Abstract

The 411 on Copyright Law: How Does it Define What is Ethical in Workplace Writing?

The objective of this paper was to dispel copyright law confusion for myself as well as for others and interpret how copyright law defines what is ethical in workplace writing. Ethics is doing what is right. Copyright law was created to protect individuals' works and proclaim what is legal/illegal concerning intellectual properties. Copyright law defines ethics in workplace writing by setting the standard by which one is to be governed. Natural law existed before man's law; therefore, ethics defines copyright law. Ethical beliefs set the standard for what man puts in touchable form and calls "law."

Rhetorical ethics is about being able to take a firm stand when it is needed, even with various possibilities and many choices. When students are not being responsible, fair, and ethical writers, teachers should consider it an obligation to judge and act when necessary. A critical point of view calls for people to recognize writing as a social action with ethical and legal implications and not just "floating in cyberspace" for anyone to claim. Critical theory reminds society that writing dwells in an economic setting as a social resource to people participating in society. Writers need to recognize writing as a "social resource to be shared and distributed" instead of as a "private property to be protected." Critical rhetorical ethics call for writers to be freer in constructing electronic networks and to understand that their writing is situated in a network of writers and readers from broad and various audiences.

Table of Contents

The 411 on Copyright Law: How Does it Define What is Ethical in Workplace Writing?

"Every great and original writer, in proportion as he is great and original, must himself create the taste by which he is to be relished" (William Wordsworth). Copyright law and ethics are two essential topics that every writer should be equipped with: familiarity with copyright law like with the back of your hand and genuine ethical beliefs. A good writer is a type of artist who creates mastercreations that can cause the writer to reap great benefits: prestige, fame, fortune, and extremely high ethos. Writers who do not value or equip themselves with the essentials are setting the standards by which they want to be esteemed and remembered. When a writer does not know the laws and rules by which his/her craft is regulated, the writer does not know when he/she is operating within protocol, which has a high impact on credibility. Copyright law is only one sub-heading under the main heading: writing. When a writer acquires knowledge of the law, he/she is only following the words of Pindar (famous Greek poet), "Learn what you are, and be such."

I am taking Teaching Writing for the Workplace this semester. Copyright law and ethics in workplace writing are topics that have been slightly discussed in Teaching Writing for the Workplace and discussed more in Theory of Technical Communication. The scenarios discussed in Teaching Writing for the Workplace intrigued me because of a lack of knowledge, and I realized that copyright law is a vital topic in my career. For example, we had to choose a reading assignment to present to the class. I had to inform my classmates of how to retrieve individual copies of the reading that I was going to present because I could not make copies

for my classmates (I would be guilty of copyright infringement). I had no prior knowledge of this, and it surprised me. When I was teaching English, the administrators of that school district did not supply the students with textbooks. I would make copies out of an English textbook for all my students with paper supplied by the district for copies. I did not consider that prevented the author from making more money. At that time, I had not decided to make writing my career. Now that I am in the writing field and feel so passionately about "owning my own words," I appreciate the value of an author's work and know that I would not want someone to violate my rights or be unethical towards me.

In Theory of Technical Communication, one of my classmates raised some interesting questions about copyright law. She asked, "When do you know when your ideas are really your ideas: How do you know when something is your idea or something you have heard or read in the past from someone else to know if you are plagiarizing or guilty of copyright infringement?" Silence filled the room after the questions. Everyone was in deep thought. I wondered to myself, "How does copyright law cover that type of situation?" In my mind, other questions succeeded that question, which are the questions I answered through research.

With ethics and copyright law being important factors in writing and me re-entering the workplace again soon, I desired to learn more about what it actually means to violate another writer's rights and how to protect my writing. Considering that I had no idea about making multiple copies of a text being infringement, I knew that there was more that I had misconceptions about regarding copyright infringement and ethics with workplace writing. I also wanted to know when my writing is considered belonging to an employer. My interest was grounded foremost

in workplace writing but also in freelance writing since I plan to freelance, publish novels, and publish poetry books.

Copyright issues are factors that can destroy a writer's career when he/she is not knowledgeable on what constitutes copyright infringement. Copyright infringement is an offense and is serious enough for laws to exist to help prevent it. When an individual violates a writer's rights in workplace context, companies may be sued and the guilty individual fired as consequences. In a freelance writing situation, the freelance writer may be sued by the company that hired him/her, never contacted again because of that company being sued, and lose ethos as a result of infringement. I plan to use the research results to avoid being unethical towards someone else and destroying my career over something I would not have done if I would have had prior knowledge.

"Tell me and I'll forget. Show me, and I may remember. Involve me, and I'll understand" (Native American saying). This paper is written for technical writers in the workplace, technical writing students, teachers, and writers of other genres. Copyright law "plays a role" in all writers' lives and teachers who teach those writers the writing process. Readers of this paper will benefit from knowing that bylaws exist and that these bylaws are vital to a teaching, writing, and research career.

With there being exceptions in the copyright law for teaching and education, it will benefit teachers to know about fair use because it may make a difference in the quality of education and information that they can instill in their students. Teachers will be able to inform their students of what they can and can not do when writing. For students to understand present and future ethical issues in technical

communication, teachers must increase students' awareness of possible problems before the student encounters those problems in the workplace. Many teachers' main approach to teaching ethics in workplace writing is to warn against plagiarism, but ethics in workplace writing extends farther than plagiarism. Many possible ethical problems were not known, but electronic technology made more problems known. The movie "Rising Sun" contained many manipulated images. In the past, expensive equipment and expert ability were needed for manipulations of this extent, but desktop publishing technology makes manipulation cheaper and easier (Horowitz).

After reading this paper, readers will have a clearer understanding of the role of copyright law in workplace writing and any other type of writing. Copyright law protects a writer's "original work of authorship" and defines what writers consider ethical in writing.

I used secondary sources to answer specific questions. The research questions that I aspired to answer are:

> What is ethics?

> What is copyright law?

> What is copyrightable by law?

> What does copyright law actually protects?

> What constitutes fair use?

> What does it mean to violate anther writer's rights?

> How can I protect my writing?

> When writing for the workplace, does my writing belong to me or to my employer?

> ➢ How does copyright law define what is considered ethical in workplace writing?

My research consists of information from books, articles, and online. This information was presented by reliable, professional individuals. There is only one sub-topic in this paper, and it is about what is not copyrightable by law. This paper may not answer questions that may arise as readers process the information presented. Additional research may be required to answer additional questions, but readers will find concrete answers to all the questions that I aspired to answer and sources for additional answers.

Ethics

"Whether you are really right or not doesn't matter; it's the belief that counts" (Robertson Davies). The phrase "doing the right thing" is what defines ethics. Davies' words are very true because whether an action or spoken word is actually right does not matter: If the performer or speaker believes that it is right, then the action or spoken word does not defy ethics. If the belief is that I am "doing the right thing," then it is the right thing. Thomas G. Plante, a professor of psychology, ethicist, and author/editor of a few books, presents the notion of "doing the right thing" in his book *Do the Right Thing: Living Ethically in an Unethical World*. Plante proposes a step-by-step strategy of making decisions in any area of life (personal and professional). His strategy is based on five principles that people can use to handle small and large life decisions.

The five ethical principles that Plante proposes are integrity, competence, responsibility, respect, and concern (Plante 35). These are principles that can be

applied in any ethical situation. The principles date as far back as the Bible days and are published in the code of ethics for psychologists. The five were chosen because they are useful for most people despite cultural differences, religious practices, personal situations, or ethical beliefs (37). So many sub-headings fall under the five ethical principles that Plante discusses. Integrity covers honesty, uprightness, morality, and fairness. When a person is competent, he/she is knowledgeable and skilled. A responsible person keeps promises and recognizes the importance of obligations. Respect causes one to treat others as he/she wants to be treated, and concern is showing interest in others' needs (39-43).

From a technical communication standpoint, Carolyn Boiarski considers ethics as "concern for the consumer and citizen should be foremost in relation to everything you write." Allen and Voss states, "Ethics is doing what is right to achieve what is good" (Allen & Voss 5). When influenced to be unethical in the workplace, writers should apply the same ethical practices as when not in the workplace. "The key to ethical action is to behave with integrity that is based on a sound core of personal values" (Allen & Voss). Allen and Voss' implementation of the term "integrity" into their definition of ethical behavior coincides with Plante's basic principles of ethical decision making. Allen and Voss lists ten basic values that they believe are important in a technical communication career:

➢ honesty

➢ legality

➢ privacy

➢ quality

➢ teamwork

> ➢ avoiding conflict of interest

> ➢ cultural sensitivity

> ➢ social responsibility

> ➢ professional growth

> ➢ advancing the profession

Two approaches to handling unethical practices of others and for making ethical decisions in the workplace are doing the jobs in the best possible way, applying analysis to and using the ten main values listed and using language skills to expose ethical issues for the public to examine and debate. The latter is specific to when direct action can not be taken because of professional responsibilities (Allen & Voss 9).

George Slaughter, a technical communicator of about 15 years and professional writer, presented principles for ethical decision making for technical communicators. Slaughter provides six reasons:

> ➢ ethical guidelines are usually unclear

> ➢ technical communicators have hardly any power in the workplace because of their position

> ➢ technical communicators usually confuse business and professional writing ethics

> ➢ guidelines will help improve the usability of the product

> ➢ technical communicators save companies money; therefore, making themselves more valuable

> ➢ guidelines will help technical communicators do the right thing (ethics 1).

Slaughter saw a need to create a model that incorporates both absolutist and relativist views. A relativist (i.e. Aristotle) believes that each situation has to be studied individually. An absolutist (i.e. Plato) has one set of unchangeable guidelines, regardless of the situation. Slaughter's results are three main guidelines for technical communicators:

➢ we are clear on what is and is not acceptable from the beginning

➢ we know the core of our work-principles, audiences, and content

➢ we choose the decision that positively affect the majority

Being clear on standards includes providing clear definitions of technical terms. Recognizing our principles, audiences, and content is ensuring that successors will be able to pick up where we left off, identifying users from broad and various audiences (part of critical theory), and developing a strong product knowledge that will improve communications products. Choosing the decision that positively affects the largest number of people is knowing when to make an unpopular decision when principles, audience, and content are clashing and getting everyone else to agree with the decision. George Slaughter aims to help technical communicators make ethical decisions that benefits the majority by providing the most good (Slaughter 1-5).

Copyright Law

Understanding what being ethical entails prepares writers, teachers, and students for operating with a peaceful mind, knowing that they are operating within legal and ethical principles. What is illegal in workplace writing is automatically unethical, but what is considered unethical is not always illegal. Copyright law is

created to protect individuals' works and proclaims what is legal and illegal concerning intellectual properties. The copyright law was established in 1976 as the Copyright Act of 1976 but has endured a variety of amendments. Copyright is noted as a type of personal/intellectual property right. It protects a particular way an author expresses himself/herself. Entitlements, limitations, and protections are granted to the authors of "original works of authorship" that exist in tangible (can be touched) forms. In other words, expressions (writing, music, etc.) must be expressed in something that a person can touch (paper, CD, palette, etc.) for copyright protection. I will refer to an "original work of authorship" as "creation" (for short) from this point on. Copyright does not protect ideas, the steps taken to do something, or information established as general fact (knowledge) that is expressed in a creation (copyright 1).

Copyrightable by Law

literary works

dramatic works with musical accompaniments

pantomimes, choreographic works

musical works with lyrics

pictorial, graphic, and sculptural works

motion pictures and other audiovisual works

architectural works

sound recordings

Not Copyrightable by Law

> Works consisting of entirely information that is general property
> and having no original authorships:

standard calendars

rulers

tape measures

charts and common source
lists or tables

> titles, names, short phrases, and slogans-but can be trademarked

> familiar symbols or designs like the music symbol

> ➢ small variations of typographic ornamentation, lettering, or coloring

> ➢ small listings of ingredients or contents

> ➢ ideas, procedures, processes, methods, concepts, systems, principles, discoveries, or devices, as well-known from a description, explanation, or illustration (copyright 1)

Many companies secure success and profit with trademarks or service marks. They are used to protect products and services that are not usually copyrightable. A company can distinguish products from its competition through trademarks and distinguish services through service marks. In these cases, words, designs, slogans, names, sounds, and more can be protected. To keep legal protection, owners must guard trade/service marks because owners can lose them if they fail to prosecute or protest companies who use similar marks to describe similar products (Allen & Voss 107-108).

Obtaining Work Protection

A creation is automatically copyrighted when created. At this present time, no publication, registration, or other action is required to secure a copyright. Copyright registration is a separate service available from the United States Library of Congress Copyright Office (www.copyright.gov) for a fee. There are certain advantages to securing further copyright through voluntary registration, and registration may be important to any resulting settlement and/or lawsuit. When suing someone for copyright infringement, having a creation registered and on file at the United States Library of Congress Copyright Office will only strengthen the

offense and result in a winning case. However, legal works with the classification of "made for hire" are considered authored and owned by the employer.

Work for Hire

For "works made for hire," authorship and copyright ownership are forfeited by the writer and transferred to the employer, who then keeps these rights. Copyright law defines the category of works that are "works made for hire." Copyright law requires that a previously written, signed agreement must exist between author and employer to specify that a work's production has been designated for use as "work made for hire." By legal definition, authorship and ownership of "works made for hire" belong specifically to the employer. One may ask if a writer can sue an employer or if an employer can take a writer to court about a creation the writer created: If an agreement on paper was not created and signed by the writer and the employer, by the writer's discretion, the writer can take the employer to court. If an agreement on paper is signed, then the employer can take the writer to court if the writer uses the creation for personal use.

Fair Use

Fair use is when others' creations can be used without permission from the people the creations belong to. Section 107 in the copyright law contains a list of different reasons for which the reproduction of a creation may be considered "fair," which includes the following:

- ➤ news reporting

➢ teaching

➢ scholarship

➢ research

➢ criticism

➢ comment

Section 107 also sets out four factors to be considered in determining whether a particular use is "fair:"

➢ the purpose and character of the use, including whether such use is of profitable purposes or is for nonprofit educational purposes

➢ the nature of the copyrighted work

➢ the amount and substantiality of the work used as an entire criticism

➢ the effect that the use has on the value of the copyrighted work

These four factors are unclear, but specifics that are listed in the copyright law fall under these four factors (copyright 1). Allen and Voss clarify the fair use section of the copyright law a little more than what is stated on the copyright.gov website. The nature of the copyrighted work must be *critical* to its use in the copy (when photocopying and using another's words in your writing). The term *critical* is an unclear term. In the case of a critic using quotes to support a claim about the novelist's descriptions, the quotes are critical, and it would fall within the guidelines of fair use. For a reviewer to quote lyrics to a song to show that the words are timeless and moving would not fit the *critical* term. The best way for writers, teachers, and students to understand the fair use factors is to study some court decisions concerning fair use (Allen & Voss 103-104).

Critical Rhetorical Ethics

James E. Porter, a researcher and professor at Purdue University, discusses legal and ethical issues concerning internetworked writing in *Rhetorical Ethics and Internetworked Writing*. He clarifies how what is illegal in workplace writing is usually unethical, but what is considered unethical is not always illegal. Main topics under what is illegal and unethical in workplace writing are plagiarism and image/graphic distortion.

Plagiarism is using and passing off ideas or writings of another as your own. Plagiarism is illegal in the sense of claiming another writer's work as your own and unethical in the sense of claiming ideas. Since ideas are not copyrightable, it is unethical to take credit for another's ideas, although not illegal. For example, when participating in a conversation on a listserv or conversing orally, using ideas from another person without citing that person is not illegal but is unethical (Porter 129-130). An act like this is disrespectful and betrays the trust of that person and the listserv group. Allen and Voss define plagiarism as the unethical use of others' works. When using information or ideas from a copyrighted or non-copyrighted work, a technical communicator must give proper credit to the author of the work. Otherwise, it would be plagiarism. In academic settings, plagiarism can lead to a failed assignment, a failed course, or even removal from a school. In business, it can lead to the same consequences as previously mentioned: lawsuits, financial settlements, and loss of ethos (Allen & Voss 104-105).

Image/graphic distortion is illegal in the sense of merely changing someone's illustration/graphic and acting as it is your own when the original work is very evident. It is unethical in the sense of changing someone's illustration/graphic so

much that the original is not recognizable, and you are basically turning the idea and creation into your own without noting the person, even though the original work is not evident (Porter 120-121).

Allen and Voss also provide insight of legality and ethics in *Ethics in Technical Communication: Shades of Gray*. "Some actions are illegal, some are unethical, and some are both. Some legal actions are unethical; some ethical actions are illegal, and others are gray (*gray* meaning uncertain)" (Allen & Voss 99). Sam Dragga conducted a survey of opinions on principles and practices of document design titled "Is This Ethical?" It was a national survey of technical communicators and technical communication teachers. The survey contained questions about their perspectives on the ethics of various document design issues. Document design ability gives technical communicators new rhetorical power and force new responsibilities on using that power. The following are the results of Dragga's survey:

> ➢ shrinking type and leading to fit more information - completely ethical
>
> ➢ manipulation of pictorial illustrations - completely unethical
>
> ➢ inflating type and leading to fit less information - ethical
>
> ➢ choosing colors for persuasive colors - ethical
>
> ➢ using spacing to direct or divert reader's attention - ethical
>
> ➢ graphic distortion - unethical
>
> ➢ using typography to decrease readability - ethics uncertain (Dragga 262-263).

When online, writing on the Internet and transferring information to or from a website without permission from the copyright owner is illegal and unethical: It is copyright infringement. Linking information is another area of copyright. Permission is not needed for a simple link but is needed when the link contains a trademark, such as a logo, slogan, etc. (standford 1). When uncertain about law, it is better to rely on ethics than blindly acting and suffering from the consequences afterwards. According to James Porter, Lori Allen, and Dan Voss, the best thing to do is consult a lawyer when uncertain.

In *Rhetorical Ethics and Internetworked Writing* and "The Exercise of Critical Rhetorical Ethics," James Porter promotes critical rhetorical ethics. Porter recognizes a need for teachers to "encourage students to be responsible, fair, and ethical writers" (Porter 187). Rhetorical ethics is about being able to take a firm stand when it is needed even with various possibilities and many choices. When students are not being responsible, fair, and ethical writers, teachers should consider it an obligation to judge and act when necessary (188). A critical point of view calls for people to recognize writing as a social action with ethical and legal implications and not just existing in cyberspace for anyone to claim. Critical theory reminds society that writing dwells in an economic setting as a social resource for people participating in society. Writers need to recognize writing as a "social resource to be shared and distributed" instead of as a "private property to be protected." Critical rhetorical ethics call for writers to be freer in constructing electronic networks and to understand that their writing is situated in a network of writers and readers from broad and various audiences (199-200).

Writers are known to be "married to their work." They are too caught up in "owning their own words." As a part of copyright law, a writer can expand or decrease limitations on their work by designating when others must or must not consult the writer for permission when others want to use portions of the writer's creation. I do not know how many writers are flexible and provide stipulations, but more should by operating within a critical rhetorical ethics' mind-frame. Presently, there is no sure way for a writer to completely "own" his/her words because there is no international copyright protection. Some treaties exist between the U.S. and some other countries but very few. If someone from another country wants to claim something that is owned by someone in the U.S., there is nothing that the author or owner can do unless that country maintains copyright relations with the U.S.

Copyright Law Defining Beliefs

Law is setting the standard by which human behavior is to be governed. Law controls the use of power. The state has the dominant role of enforcing the rules. Since the government controls "force," it is important for a system to exist to control the controller. The government and everyone else are confined by rules. "As explained by Hayek in his various works, the rule of law requires law to be general and abstract, known and certain, and equally applicable to all people" (Younkins). In a free society, each person has a familiar personal area, a protected area that government authority cannot invade upon. "The purpose of law is to preserve freedom and moral agency" (Younkins).

Natural law resists the idea that moral law is comparative, one-sided, and changeable. Natural law comes from the nature of man and the world. It stems

from the use of reason and nature, everlasting and unchangeable, and appropriate

to everyone. Natural law theory supports universally shared moral principles and

standards that promote man above relativist and absolutist thoughts (refer to

Ethics section for definitions). With natural law deriving from what is inborn in

human nature, it would exist even if God did not exist. Thomas Aquinas has

explained that a system of moral beliefs exists for human reasoning that is separate

from God's existence. "Man has a particular nature involving specific natural needs

and the ability to use reason to recognize what is good for man in accordance with

those needs" (Younkins).

Although natural law is needed for Christianity, Christianity is not needed for

natural law. Edward Younkins states the relation of Christianity and natural law:

> Natural law is in agreement with God's will, not because of divine
>
> revelation, but because the nature of man and the world mirror God's will. A
>
> person does not have to be a Christian to understand the conditions and
>
> framework of human existence and social life, although believers in the
>
> Divine will avow that the conditions and framework are of God's creation. In
>
> creating each existent, God implanted the law of its nature within it. The
>
> law of nature, as dictated by God, is superior in obligation to all other laws.
>
> To believe in the natural law is to believe that there are moral standards
>
> that transcend the customs, practices, and laws of any given community.

Younkins' explanations of natural law are somewhat coherent with what Mike

Markel says about ethics and morality. To most people, ethics and morality

generally mean determining what is right and wrong. Morality is basically a

society's set of beliefs about what is right. However, ethics is an individual's

thoughts on what is right or wrong. An individual does not determine his/her own morality. He/she is born into a culture's moral beliefs. On the other hand, an individual chooses what he/she considers the ethical (right or wrong) thing to do (Markel 28). Markel does not mention taking God out of the equation. He does not bring religion into the factor. Younkins and Markel agree on a person being born into morality. From Younkins point of view, it appears that governmental law does not define ethics, but instead, ethics define governmental law. Natural law existed before man's law; therefore, ethics defines copyright law. Ethical beliefs set the standards for what man would/has put in touchable form and called "law."

As stated before, I was in a situation where I taught English at a middle school. The school district was eventually going to implement a state mandated program called America's Choice. Until then, I had to teach studentns grammar, punctuation, and writing without an English book. The school district did not supply my 118 students with English books; I was the only person that entered my room daily who had an English book. Whenever I wanted the students to have the same information as me, I had to photocopy the information or write it on the board. This was an issue for me because I taught two different levels, and they did not always do the same thing. I did not teach 7th graders during the earlier portion of the day and 8th graders during the last portion of the day. The grades switched between the periods. In other words, I could have 7th graders for the 1st period, 8th graders for the 2nd period, and then 7th graders again for the 3rd period.

I do not plan to teach again, but if I do, because of this research, I will not copy 95% of books. I do not care if my administrators desire for me to do so. I must educate them on the copyright law, which I can do by photocopying this paper

(which I did write) and pass it along as their lessons in copyright infringement. In the previous situation where my administrators wanted me to do so, I'm sure that they were not aware of copyright law concerning photocopying and the stipulations with fair use. However, I plan to be a technical writer and freelance write. After thinking about the need for critical rhetorical theory and no way to completely "own my words" (barely any international copyright protection), I will consider my audience and make my work easier to use by not making people consult me to use a certain amount of my work.

 After my research, I do feel a need for someone to challenge the U.S. copyright office to make the copyright law very clear, especially on the fair use section. Some primary research needs to be conducted with someone interacting with United States Library of Congress Copyright Office and doing some extensive technical writing to make the law very clear. Regardless, I feel that not only should I implement critical rhetorical theory into my thought process, but other writers should also. Teachers of technical communication should teach critical rhetorical theory along with copyright law so that more writers will be open to releasing their work without restraint in certain situations.

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