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COPYRIGHT AND DIGITAL YEARBOOKS

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One of the educational rites of Spring is the completion of the school yearbook. This annual ritual involves photographing signature events and people, collecting and prioritizing school memorabilia, and telling the stories of the year in ways that graduates years later will recall with joy or dread. In the age of YOU TUBE, MYSPACE and FACEBOOK, the school yearbook is getting a digital makeover. Students want to produce their own histories in formats that can be shared on online, and on iTunes.



But as with everything digital, care must be given to all the content contained between the opening frame and closing credits. As the peer-to-peer copyright issues grab the headlines and YOU TUBE/Google face a \$1 billion copyright infringement lawsuit from Viacom over copyright infringement of TV shows and movies, attention must be paid to the proper use of content in all digital productions. So in time for Spring, here's a review of copyright issues for Digital Yearbooks.

For Starters, Get Educated

Unlike print yearbooks that are sold to students and their families, and then collect dust on bookshelves, a digital yearbook (or part of one) may appear not only in school stores, but also in all kinds of online environments – school websites, My Space pages, You Tube, Facebook, Crackle.com, etc., to be accessed by a much larger audience. Therefore, from the very start, a faculty member versed in video rights and responsibilities needs to be at the helm of the student editors. Ultimately, the school will be responsible for the actions of its student publishers, so the school's administration needs to make sure students are adequately supervised, aware of the rules of copyright and the obligations to individuals when dealing with their publicity and privacy.

My video series, *Copyright Compliance* and book, *Content Rights for*

SPECIAL POINTS OF INTEREST:

- For Starters, Get Educated
- Music Issues
- Photographic Issues
- Poetry and Text Issues
- TV Shows and Films Issues
- Closing Notes: Fair Use and Online

Creative Professionals: Copyrights and Trademarks in a Digital Age, provides key counseling on many of these points and should be a staple in school libraries. I created the series and book with the goal of explaining in a simple and clear format many of the basic rules affecting educational digital rights and responsibilities. These works cover in detail many of topics pertinent for students, faculty and administrators, including those affecting student and faculty publications and fair use.

Issues in Collecting and Editing the Content

The content of a digital yearbook is the core. Individual and class photographs; video interviews; reminiscences by students, faculty and administrators; sporting and theatrical events; individual performances and candid moments all can be shared for the collective whole. However, the mere fact that an events or interviews can be recorded, does not mean that they can be reproduced and distributed to a larger audience without consideration of copyright rights and responsibilities. As a practical matter, each segment of a video yearbook needs to be evaluated for what licenses (if any) must be secured for the purposes intended. Complicated issues can arise along the way, especially with respect to music, photographs, poetry and third party video content. Let me highlight a few.

1. Music Issues

A winning touchdown in a crucial game against a rival school is likely to be a great memory and a featured part of any video yearbook. What happens if, while the receiver was running back a long kickoff for the touchdown, the school band playing is *WE ARE THE CHAMPIONS*? That coincidental moment, recorded live by a yearbook videographer, made the touchdown all that more memorable for those in attendance, and may become the stuff of school legend that will never die. Do the yearbook editors need to give the musical anecdote a second thought? For sure, they do. While the live performance may be sanctioned, incorporating it into a video yearbook involves further copying and public distribution of the musical work. Do the editors need consent from the authors of the music? (In most cases, yes they do.) Or should the music be deleted? (What a shame!) Is there a middle ground? (Perhaps editing to the sequence so that only a snippet of the song is heard.)

Now suppose the touchdown was scored without musical accompaniment, but the Yearbook Editors want to add Queen's version of the song to the yearbook. While easy to do, a digital cut and paste, this edit raises the question whether consent from the authors of the song and the producers of the Queen recording is required. While the school band's performance as background while the event was occurring is original and does not involve a private recording company, adding a soundtrack from a published musical recording to accompany the video will in most cases require a license.

Now let's cut from the football stadium to the auditorium. Every



**THE CONTENT
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year, the seniors produce a musical, and this year it was GREASE. The entire production, including some rehearsals, were preserved for posterity. The Editors want to include *Greased Lightning*, *We Go Together* and *Born to Hand Jive* in the yearbook. Any problem. (You bet!) What if the students want to have a copy of the entire production available with an online link from the yearbook website? These are things that students should know from the outset are problematic and a faculty member reviewing the creative work must be prepared to put the institutional foot down and require proof of rights, or no access to the video should be allowed.

2. Photographic Issues

The essence of every print yearbook is pictures, and that will be true for the video publications as well. Are the yearbook staff photographers subject to “work for hire” rules? When they capture school moments and pictures of the students (whether by still or video), who holds rights to the images? It makes sense for a school to have an agreement with everyone that works for a school publication that the still and video images belong to the school, so they may be properly controlled. Issues of privacy may arise, especially when minors are being photographed. Have the students or their parents consented to the photography? Based on the circumstances of the photographing and the nature of the images, a permissions form should be used to ensure proper photographing of children in particular contexts. If the school hires a professional to take class pictures, the same rule applies – get a contract with the photographer so that the institution, not the individual, owns the copyright in the images and clears privacy rights.

Just as with music, there are issues associated with taking third party pictures and incorporating them into the yearbook. For example, what if one of the 2008 Presidential candidates visited the school during the campaign and a great picture appeared in the local newspaper? Can the yearbook pull the image off the local newspaper website or clip it from the newspaper and reproduce it? Not without second and third thoughts about whether rights need to be cleared. Every photograph is owned, either by the person who snapped it or the entity who paid for it to be snapped. To reproduce it without permission of the professional (or amateur) author raises the possibility that copyright liability will follow. While in the past it might have been common for editors to borrow such images for printed yearbooks and not hear a complaint, today’s digital versions are more likely to create a stir. Obtaining permission in advance should be standard operating procedure.

3. Poetry and Text Issues

Nothing speaks to the school experience like the learned words of poets and chroniclers of an era. Poetry by well known authors, as well as student works, fill many pages of yearbooks. However, the reproduction of those works raise copyright issues, similar to use of mu-



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sic or photos. To include by text or audio reading a group of poems from Maya Angelou's *Poetry for Young People* without consent would subject the school to an infringement claim as assuredly as the record producers of Queen's *WE ARE THE CHAMPIONS*. Moreover, while producing a video collage of images of pages from books published during the year will likely pass fair use muster without prior consent, to allow video users to click on the images from the collage and have extended excerpts of books emerge would cross the line. Even though it can be digitally done, does not mean one has the right to do it. A steady message for good practice is to focus on original works of the yearbook staff, and whenever third party materials are used, see if permission can be secured. If not, stay within reasonably clear fair use guidelines or feature other works for which permission can be obtained.

4. TV Shows and Films Issues

Another topic worthy of a large, red flag are video clips of films and television shows popular during the school year. With DVDs of major films being released within months of theatrical openings and with TIVO and other digital recording of television shows routinely available, it is easy to access TV and film clips for inclusion into the video yearbook. What better recording speaks to the age than these works? However, extreme care must be exercised when taking these materials. Television and movie distributors are keen to assert their rights against every kind of copyright misuse, including those within educational settings. It behooves the students and faculty to make only the most limited and judicious use of third party materials under appropriate fair use standards, if necessary consent has not been secured. Moving beyond the briefest of clips to segment presentations will place the entire video yearbook under a cloud. Since one of the legal remedies of any copyright owner proving infringement is destruction of the offending work, the yearbook staff needs to understand that misuse of the copyright rules can result not simply in a negative ruling, but also in the ruination of their entire year's work.

Closing Notes: Fair Use and Online

Some closing notes are called for. When copyright rules are applied to educational uses, as they are in the case of video yearbooks, fair use must also be considered. Every school should develop a clear policy for students and faculty working on publications such as yearbooks, to ensure that fair use exception is both understood and reasonably exploited. Not every use need be rejected, but since fair use is a balancing test of several factors, reasoned judgment must apply. Students and faculty need to gain confidence in their individual and collective judgment by talking through the appropriate fair use factors at editorial meetings.

When the video yearbook is done, there will be a great temptation to place it and supporting content online. There is also the possi-



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bility that students or faculty may post clips of pertinent material on personal web pages from the school or social sites such as MySpace.com. The school should develop its own policies as to how the created work may be shared with others. While technological measures limiting access to works may be circumvented, schools need to consider whether to restrict how the works are further disseminated beyond the school community, not only for copyright reasons, but also for reasons of privacy concerns regarding minors. The wider the public dissemination, the greater the chance questionable uses within the publication will be scrutinized and potential infringement claims asserted.

For most institutions, the transition of yearbooks from print to digital formats brings great opportunities for creative expression, but with it new kinds of social and legal responsibilities. The key to enjoying new ways to exhibit these works, not just in the present, but long into the future, depends upon articulation and adherence to a set of rules that will govern copyright and privacy rights in particular. As young students assume the role of video producer for the school, they and their faculty advisors should be fully equipped to exercise sound judgment regarding the creation and use of content. As this new video page is turned, we say, Stay Tuned.

Arnold Lutzker serves as legal counsel for AIME.



BASICS OF COPYRIGHT

The Copyright Clearance Center has edited the informational content posted on the website of the U.S. Copyright Office, www.copyright.gov. For a simple explanation of the law, with emphasis on print materials, visit www.copyright.com/cc

Sections covered include:

When Copyright Occurs

Registration and Other Requirements

Duration of Copyright

Public Domain

Fair Use

First Sale Doctrine

Infringing Copyright

"International" Copyright

Copyright and Academia

What is Copyright-Protected?

**THE U.S.
GOVERNMENT
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AUTHORS OF
ORIGINAL
WORKS
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COPYRIGHT
LAW.**