

Intellectual Property Risks With School And Teacher Websites

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Teachers and school districts continue to find new ways to use technology both in and out of the classroom. For example, it is becoming more and more common for teachers to launch their own classroom websites. Teachers use these websites to post assignments, communicate with parents, and provide other information about the classes they teach. While these websites provide a convenient means for communicating information, they also raise important issues with respect to the intellectual property rights of others. Teachers and school districts must be aware of these intellectual property issues when posting third party material to their websites. A failure to do so may result in infringement claims and require the school district to pay settlement fees in the order to resolve the claim.

USE OF IMAGES AND RISK OF COPYRIGHT INFRINGEMENT

One of the most common risks associated with teacher websites is the use of images, which may include photographs, drawings, and cartoons. Search tools such as Google make finding images incredibly easy. Teachers can find the images they want and upload them to their website within a matter of seconds. This ease of use can create a false impression with respect to ownership rights of the images themselves.

Images are protected by copyright laws which grant their owners the exclusive right to copy, reproduce, and otherwise use the images[1]. Just because images can be found through a simple internet search does not mean that they are in the public domain and free for anyone to use for any purpose. Further, providing a copyright notice is no longer required to claim copyright protection. So, teachers should not assume that images are in the public domain just because there is no copyright notice.

Teachers and school districts are increasingly becoming the targets of copyright infringement claims. Stock photo companies actively search the internet for use of their images and then send letters to the users demanding payment. These demand amounts can be in the range of hundreds or even thousands of dollars.

To avoid infringement claims, teachers must ensure they have permission from the copyright owner to use any image they post on their website. Providing attribution, or "giving credit," to the owner is not a valid substitute for obtaining permission to use the image. Therefore, merely stating where a teacher found the image will not be sufficient to avoid an infringement claim.

Teachers and school districts should immediately remove any images from their websites that they do not own or have permission to use. School districts should also take steps to inform their teachers of the risks associated with posting third party materials on their websites and periodically assess whether or not all necessary permissions have been obtained.

FAIR USE IS NOT A DEFENSE

The issue of fair use often arises with respect to the use of copyrighted works in an educational environment. Fair use provides a defense to copyright infringement for limited purposes such as criticism, comment, news reporting, and teaching. Not all educational uses of copyrighted material automatically qualify as a fair use.

There are a number of factors that must be considered before a defense of fair use can apply. These factors include: (i) the purpose and character of the use, (ii) the nature of the copyrighted work, (iii) the amount of the copyrighted work used,

(iv) and the effect of the use on the potential market value of the copyrighted work^[2].

In general, a teacher posting an image to a classroom website will not be considered a fair use. These images are commonly used to make the websites more entertaining or aesthetically pleasing, and provide little if any educational value. It is important that teachers and school districts recognize that they will not be able to rely on the concept of fair use as a defense against any infringement claim for use of images owned by third parties.

PRACTICAL ADVICE

Teachers and school districts should review their websites and remove any images they do not own or have appropriate licenses to use. If licenses have been obtained for the use of certain images, the licenses should be reviewed periodically to ensure they are still valid and that the teacher's use of the images does not extend beyond the permitted scope of the license. Any images that the teacher does not have permission to use must be removed from the website.

It is important to note that copyright protection extends to other works of authorship including videos, music, and literary works. These types of works pose the same risks to teachers as using images. Therefore, teachers must carefully consider any third party rights to these works before posting them on their website.

In addition to copyrighted works, teachers and school districts should review any third party trademarks, service marks, or logos that may be posted to their website and ensure similar permissions have been obtained for their use. Use of the trademark, service mark, or logo of another without their permission in a manner that implies any affiliation, sponsorship, or endorsement of the school district by the trademark owner may constitute infringement.

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[1] 17 U.S.C. §106

[2] 17 U.S.C. §107