Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: May public libraries use tutorials created under a Creative Commons license on their library Websites without worry about infringement? What would happen if the owner decided to sue for infringement?

ANSWER: The Creative Commons (CC) offers a variety of voluntary licenses that a copyright owner may adopt which work along with copyright. So, the answer to the question depends on the type of CC license and the rights that it grants to users. For example, if the CC license for the tutorial is an attribution license, then the library may post the tutorial on its Website but must give credit to the owner of the tutorial. The licenses are detailed on the CC Website at: http://creativecommons.org/about/licenses/.

Should a copyright owner wish to sue someone who violates the terms of CC license, it would be filed in state court since it is a contract matter rather than a copyright one. However, the owner still has a U.S. copyright and could withdraw the CC license at anytime and then sue anyone who subsequently infringes the copyright, even if the defendant is doing something that would have been permitted under the prior CC license. Copyright infringement is a federal matter.

QUESTION: A college dance teacher has a personal use license from iTunes. She has loaded the dance music on her laptop for her personal use but also wants to play the songs in her dance classes. Is this permitted?

ANSWER: The question will be answered by the iTunes license agreement. Typically, a “personal use license” does not allow use even in nonprofit educational institutions because this is not a personal use. Apple does offer educational licenses, however, as well as licenses for a number of other organizations. See http://developer.apple.com/ituneslicense/agreements/itunes.html

Transformative expression “[is] not confined to parody and can take many forms,” including “fictionalized portrayal … heavy-handed lampooning …[and] subtle social criticism.” Id. at 809.

Hallmark certainly had that defense. However, Hilton could show the “minimal merit” defeating Hallmark’s motion to strike. So let’s do that.

In “Sonic Burger Shenanigans” Hilton and Ritchie cruise on roller skates serving customer’s cars. And Hilton will say that this or that is “hot.” Hilton says the card is a total rip-off of the episode. Hallmark says it’s transformative because the setting is different and “that’s hot” is a literal warning about the temperature of food.

Hmmm. Shall we call that disingenuous?

True, there are minor differences in setting, food, and uniform. Hilton’s head sits on a cartoon body. But it’s really the same thing and wouldn’t have any impact on the public if it were not.

Public Interest


And this includes shallow celebrities because “[p]ublic interest attaches to people who by their accomplishments or mode of living create a bona fide attention to their activities.” Dora v. Frontline Video, Inc., 18 Cal. Rptr. 2d 790, 792 (Ct. App. 1993).

But, looked at carefully, Hallmark is not helped in the least. Read: “publication of matters in the public interest.” It’s explicitly linked to the reporting of newsworthy items. See Montana, 40 Cal. Rptr. 2d at 640-42.

And this is after all just a particularly lame greeting card that doesn’t add to our stock of vital knowledge about Paris. Such as a really juicy Vanity Fair article about rich-shot teenagers burglarizing her house repeatedly and her never noticing anything was missing.

So Hallmark can’t strike under the Anti-SLAPP statute and must go to trial with its particularly weak defenses.

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Kindle 1: Snap, oh brother of mine…publishers just love Stevie J and all he can do for them…why it’s the rebirth of high-priced magazine subscriptions and high-margin book prices!

Kindle 2: Jobs doesn’t read. You read about this all of the time.

Kindle 1: SJ — he’s more than reading, he’s….visual. They say you don’t read the iPad you touch, its tactile information.

Kindle 2: Oh, yeah, the new reading…you think with your fingers…

Kindle 1: And more…apps.

Kindle 2: Apps? What are apps?

Kindle 1: OMG — you are so last year…apps do what you can’t, they are hyperbole aside, what the Secret alluded to but could not deliver…

Kindle 2: There’s an app for that?

Kindle 1: Yes, there is an app for everything…

Kindle 2: Tell me more…

Kindle 1: Apple figured out that the Web — meaning everything — was too much for us especially if we wanted it on little MP3 players and cell phones. Web big, device small — no one was happy.

Kindle 2: Not happy?

Kindle 1: Well, all thumbs…and bored…always connected but nothing happening.

Kindle 2: So Apple created apps?

Kindle 1: Well, we created apps or people like us. We sell them through the Apple App Store.

Kindle 2: So there is an app for Kindle books on the iPad?

Kindle 1: Yep, just like the apps for the iPhone, Blackberry, MAC, even the PC. We read everywhere…

Kindle 2: I’m down with that — the more the merrier…

Crowd parts…iPad approaches…

Kindle 1: He cometh…

iPad: Flash isn’t good enough for the iGuys…Droid, puh-leeze…me, a laptop killer — fugatobutiful — at least for now…

Kindle 2: (urgently)…Don’t forget, older brother, we are a lean, mean, reading machine. — Evelyn Wood-optimized and priced right — new books cheaper than paperbacks!

Kindle 1: Shish — here he comes. He’s so bright, so cool…

iPad to Kindles: Hey.

Kindles: Hey.

iPad: What’s up?

Kindles: Nice day.

iPad: Yeah, nice day.

Kindles are silent…

iPad: Would talk — late for a reception in the main reading room…something about “the book” and yours truly then…got to roll — Justin Bieber concert…the “Just” is waiting for his “comped” iPad…

iPad disappears into the future…

Kindle 1: IThink, therefore iAm…

Kindle 2: I hope Jeff knows his Bezos… علاقة

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author. Also, outside of copyright, the right of publicity might apply, and some authors claim that all rights belong to them.

Purely on the copyright question, while the university is the legal owner of these photographs, it likely does not own the copyrights in them unless the deed of transfer actually transfers the copyright to the institution. So, the library owns the physical copies but probably not the rights. The library can display the copies locally, but not reproduce them, etc., unless the library owns the copyrights. On the other hand, if the photographer has no heirs or if the heirs agree to reproduction and display more broadly, then the library can do that.  "

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