the public domain. You can safely use any of these works. How do you know if a work is in the public domain? Effective October, 1998:

- An author's copyright on his work is for his lifetime plus seventy years after his death.
- Copyright on works-for-hire (example: an article in a magazine) lasts for 95 years after the date of first publication.

All works published prior to 1923 are now in the public domain, but subsequent revised, edited or updated versions could still be protected by copyright. Anonymous work is still protected by copyright and only enters the public domain on the same basis as any other copyrighted material.

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Fair Use

In case you want to use portions of a work that are not in the public domain, there are some situations in which you may use such work.

The doctrine of fair use may allow a journalist to copy a limited portion of published material, such as in news reporting, editorials or for criticism, education and research. For example, a journalist can use limited quotes from a novel to illustrate his opinions in a book review.

There are several important criteria in determining fair use, which is decided on a case-by-case approach. It will be difficult to take advantage of the fair use defense if you include a substantial work, or use the work for profit. For example, you can't copy a book word for word, add a few lines of criticism, and sell it as an original work. If you do, you'll be committing two violations of the principle of fair use.

Copyright Infringement

If you use copyrighted material without permission, you may be liable for copyright infringement. Copyright infringement can result in a lawsuit and some very heavy penalties for your publication and your school. If you are guilty of willful infringement-using material that you know is under copyright-the penalties can be even more harsh. The court can issue an injunction prohibiting distribution of the material. It can also assess your school damages, and possible criminal penalties in case of willful infringement.

Use of Copyright Materials

Following are some situations where questions might arise about use of copyright material.

Song Lyrics

Subject to "fair use" limitations, you may be able to use a limited number of lines of a song's lyrics without copyright infringement. Assuming it is "fair use," it is also appropriate to credit the author.

Poetry

You can use brief quotes from poetry as long as the quote does not constitute a substantial portion of the work. If you are unsure whether a quote represents a substantial portion of the material, ask to see the whole poem. Remember four lines of poetry are a small portion of an epic poem, but an entire haiku is less than four lines. If possible, format the poetry with the same alignment as the original, and give the author credit.

Quotes

Brief quotes are generally acceptable. Obviously, you can use quotes that are within the public domain. You can also quote public figures with appropriate attribution. For example, you can use a brief quote by President Clinton from *Time Magazine*, but you should include the citation.

Book, Song or Movie Titles

Titles are not 'copyrightable' because they are by their nature not sufficiently original. They are available to the public without compensation to the author. However, some titles may qualify as trademarks if they are used on merchandising items.

Stamps

Stamps can be reproduced as long as they are not intended for use as counterfeits. In theory, this could mean that you can reproduce stamps in a larger or smaller format than the original. In practice, reproducing a recent stamp like the Elvis stamp is copyright infringement because the artist owns the copyright on the portrait. Therefore you should not reproduce recent stamps without permission.

Cartoon Characters

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Any cartoon character in a cartoon strip, TV show or movie may be copyrighted, and is potentially protected by trademark law as well. Even if a student in your school draws a copy of the cartoon character, you may be liable for copyright infringement. Some attorneys argue that a cartoon character can be suggested as long as there are enough differences between the original and the copy. This can be risky, however. Many cartoon illustrators are very protective of their creations.

The safest approach is to apply for permission to use a character. Sometimes, the artist is very cooperative. In one case, a high school in Minnesota asked Bill Keane, the cartoonist who creates "Family Circus", if they could use some of his material in their yearbook. Keane gave his permission and drew a special cartoon for them to use on the cover.

Photographs of Famous People

Celebrities' photographs are subject to copyright protection, with their rights usually owned by the person who took the photograph or the publisher of the photograph. Usually the copyright holder's name appears along the side or bottom of the photograph. While you may be able to obtain the right to publish photographs of newsworthy people from press services or photo archives, use of a celebrity photograph to sell or advertise a product or service may also violate the celebrity's right of publicity.

Movie and Television Characters

The names and characteristics of movie and TV characters may be copyrighted material that you cannot use without permission. For instance, you might be able to purchase a photograph of Dana Carvey dressed as 'Garth' from a press service to use in the yearbook trends segment. However, you can't use the character of Garth as your yearbook narrator. You could dress up another student to look like Garth, but if you use too many of Garth's characteristics, you can be sued for infringement if you use it without permission.

Games and/or Game Boards

Games such as *Monopoly*, *Trivial Pursuit*, etc. are also subject to copyright and trademark protection and cannot be reproduced without permission. One school decided to use a *Monopoly* theme in their yearbook. Unfortunately, they failed to get permission from Parker Brothers before they sent the yearbook to the printers. As soon as Parker Brothers became aware of the situation, they flew in a lawyer to supervise the destruction of every copy of the yearbook.

Currency

In the past, currency could not be reproduced. Only 'play' money could be used in a yearbook or newspaper. Now the laws have changed. You can reproduce currency as long as it lacks reproductive detail. You can safely include images of currency in your publication as long as its size and color are not the same as the original. There are no restrictions on the reproduction of coins.

Internet

Publishing issues with regard to the internet are essentially the same as other types of publishing. The format is electronic with worldwide reach and access. Rights and issues relating to publicity and privacy, libel, obscenity, and copyright and trademark must still be considered if the material is posted on the internet or taken from the internet.

No assumptions should be made that because something is posted on a web page, it is in the public domain. Copyright and trademark rights still apply and permission must be obtained from the owner, who may not necessarily be the web page owner. Similarly, material that otherwise might be obscene or libelous would likely be so when posted or taken from the internet.

Posting materials on the internet may have some unexpected, yet far reaching consequences. As materials may be accessed worldwide, you may find yourself subject to remote jurisdictions. U.S. courts have obtained jurisdiction over individuals in other states due to their postings on the internet.

What is a Trademark?

A phrase or a title cannot be copyrighted, but it can be trademarked. A trademark is a word, name, symbol, device, or any combination of these items used to identify a product by a manufacturer. Most trademarks carry one of these symbols ®, ™ or SM. One of these phrases can also identify trademarked items: *Registered in the U.S. Patent and Trademark Office; and *Reg. U.S. Pat. & T.M. Off.

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Trademark protection means that these materials cannot be used for any commercial purpose without trademark infringement. You can use a trademark to identify the product itself, e.g., to say that a student “just loves Milky Way® bars.” You can’t use a trademark for a yearbook without permission.

The purpose of trademarks is to identify the source of a product and give a representation of consistent and desirable quality symbolized by that mark. Any use of a trademark that is likely to cause confusion as to the source, sponsorship or affiliation of a product or that dilutes the strength or tarnishes the image of a mark could violate the trademark owner’s rights.

Some examples might help to illustrate this idea. Showing a picture of a Nike tennis shoe as part of a section dealing with student fads is not a trademark violation because you are identifying the product. If you used the Nike symbol on the yearbook cover and throughout the yearbook as a theme, it would be a trademark violation since it implies that Nike sponsored or published the yearbook.

You can show a group of students gathered around a Pepsi machine drinking cans of pop since the Pepsi symbol essentially identifies the product. You cannot use a trademarked phrase from a Pepsi advertising campaign to help sell your yearbook.

There can be other serious consequences from trademark infringement. A school in Colorado had always used the Olympic Rings as a school symbol, which happens to be protected by a special trademark law. The school even had a large scale model of the rings outside the school building. When the staff decided to use the rings in the yearbook, they contacted the Olympic Committee to request permission. Not only did the Olympic Committee refuse to let them use the Olympic symbol in the yearbook, the school had to remove the rings in front of the school.

Obtaining Permission

If you want to use materials that are copyrighted or trademarked, you need to get permission from the copyright or trademark holder. Here are some steps to follow:

Find out who holds the copyright or trademark.

A published work may include the copyright holder’s name and address in the material. If neither is there, you can try the local library, or looking up the ownership on the internet, e.g., at the websites of the United States Patent and Trademark Office or the U.S. Copyright Office. Many libraries have directories containing publisher’s addresses and telephone numbers. You may be able to obtain permission to use trademarked material from the corporation that owns the trademark.

Contact the copyright or trademark holder.

You can try contacting them by telephone, but they may want you to submit your request in writing. Include the following information:

- Title, author and/or editor of work to be reproduced.
- Exact material you want to use including page numbers, chapters, and amount. If possible, include a photocopy of the material.
- Number of copies of your publication.
- Use of materials. In other words, where you want to include the material and how it will be used.
- Form of distribution.
- Distribution location.
- Whether you will sell the material.

Allow ample time to receive permission.

Some sources recommend that you allow at least a month, but to be safe, you need to allow even more time. The copyright holder may have questions or need assurance on some points. If you want to use copyrighted or trademarked material, make the decision as early as possible and immediately apply for permission for use.

The copyright holder may want to charge you a fee for using the material. You may receive permission to use the material with some restrictions. It is very important to observe these restrictions carefully to avoid delays in your publication. Submit a copy of the permission to use document to your printer along with protected material. Then, your printer will know you have the right to use the material, and he will not delay publication.