

Copyright and Libel Primer for Web and Print Publishers

WHY SHOULD I CARE?

Computers and the Internet have changed everything. Publishing used to be limited to a select few who had sufficient resources. Now, technology has made everyone a potential publisher. Copyright law, which has always been complex, has become bewildering in an electronic environment. It has never been easier to copy or incorporate other people's work. **It has never been easier to make yourself and the University vulnerable to a lawsuit.**¹

Copyright Law

Since 1978, copyright protection occurs at the moment of creation, and protects the form of expression (word, images, music) rather than the ideas or facts represented. A copyright notice or registration is not required. Lack of a copyright notice does not mean that something can be freely reproduced.²

I. Using Material from the Internet

Technology may result in a loss of control over reproduction of materials for authors in the future. However, copyright law has not yet sufficiently addressed electronic communication. The same laws that were made for printed publications, art, music and film now apply to material on the Internet. Words, images, page design and even HTML code are protected from the moment of creation, regardless of whether or not a copyright notice appears. The majority of information on the World Wide Web is *not* in the public domain. Theoretically, even text from e-mails and electronic bulletin boards may *not* be reproduced without permission from the author.³

Most Web sites list the e-mail address of a contact person, making it relatively easy to request permission to reproduce images or text.

When in doubt, request permission.

II. Fair Use

- Fair Use allows you to reproduce portions of someone else's work in certain situations. *No single factor* can determine Fair Use—educational use alone is not enough—there is a lot of gray area. Four factors are considered:
 - 1) Is it educational in nature?
 - 2) Is it not-for-profit?
 - 3) What percent of the original is used?
 - 4) What will the effect of your use be upon the potential market value of the work?⁴

¹ Georgia Harper, University of Texas System Office of General Counsel, *Copyright and the University Community: Implementing a Comprehensive Copyright Policy*. Retrieved June 17, 2002 from <http://www.utsystem.edu/ogc/intellectualproperty/admin3.htm>
 Joe Salkowski, *Drudging up libel*, StarNet Dispatches. Retrieved June 14, 2002 from <http://dispatches.azstamet.com/joe/libel.htm>

² *Questions and Answers on Copyright For The Campus Community* (Oberlin, OH: National Association of College Stores, Inc., and The Association of American Publishers, 1991) pp 2-3.

³ *Using Materials from the Internet: What are the Rules?*, University of Texas System. Retrieved June 18, 2002 from <http://www.utsystem.edu/ogc/intellectualproperty/useofnet.htm>

Thomas G. Field, Jr., *Copyright in E-Mail*. Retrieved June 17, 2002 from <http://www.press.umich.edu/jep/05-01/field.html>

⁴ Benedict Mahoney, *Fair Use, The Copyright Website*. Retrieved May 21, 2001 from <http://www.benedict.com/info/fairUse/fairUse.asp>

- Fair Use is designed to enable people to use small amounts of the work of others for review, critique, or to support their arguments. Depending on the size of the work being copied from, it's a good idea to avoid quoting more than two paragraphs, or quoting so frequently that the quoted information predominates. It is almost always outside the bounds of Fair Use to reproduce all or most of anything.⁵
- There ARE specific prohibitions around making multiple copies of a work to use in an educational setting:
 - Copies may not be used to create/replace anthologies or collected works.
 - Consumable publications such as workbooks and standardized tests may not be reproduced without permission.
 - Unauthorized copying cannot be used in place of the purchase of books and periodicals.
 - The same teacher cannot copy the same item term after term without permission.
- Situations in which copying for academic purposes IS allowed generally share the following characteristics: SPONTANEITY—BREVITY—SINGULARITY. The situation should share *all* of these characteristics.
 - Spontaneity: If a teacher is inspired to use something as a teaching tool, and there isn't enough time to request permission.
 - Brevity: If the excerpt copied is no longer than 1000 words or 10 percent of the work, whichever is shorter, or if the complete work is less than 2500 words.
 - Singularity: One course use, one work per author, etc.⁶

When in doubt, request permission.

III. Public Domain

- Works and images that are in the public domain may be freely copied. Such works include
 - works that never had copyright protection;
 - works whose term of copyright protection has expired;
 - works created by the U.S. government.

Because of the complicated history of copyright law, it has become extremely hard to ascertain whether or not a work is in the public domain. The fact that the author is deceased or the work is out of print does not guarantee that a work is in the public domain, nor does the lack of a copyright notice.⁷

When in doubt, request permission.

IV. Requesting Permission

The good news is that e-mail has made it faster and easier to request and receive permission from individuals and institutions, if you can find the appropriate person to e-mail. If they have a Web site, chances are they list staff contacts and conduct a lot of business electronically. You can save time by including all of the elements on The University of Texas System's online sample of a permission request letter, available at <http://www.utsystem.edu/ogc/intellectualproperty/permmm.htm>

⁵ *The Chicago Manual of Style*, 14th ed. (Chicago: University of Chicago Press, 1993) p 146.

⁶ *Questions and Answers*, pp 16-17.

⁷ *Fair Use of Copyrighted Materials*, University of Texas System. Retrieved June 17, 2002 from <http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>

The Copyright Clearance Center specializes in obtaining permissions, particularly for academic use. They charge a nominal fee, plus whatever royalty the copyright owner charges. The center has a catalog of preauthorized titles, making the permissions process nearly instantaneous. Go to their Web site at <http://www.copyright.com/> and select “Academic—Higher Education.”

Libel and Invasion of Privacy

Each state defines and applies laws relating to libel and invasion of privacy differently. Typically publishers were sued for libel and invasion of privacy in the state of publication/distribution. Since the Internet enables material to be published everywhere at once, we are entering murky waters indeed.

The Internet has made it fast, easy, and cheap to publish. People post Web pages without the consideration and peer review that typically occurs with print material. And depending on who is publishing the material on what server, with whose equipment, and in what capacity, both the University and the person publishing the Web page could very well be liable.⁸

I. Libel: publishing defamatory material or anything that damages the reputation of a person or entity. Lack of knowledge or intent is not a sufficient defense—for instance, a writer who uses a word without understanding the meaning it may have to a particular audience would still be liable.⁹

The University of Texas has an excellent Libel Checklist that will analyze a situation for you: <http://www.utsystem.edu/ogc/intellectualproperty/libelfrm.htm>

II. Invasion of privacy:

- disclosing intimate or private details about someone;
- printing false statements or representing a person in a false light;
- appropriating a person's likeness (e.g. photo) or name without permission, particularly for commercial gain;
- intruding unreasonably and intentionally upon a person's seclusion (e.g. trespass, surveillance).

In any case, providing the identity of a private individual, unless in a public setting, is a sensitive matter (less so for a public figure). All of the above are more serious if the material is embarrassing, offensive and/or not inherently of public concern.¹⁰

Take great care when publishing information in newsletters or on Web pages about volunteers and other individuals. Be mindful of their right to privacy and potential libel issues. To be safe, get permission to publish a name or picture in writing.

Plagiarism

Non-copyrighted material still needs to be credited appropriately. If you use someone else's ideas, design, graphics, data, or words, even if it is public domain material, without crediting the source, you are representing someone else's material as your own. This is plagiarism.

Hamilton College has an excellent Web page on avoiding plagiarism:

<http://www.hamilton.edu/academic/Resource/WC/AvoidingPlagiarism.html>

A briefer overview can be found at this Barnard College site:

<http://www.econ.barnard.columbia.edu/FAQs/plagiarism.html>

⁸ *Liability for the Wrongful Acts of Publishers*, University of Texas System. Retrieved June 14, 2002 from <http://www.utsystem.edu/ogc/intellectualproperty/publia.htm>

⁹ *Words into Type*, 3rd ed. (Englewood Cliffs, NJ: Prentice Hall, 1974), p 54.

¹⁰ *Liability for the Wrongful Acts of Publishers*, University of Texas System. Retrieved June 14, 2002 from <http://www.utsystem.edu/ogc/intellectualproperty/publia.htm>

Citation

Good citation practices

The purpose of citation is to credit the scholarship of others, and to allow the reader to verify, ascertain the credibility of, and find out more about the information in question. Any idea, image, or expression that is not your original work should be cited. Direct quotations should be enclosed in quotation marks with a footnote or in-text reference. Avoid quoting significant amounts of text without permission.

As the Barnard College Web page on plagiarism points out, good citation not only acknowledges the work of others, but it clarifies and highlights which work is your own. “The point of good citation practice is to direct the reader's attention to where you have advanced the argument.”¹¹

About paraphrasing: the author of the Barnard page goes on to explain that “a more subtle form of plagiarism is footnoted paraphrase.” Such a practice, according to Barnard, leaves it unclear which ideas come from the author and which from the cited source. Paraphrased passages should be defined with an introduction such as “Rowling explains that this event is...” Alternatively, you can footnote the paraphrased passage and identify it as such in the footnote, e.g. “This sentence/paragraph paraphrases Rowling’s ideas on wizardry, p 231.”¹²

Citation Styles

The citation style you should use depends on whether you are creating footnotes or a bibliography, whether you are creating a county newsletter, an article for a refereed journal, a fact sheet for low-income families, a workshop handout, or a federal report. The appropriate citation style could be AP, APA, CMS, GPO or something else, depending on the document and the audience. Contact the publications editor for an appropriate citation style for your publication.

When researching and writing, be sure to keep a record of the source of anything that isn’t your own original expression or idea. Include the author’s full name, the name of the work, the name of any larger work in which the work appears, (e.g. the anthology that a story appears in, or the journal that an article appears in), the year published, the publisher, the publisher’s city and state, the total number of pages in the work, and the page(s) from which the information was taken. This will ensure that you have enough information for any citation style.

This handout was developed by Kyle McCaskill, University of Maine Cooperative Extension communications leader/editor, for staff training purposes. It is not intended to be a definitive treatment of the topics discussed. June 2002.

¹¹ *Plagiarism*, Barnard College. Retrieved June 22, 2002 from <http://www.econ.barnard.columbia.edu/FAQs/plagiarism.html>

¹² This paragraph paraphrases the 4th paragraph of the Barnard College *Plagiarism* Web page. Retrieved June 22, 2002 from <http://www.econ.barnard.columbia.edu/FAQs/plagiarism.html>