

## LECTURE FIVE

### LEGAL ISSUES IN ACADEMIC WRITING

#### 1.1 Objectives

By the end of this lecture, you should be able to:

1. Explain intellectual property rights and copyright law
2. Recognize when copying of material is allowed

#### 1.2 Introduction

In Lecture 4, we examined a biting ethical issue of plagiarism. We learned that plagiarism is a serious issue that students must take cognizance of. It can have far-reaching consequences on the student, the institution and the society at large. In this lecture, we will examine the most pressing legal issues you need to be aware of. The trouble with legal issues, unlike ethical issues, is that they can land you in court. We will specifically examine intellectual property rights or copyright law. We will also examine instances when you are allowed to copy certain material, also known as Fair use.

#### 1.3 Intellectual Property Rights

How does one secure creations of the intellect? Through intellectual property rights. Hence, it's important for you to understand and be vigilant about your sources.

To demonstrate the seriousness of this issue, consider the case of S. Victor Whitmill vs Warner Bros. Entertainment on April 28, 2009. Whitmill sued Warner Bros. Entertainment for using a tribal tattoo on actor Ed Helms in the movie *The Hangover Part II*. The matter was resolved when the two parties agreed to settle out of court (Smithsonian Magazine, 2020). So, yes, even what may be considered mundane by some people like a tattoo is protected as an intellectual property.

Intellectual property law exists to protect the creators of original works (WIPO, 2020). This protection comes in many forms such as copyright, trademark and patent laws (WIPO, 2020). These laws recognize the effort injected in the production of intellectual property and thus seek to discourage those who may want to illegally gain from someone else's sweat (WIPO, 2020). Take for instance, a person who invents a solar panel. It is expected that he/she will patent that panel so that manufacturers will pay him royalties. Supposing the inventor earned nothing from the panel, but manufacturers go ahead to mint billions out of that invention. It will not only be unfair to the inventor, but this action will deny the creator the right to the benefits accruing from his invention.

In summary, intellectual property rights ensure creators of works are protected and financially compensated for their efforts. (Kenya Copyright Board, 2020). That's why it's very important to cite and attribute sources in academic writing. Not doing so is akin to stealing another's glory.

According to HG.org (2020), the purpose of these laws is, 'to give an incentive for people to develop creative works that benefit society, by ensuring they can profit from their works without fear of misappropriation by others.' Patents give inventors the right to use their product in the marketplace, or to profit by transferring that right to someone else while Trademarks protect symbols, names, and slogans used to identify goods and services (HG.org, 2020). Copyrights apply to writings, music, motion pictures, architecture, and other original intellectual and artistic expressions (HG.org, 2020).

All countries have these laws enshrined in their constitutions. International conventions give protection in most countries, subject to national laws, so that intellectual property rights are protected across the globe (HG.org, 2020). So, be careful with copying from the Internet.

#### 1.4 Copyright Law

Copyright law originated in the United Kingdom from a concept of common law; the Statute of Anne 1709 and became statutory with the passing of the Copyright Act 1911(UK Copyright Service, 2020). The law protects the intellectual property rights of creators of original work and ensures that the rights assigned to original creations are exclusive (UK Copyright Service, 2020). Creators have the sole right to distribute and profit from them (UK Copyright Service, 2020).

According to the United States Copyright Office (2020):

Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- reproduce the work in copies or phonorecords
- prepare derivative works based upon the work
- distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audio-visual works
- display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audio-visual work
- perform the work publicly (in the case of sound recordings) by means of a digital audio transmission (United States Copyright Office, 2020).

#### **1.4.1 Which rights are covered?**

According to the UK Copyright Service (2020), the law gives the creators of literary, dramatic, musical, artistic works, sound recordings, broadcasts, films and typographical arrangement of published editions, rights to control the ways in which their material may be used.

The rights cover; broadcast and public performance, copying, adapting, issuing, renting and lending copies to the public. In many cases, the creator will also have the right to be identified as the author and to object to distortions of his work (UK Copyright Service, 2020).

#### **1.4.2 Types of work protected**

The UK Copyright Service (2020) provides the following list which is universal:

##### **1. Literary**

They include song lyrics, manuals, manuscripts, commercial documents, computer programs, leaflets, articles & newsletters etc.

##### **2. Dramatic**

Plays and dance fall under this category

### 3. Musical/Sound recording

Recordings which include sound are protected. These may also be recordings of other copyright works such as musical and literary.

### 4. Artistic

Earlier we talked about tattoos as being protected. They are an art. Other artistic works include photography, sculptures, painting, architecture, maps, technical drawings/diagrams and logos.

### 5. Typographical arrangement of published editions

Magazines and periodicals are examples of typographical arrangements of published editions protected under the law.

### 6. Film/Movie/Motion Picture

Broadcast and cable programmes are protected. So are the movies, series, films, documentaries and so on.

### 7. Computer Programs

Changes have had to be made to include coverage of computer programs.

## **1.4.3 When rights occur**

The moment an individual or company creates a work, copyright immediately subsists. In other words, copyright is an automatic right. As long as the work is original and has evidence of labour, skill and judgement, it qualifies to be covered by copyright law (United States Copyright Office, 2020).

However, copyright does not cover ideas. The law only recognises independent creation of content rather than the idea behind the creation (WIPO, 2020). For example, if you wrote on your Twitter handle that you intend to write a book about indigenous gospel music and someone went ahead to write the book, he/she has not committed any offense. What is protected by copyright law would be the actual contents that your book carries. What would be offensive is if someone else directly copied a significant portion or the whole of your book and sold it as his own.

Something else to note is that names, short phrases, colours and titles are not generally considered substantial enough to qualify for coverage. Logos are considered because they involve a combination of creations (UK Copyright Service, 2020).

## **1.4.5 Copyright Ownership**

The following information is derived from WIPO (2020) and UK Copyright Service (2020).

- Where one individual creates a work, he/she becomes the sole owner and acquires exclusive rights of ownership. Such a person is referred to as the first owner of copyright.
- If the work belongs to more than one individual, all the creators concerned assume immediate copyright.

- Sometimes a corporate may require employees to come together and come up with a creation. In such a case, the corporate is granted copyright and is the first owner unless there is a contrary agreement.
- Freelance or commissioned work will usually belong to the author of the work, unless there is an agreement to the contrary such as a contract.

Copyright transfer or selling by the owner to another party is allowed (WIPO, 2020). Also, rights cannot be claimed for any part of a work taken from a previous work. In such a case, copyright of the samples would remain with the original author (WIPO, 2020). In addition, only the owner, or his exclusive licensee can institute a legal proceeding to court (UK Copyright Service, 2020).

#### **1.4.6 How long copyright lasts**

In majority of the cases, according to UK Copyright Service (2020), copyright lasts for 70 years from the end of the calendar year in which the last remaining author of the work dies. For instance, suppose there are three authors who create a work in 1950. If the last author to die does so in 2010, then copyright will end in 2080. This means the family will continue receiving dues until that time lapses. Works which fall under this category include literary, dramatic, musical and artistic works (UK Copyright Service, 2020).

If, however, the author is unknown, copyright will last for 70 years from the end of the calendar year in which the work was created, although if it is made available to the public during that time, (by publication, authorised performance, broadcast, exhibition, etc.), then the duration will be 70 years from the end of the year that the work was first made available (UK Copyright Service, 2020). Films also enjoy 70 years from the end of the calendar year in which the last principal director, author or composer dies (UK Copyright Service, 2020). So, do not be afraid to use Shakespeare's works since his works were not copyrighted then, and even if they were, copyright would have lapsed. However, be careful because other people's ideas about Shakespeare, such as adaptations, are copyrighted.

Sound recordings and broadcasts last 50 years from the end of the calendar year in which the work was created, or if the work is released within that time, 50 years from the end of the calendar year in which the work was first released (UK Copyright Service, 2020). Broadcast and cable programmes also fall in this category.

#### **1.4.7 Infringements/Restricted acts**

You may be confused about what exactly constitutes an infringement so that a creator has grounds to institute legal proceedings. The UK Copyright Service (2020) suggests the following infringements:

##### **1. Copying the work**

It is wrong, for example, to photocopy an entire textbook. Suppose the instructor asks the class to read a certain book which is not to be found in the library. You are a group of 10 members and decide to contribute some money, buy one book and make nine copies. While this may be pocket-friendly to you all, you just denied a hardworking creator of the book his due revenue.

##### **2. Rent, lend or issue copies of the work to the public**

A public relations officer who makes copies of a CD, for example, to distribute to those attending a certain campaign in a public sphere is infringing on copyright unless he/she has prior permission from the original creator.

### **3. Perform, broadcast or show the work in public**

I have often seen many groups which pick a literature set book and perform it at the theatre to help secondary school students grasp the content in the book. I often wonder if they got permission from the owners of the books. Performing or broadcasting without permission is infringement.

### **4. Adapt the work**

You may like a song and wish to create a version of your own by adapting it from the original. Well, nothing wrong with that as long as you seek permission from the owner.

5. The author of a work, or a director of a film may also have certain moral rights: The right to be identified as the author; and the right to object to derogatory treatment (UK Copyright Service, 2020). Creators of film will infringe on copyright if they fail to do so.

## **1.4.8 Fair dealing/Fair use**

There are certain acts that are allowed. This means you can copy or adapt the work without consultation or worry. Fair dealing or Fair use is used to describe acts which are permitted to a certain degree without infringing the work. According to the American Library Association (2020), Fair use means:

Working with scholarly material for criticism and analysis where the societal benefits outweigh the rights of the copyright holder. It often means that scholarly articles or portions of books, especially those that are part of an academic library's holdings, may be used for educational purposes, as long as they are not copied in their entirety.

Fair use may include:

### **1. Private and research study purposes**

This is where academic writing falls. Copyright law recognises that scholars need to study without hinderance. You are allowed to copy certain portions or parts of material for study purposes. However, you must observe the rules behind citation and referencing.

### **2. Performance, copies or lending for educational purposes**

I mentioned before that various groups often come together and come up with performances based on literature set books. The problem is that those performances are commercialized. The students pay to watch. If no permission was sought, then these groups are earning money that should be going to the original creators.

### **3. Criticism and news reporting**

Journalists and other communicators may need material to support news writing, reporting or any form of communication. They may need to use an image or music, for example. If it's specifically for purposes of writing and reporting news, then no permission to use another's

work is necessary. However, they should also be wary about privacy law. For example, before using another's image in a print story, it's imperative to seek permission.

#### **4. Incidental inclusion**

Incidental inclusion is, 'where part of one work is unintentionally included in another such as a sound recording, artistic work, film or broadcast' (UK Copyright Service, 2020). For example, a journalist who plays jazz music in the background.

#### **5. Copies and lending by librarians**

It is standard practice to have librarians borrowing books not available in their libraries to assist students. Hence, library A can borrow a book from library B. Remember library B is the one that has bought the book. Librarians can also photocopy a limited number of pages from a book.

6. Acts for the purposes of royal commissions, statutory enquiries, judicial proceedings and parliamentary purposes (UK Copyright Service, 2020). There are certain areas where information is needed to fulfil some requirement such as in courts.

7. Broadcasts can also be recorded for purposes of listening to or viewing at a more convenient time.

8. Producing a backup copy for personal use of a computer program.

9. Playing sound recording for a non-profit making organisation, club or society (UK Copyright Service, 2020). For example, if a non-governmental organisation is marking *World Diabetics Day* in a public space, the NGO can play any music without infringing on copyright. Businesses, however, must obtain a license from copyright music societies.

In most academic writing, it is assumed you are engaging with other scholars and together, you form a body of researchers involved in a professional conversation. You need findings and conclusions from fellow researchers to support your own academic pursuits. Hence, the need for Fair use.

### **1.5 Conclusion**

Issues of copyright violation are very serious because they can land you in trouble. Read more on the law.

### **1.6 Activity**

Find out what the copyright law says in your country, especially on fair use and academic writing.

### **References**

American Library Association. (2020). Copyright for libraries: Fair use. Retrieved from <https://libguides.ala.org/copyright/fairuse>

HG.org Legal Resources. (2020). What is intellectual property? Retrieved from <https://www.hg.org/intell.html>

Kenya Copyright Board. (2020). The Copyright Act. Retrieved from <https://www.copyright.go.ke/downloads/send/4-copyright-act/141-copyright-ammendment-act-2019.html>

Smithsonian Magazine. (2020). Ten famous intellectual property disputes. Retrieved from <https://www.smithsonianmag.com/history/ten-famous-intellectual-property-disputes-18521880/>

UK Copyright Service. (2020). UK copyright law. Retrieved from [https://copyrightservice.co.uk/copyright/p01\\_uk\\_copyright\\_law](https://copyrightservice.co.uk/copyright/p01_uk_copyright_law)

Unites States Copyright office (2020). Copyright basics. Retrieved from <https://www.copyright.gov/circs/circ01.pdf>