

Running head: ASSIGNMENT 3: CASE STUDY ON COPYRIGHT

Assignment 3: Case Study on Copyright

Peyvand Ghofrani

University of Maryland University College

## Introduction

In order to provide a clear and practical understanding of copyright as it relates to overall life as well as educational settings, two different scenarios will be analyzed. The goal of this analysis is to provide a clear understanding of copyright, exemptions that exist within educational settings, and the limits of those exemptions. First scenario presents an instructor that scans an entire book he has authored onto a password protected web site for students in his class even though the publisher holds the copyright. The second scenario is a photographer who takes views of city skylines and develops them into posters that he sells to local tourist shops. The former, although taking place in an educational setting, is an illegal act that does not meet educational exemptions. The latter is a rightful act under copyright law, and is indeed one type of activity for which copyright law was originally designed. The subsequent paragraphs will analyze the two scenarios in detail.

### Copyright-law-breaking Teacher

Hoon & Davis (2006) explain that fair use is a valuable tool, albeit one that is often misunderstood and misapplied, and that educational use alone will not support fair use. They go on to clarify that the more transformative a work is, the more fair use may be claimed. Other factors that can determine whether fair use may be claimed include the amount of the work that is used and the impact of the use of the work on its potential market value, with the Supreme Court stating this last factor to be the most important in determining fair use (2006). Fair use is the main concept or shelter by which copyrighted material may be used in educational settings without licensing, if the above criteria are met in favorable balance. Fair use is a concept that is held in high esteem and which enables the use of the copyright owner's exclusive rights for

activities that serve the common good and foster debate, criticism, education and scholarship (Kelley & Bonner, 2006).

The particular example of a teacher placing an entire book to be used without charge, however, demonstrates an instance when fair use can't be relied upon. Although the textbook is indeed being used for a class and with restricted access, the fact that the entire book is being provided free of charge means that the publisher's profits are being unfairly damaged as there is then no need for the students to purchase the book. If only a small portion, one chapter for example, had been provided the case could have been made for fair use. If the entire book is needed for the class, then it should be listed as required book to be purchased. The teacher should have been more selective in the amount that is placed online for students to freely use without payment, if in fact only a small portion was needed.

Alternatively, the book could have been put on library e-reserve through appropriate licensure as appropriate. Gasaway (2006) explains that publishers fear lost sales due to the availability of their works even on password protected e-reserve systems, however if the library has the appropriate licensing in place this would not be an issue. Ideally however, the teacher should have required students to purchase the book if required for the class. The bottom line is that since the teacher does not own the copyright the teacher should have more carefully considered the above issues and made an appropriate decision. A final consideration about this scenario is works for hire at universities. Depending on whether the faculty member and the publisher had an agreement between them that gave specific rights to the faculty member who created the work, it is possible that the actions of the faculty member may have been justified (Crews, 2006). Such an agreement was not a component of the scenario and appears remote in possibility.

### Copyright-law-protected Artist

The other side of copyright coin is the photographer who takes photos of the city skyline, develops them into posters, and sells them to tourists. This demonstrates a clear case of copyright at work. Section 102a of the Copyright Act states that copyright protects original works of authorship fixed in any tangible medium of expression, with pictorial works being one of the categories covered under that law (Kelley & Bonner, 2006). The work must be an independent creation and have a modest quantum of creativity in order to be copyrightable. Once a work is fixed in a tangible format, photographs for example, copyright protection is automatically afforded and assumed unless there is a specific statement to the contrary (2006). Therefore the photographer owns the copyright to the photographs and posters and can enjoy all the benefits of copyright, including the right to distributing copies of the copyrighted works to the public by sale (2006).

Since the photographer owns the copyright, the photographer can create derivative works which in this case could be enhancements made to the photograph or changing its dimensions into a poster size. The law provides protection for this creative work to flourish, and would also punish for instance a tourist who may purchase one of the posters and try to sell copies or a shop that would create copies of the copyrighted work (Kelley & Bonner, 2006). This possibility is not a component of the case study however it is important to point it out since enforcement of copyright law creates a secure environment within which the photographer can create his or her best work for commercial purposes.

### Conclusion

The protection afforded to the photographer that holds copyright to his or her work brings us full circle to the first example of the teacher giving away copyrighted work to which he or she

has no right. The teacher may not be making money from that act, but that teacher is directly and negatively impacting one of the rights of the publisher, or any other entity, that holds copyright: to be compensated properly for the work to which they own copyright.

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