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Take Care with Copyrights

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What is the difference between a trademark and a copyright? Is it legal for a teacher to share a copied article with her students? How about copying a videotape?

These questions and others were addressed at a recent lecture on intellectual property law presented by Salvatore J. Abbruzzese, Esq., of Hoffmann & Baron, LLP. Doris Van Dyke, RN, nurse educator at Somerset Medical Center in Somerville, N.J., and vice president of the Consortium of New Jersey Nurse Educators (CNJNE), coordinated the program. Abbruzzese outlined intellectual property law as it pertains to patents, trademarks, and copyrights, and explained the distinctions among these vastly different concepts.

Patents and Trademarks and Copyrights, Oh, My!

Patents were developed as a means to encourage disclosure of research and development. They were intended to ensure that the individual or company who initiated the use of a new technology or concept received a reward or profit for the development. In the health care industry, patents are seen on new drugs, equipment, and other original creations. To be considered for a patent, a product must truly be new.

Trademarks are symbols that distinguish a business, name, or service. Logos, symbols, and jingles all can be trademarked. A trademark is indicated by the TM or [®] symbol, which stands for registered trademark.

Specific words cannot be identified as trademarks, unless they are unique to that product. For example, "Google" is a term coined by the creators of the online search engine, so it is a trademark. Companies such as Apple Records and Apple Computers cannot trademark the word "apple," however, because it is a commonly used word.

A copyright is a legal tool that provides the creator of a work of authorship the right to control how the work is used, including the exclusive right to reproduce, distribute, adapt, display, and perform the work. Copyright law protects the authors of creative works from piracy and allows them to profit from their work.

To copyright a work, the work must be personal to and originated by the author, but it does not have to be unique or novel. Basic information is not subject to copyright, but the arrangement of the information is. For example, if you attend a lecture and take notes, the audio aspect of the presentation is copyrighted to the lecturer, but your notes become your copyrighted material. Copyright is an assumed privilege as soon as you put pen to paper.

A copyright can be registered with the U.S. government to establish the material as protected, which can be used as a defense in the event an author needs to take another party to court over the unauthorized use of the material. To obtain a copyright for a creative work, an author must submit an application to the U.S. Copyright Office, a department of the Library of Congress.

Literary, pictorial, and musical works all can be copyrighted. So can movies, sound

recordings, and architecture. Speech, however, is excluded from copyright, because the spoken word is not preserved or fixed. Ownership of the copy is not the same as ownership of the copyright. For example, by purchasing a copy of a book or videotape, you become the owner of the item. You do not own the copyright.

Here are some basic rules of copyright!—

- The author owns the copyright.
- Work that is done for hire in the scope of one's work is owned by the employer.

Terms of "Fair Use"

There are some limitations to the protection of copyrighted materials. The doctrine of "fair use" has developed through court decisions, which have determined various purposes for which copyrighted materials may be reproduced without obtaining permission from the copyright owner.²

Many factors are considered when determining whether a work meets the "fair use" exception. Among the most important factors are the purpose and character of the use, the amount or portion of the work used, the nature of the work, and the impact of the use of the work on the marketplace.¹



If the purpose and character of the use is to criticize and comment on the work, report the news, or parody the work, the “fair use” exception applies.¹ If the reproduction is only for personal use, no violation has occurred. For example, copying an article or videotaping a TV show for personal enjoyment is considered “fair use.”

In some instances, the use of copyrighted materials for educational purposes falls under the “fair use” doctrine. Educational purposes include noncommercial instruction or curriculum-based teaching at nonprofit institutions; planned noncommercial study or investigation directed toward making a contribution to a field of knowledge; and presentation of research findings at noncommercial peer conferences, workshops, or seminars.¹

Educator, Beware!

This does not mean that educators can reproduce any copyrighted work for use in the classroom. According to the U.S. Copyright Office website <www.loc.gov/copyright>, the courts have determined that “reproduction by a teacher or student of a small part of a work to illustrate a lesson”² is appropriate. But how much constitutes a “small part”? Teachers are permitted to copy one article, book chapter, or excerpt from a work of prose that is fewer than 1,000 words, or less than 10% of the entire work. Reproduction of an entire work would not be considered “fair use” and could be an infringement of copyright.¹ “If there is any

doubt,” the U.S. Copyright Office advises on its website, “it is advisable to consult an attorney.”

A copyright is a legal tool that provides the creator of a work of authorship the right to control how the work is issued, including the exclusive right to reproduce, distribute, adapt, display, and perform the work.

Another consideration for determining “fair use” is the reason for use of the work. Any reproduction for commercial or “for profit” reasons would not be considered “fair use.” Any use that would have a negative effect on the marketplace or the reward or royalties to the copyright owner also would be an infringement. Publishers of educational materials, for example, would object if reproduction of content substituted for the purchase of a book, an article reprint, or a test.

Be Safe: Get Permission

“The safest course is always to get permission from the copyright owner before using copyrighted material,” according to the U.S. Copyright Office. “The Copyright Office cannot give this permission.”²

Another way you can use copyrighted materials is to pay for the use. The Copyright Clearance Center, Inc. <www.copyright.com> was established to collect money for authors whose materials are copied on a regular basis by businesses and

academic institutions.³ Clearinghouse centers sell licenses for use of copyright materials.

Abbruzzese says a good rule of thumb to avoid “fair use” infringement is to put yourself in the author’s shoes before using copyrighted material. If you had invested your time, energy, and expertise to create a work, how would you feel if someone used it without your permission?

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