

Copyright Corner

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Tales from the Copyright Trenches: Seeking Permission

Permission letters vary widely, from modest requests for duplication of text-based learning center audio materials to complex requests to digitize or adapt materials for multimedia applications. The past year has found me deep in multimedia permission seeking. Although I am not a lawyer and cannot offer legal advice, my experiences have revealed a number of elements I find useful in the process of permission seeking. While the examples I've chosen are related to the development of computer-based courseware, the underlying principles are applicable to any permission request.

Identify Needs

When we send our permission letters, we establish a personal context for each set of requests. This includes the names of principal faculty developers of the proposed multimedia software, a brief abstract of the course's content and focus, how the multimedia application will connect to course objectives, and what students will be expected to do with the software. Our aim is to provide the content proprietor with enough information so that they understand the importance of their contribution and the value of the material they provide. (Although the function is the same, I prefer the term "content proprietor" over "copyright proprietor" because it focuses attention on the copyrighted work and the parties involved in making the work available to us, the content users.)

In our letters we also differentiate between instructional and educational uses. Instructional uses are intrinsically attached to a programmed course of study in which learning objectives are established and credit is awarded. Educational uses involve providing information or experience to the university community and, in many instances, to the general public. While the missions of conversation clubs or film festivals may be educational, they fall outside of the curriculum. Some proprietors will grant licenses for instructional activities but not for general educational activities.

Identify Materials

Beyond specific content identification (e.g., reference citation, location and duration of video segments, image specifications) we also include the sum and substance of the application. What percentage of the finished project relies on the requested item? What is the relationship between the requested item and other pieces of the application? If an application cannot succeed without a specific piece, we term it a *critical text*. For example, if a multimedia application is based heavily on one work, we attempt to make personal contact with the content proprietor before we send a permission request. It can sometimes be difficult to convey in writing how the various pieces of a multimedia application will fit together or what security measures will be taken to safeguard the copyrighted work. We believe we can address and alleviate some of these issues with a personal touch, and get an idea of the likelihood of licensing a vital work early in the planning process.

Explain the Extent of Distribution

The cni-copyright listserv is an email forum for lawyers, law professors, educators, librarians, creators and anyone else interested in copyright law. In response to a query about how much to tell a publisher if the intended use of copyrighted material was to scan and post text on the Internet for a course, Dan Dixon, Director of Subsidiary Rights at the University of California Press, had the following advice:

"Speaking on behalf of one publisher, I'd recommend that you either tell the whole truth or scale back your plans somehow. I think what we publishers fear most of all is violating, or giving the appearance of violating, our own agreements with authors and other publishers."

Speaking on behalf of one publisher, I'd recommend that you either tell the whole truth or scale back your plans somehow. I think what we publishers fear most of all is violating, or giving the appearance of violating, our own agreements with authors and other publishers. For instance, if our contract allows us to publish throughout North America and your request suggests that the posting will eclipse that boundary, we may grant you a site license within the limits of our authority to do so and admonish you that you must assume any liability for infringing on the rights of another party by permitting the material to 'leak,' outside the limits of our copyright authority. But if you can limit such postings and can reassure publishers of the efficacy of your limits, they might not be quite as shy as you think.

The following example supports Dixon's concern. Members of the National Writers Union (UAW Local 1981) have filed a lawsuit against several prominent publishing firms, challenging electronic resale of articles without permission of

or compensation to authors. Union member Irvin Muchnick hopes the lawsuit will result in the institution of ASCAP-like royalty and metering systems. (ASCAP is the American Society of Composers, Authors and Publishers.) Muchnick asserts:

Database operators certainly have the technology to market their material widely and to collect time charges and other fees; there's no reason why they can't also put in place the technology to ensure that a fair share of the revenues so generated find their way back to the creators. Much of the material on the [various] databases and [on-line] services was written by freelancers who sold only First North American Print Rights to their publishers.

I have heard this concern about who owns the digital rights to images, motion pictures, and print works from a number of licensing agents. Our current copyright law was intended to address future uses of technology. However, I have found in speaking with licensing agents that digital rights were not specifically addressed in many of the contracts established between creator or talent and distributor or publisher, and they proceed with digital permission requests very cautiously.

Ask for What You Need

When planning a permission letter, we make reference to the exclusive rights guaranteed to content proprietors (reproduction, adaptation, distribution, performance and display). For example, a typical multimedia request would ask for:

- reproduction rights to create analog or digital copies of the work,
- adaptive rights to incorporate the work into a multimedia application,
- distribution rights to make the material available to students over the campus computer network, and
- performance or display rights.

We request permission to press data files to CD in order to provide a more efficient format for management and delivery. And, so that faculty need not be concerned about possible infringement when they present projects at professional conferences, we also request permission to demonstrate the resulting computer application when presenting a synopsis of the project.

After the Letters Have Been Sent

We try to establish a cooperative relationship with a content proprietor in the same way that we develop a relationship with a vendor. At the Educational Fair Access and New Media Conference in June 1994, Carol Risher (Vice President

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for Copyright and New Technology for the Association of American Publishers) claimed that the publishing industry values the permission requests it receives because it is one of the few forms of communication they have with their market. Our requests help them assess the market and, ultimately, provide the kinds of materials we want to buy.

In half the cases, we expect to send more than one request or to have the request forwarded to another party. There are also a number of requests which are returned because the proprietor has gone out of business or transferred ownership. We also anticipate that licensing fees will be charged for some of the materials. Responses have ranged from no fees with extensive acknowledgments to high fees with moderate acknowledgments to no permission granted.

If the response is Yes, we remember the proprietor in future business activities. We have begun keeping a database of the outcomes of permission requests. We hope that within a few years we will be better able to predict success rates based on our past experiences.

If the response is No, we try to find out why. Does someone else own the rights? Can the proposal be altered to make it a palatable use? Is the company interested in educational uses of its materials? In the past year I requested permission to digitize two segments of video from major motion picture companies (under two minutes each) and incorporate them into a multimedia application. In each case the licensing agents told me that the nature of the request was obviously educational and comprehensible, but that they were unable to grant digital rights to anyone at this time. One company suggested I repeat my request in a few years, after it was decided how such requests would be handled. Our dialogue provided information to both parties. I realized the depth of concern content proprietors have about computer-accessible formats including the potential loss of control over the work, its possible unlicensed, widespread dissemination, and the distribution of royalty and licensing fees to the creating participants. The licensing agents I spoke with asked a myriad of questions. For many, multimedia applications and interactive programs are abstract terms. Many of these individuals have never seen how powerful a teaching and learning tool interactive media can be.

On-Line Copyright Resources

Legal Information Institute

The Legal Information Institute (LII) at Cornell Law School has made hypertext versions of the United States Copyright Act, Copyright Regulations, the Patent Act, the Berne Convention and numerous other bodies of law available on its World Wide Web server. LII publications are viewable and printable with full font value and graphics with Cello (the LII's Windows-based Internet browser software) or Mosaic.

This is a marvelous resource! The powerful hypertext links allow the user to easily locate and navigate the complex material. The LII's World Wide Web site can be accessed at: www.law.cornell.edu

The LII also provides telnet access. Telnet to: www.law.cornell.edu and login as: `www`

The hypertext publications are also available on diskette with the FOLIO VIP 3.0 software for Windows or DOS. Email inquiries should be directed to: lii@law.mail.cornell.edu

My thanks to Peter Martin, Professor of Law and co-director of the LII, for providing this information, and my compliments to him and his staff.

Library of Congress

The Library of Congress Information System (LOCIS) is an important resource available by gopher and telnet. One useful feature is the Copyright Information section. It contains works registered for copyright since 1978, as well as information relating to copyright ownership. Telnet to: locis.loc.gov or via gopher at: marvel.loc.gov

In Cooperation with

The most important thing I learned at the Educational Fair Access and New Media Conference is that nearly everyone, content users and content proprietors alike, want to find a way to work together to satisfy all concerned parties. The need for digital resources will grow. We, as educators and content users, can advance our position by clearly stating our needs, reassuring the content proprietors that our requests are honorable, and encouraging them to make the necessary materials and rights available. ■

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