

COPYRIGHT LITERACY: A LIFE SKILL

JEANANNE KIRWIN, K.C.

This information is of a general nature only. It does not constitute legal advice or create a solicitor-client relationship. The reader should seek advice from a lawyer pertaining to any particular fact situation.

“My behaviour helps create the situation to which I am responding.”

— Organizational Theorist
Mary Parker Follett

Twenty years ago, when my teens used Napster to download music for free, I asked them to consider the ethics of their actions.

“It isn’t against the law, Mom,” they replied (which was correct at that time).

“Just because it’s not illegal doesn’t mean it’s right,” I countered. “You’re taking the creations of others for your own use without paying.”

“But musicians only get pennies per copy, anyway,” they argued. “And if it’s on the internet, isn’t it free to take?”

Taking a digital copy of a song, photograph, drawing, or movie seems trivial, because the number of copies is limitless, and the copying feels infinitesimal. Taking copyright-protected works without permission is theft, but that concept is more difficult to grasp than if the object of the theft was physical. It’s clearly wrong to steal a book from a bookstore; is it also wrong to download it illegally?

My (long-suffering) children were exposed early to debating copyright ethics and the reality that the law will always lag behind technology, but the public rarely bandies such ideas at the supper table. According to a 2011 study conducted by Australia’s Intellectual Property Awareness Foundation, about 30 percent of Australians are “accidental pirates” (Analysis & Policy Observatory apo.org.au).

A 2018 Canadian study confirmed the same outcome (Copyright Literacy Experiment —

Canada.ca). While the study outcomes are reported in an academic manner, the message is the same: Canadians don’t understand copyright law very well. (Plus, that report is the source of Follett’s apt behavioral quotation.)

The proof of the pudding is in the eating. A regular part of my intellectual property (IP) law practice comprises helping clients respond to copyright infringement allegations of using unlicensed images on their websites and streaming movies from illegitimate providers.

Regarding movie streaming, it’s likely most users are aware they’re getting pirated copies because the purchase price is low or even non-existent. With unlicensed website images, however, unauthorized use can be innocent. A search engine query for certain images yields numerous digital examples, and it’s difficult to discern which are freely available, and which require licenses. It’s easy to be ambushed.

Third-party content owners, such as newspapers, magazines and stock photography licensors, engage copyright monitors to provide compliance services. The service provider uses copyright tracking tools, often powered by artificial intelligence, to scour the internet for unlicensed uses of images. Once an unlicensed use is captured, the service provider sends a notification to the alleged infringer demanding removal of the offending image from the website, and payment of an amount much higher than an upfront license fee would have been. Some recipients ignore these notices and interpret the ensuing silence as proof the demand was not authentic. Yet, sleeping dogs do eventually awaken. The next step in the infringement pursuit is a demand letter from an IP law firm, threatening the issuance of a Federal



Court action to rule on the infringement, and requiring an even higher payment to avoid that consequence. When clients refer these letters to us, we advise them that while it may be possible to negotiate a lower payment, they ignore these letters at their peril: the IP law firm will file the Federal Court claim and the Federal Court will most likely rule against them, resulting in judgments requiring payment of even higher amounts that include court and substantial legal fees.

Many clients complain they’ve fallen into a trap. “But I found it online!” is a frequent refrain. They seem to have been persuaded that the public domain is large indeed, and that whatever appears on the internet is free for taking, copying, and using.

In a recent British Columbia case, an educational software developer successfully sued an individual who posted YouTube links of the developer’s information without its permission. The case stands for the principle that because content is online doesn’t mean it’s free to use or “in the public domain” (*Linkletter v Proctorio, Incorporated*, 2023 BCCA 160).

What is at the root of this trap, and what can be done to equip internet users against it?

A major problem is misinformation. Some educational institutions advise educators that they and their students can freely take publicly available internet materials, unless materials are technologically protected or contain clearly visible notices prohibiting educational use, so long as they provide attribution. Such advice is risky, because as a sweeping statement, it doesn’t consider the facts of a particular situation or the nuances of copyright law. More seriously, the advice may give students the false impression that

taking from the internet is permitted. If taking is permitted in the classroom, where learners often encounter new concepts for the first time, then why not download images, movies, and books?

The solution to these problems is copyright literacy. If literacy is the ability to communicate and operate in a field, then copyright literacy is the ability to recognize a copyright issue and respond to it appropriately. Cambridge University professors define the term as “Acquiring and demonstrating the appropriate knowledge, skills, and behaviours to enable the ethical creation and use of copyright material” (*Copyright and Digital Literacy: Rules, Risk and Creativity*, Chapter 7 — “Digital Literacy Unpacked,” cambridge.org). Cambridge professors Jane Secker and Chris Morrison cited Tania Todorova of Bulgaria with first coining the phrase in 2012.

“Copyright is a mainstream issue,” writes Lesley Ellen Harris, founder of Copyrightlaws.com, a platform providing copyright education in both Canada and the U.S. “Copyright literacy is about educating ... the public about copyright law and raising their awareness of how copyright law affects them.” *An In-Depth Guide to Copyright Literacy: Everything You Need To Know* — Copyrightlaws.com: “Copyright courses and education in plain English.”

In an article written for the World Intellectual Property Office, Harris quoted Maria Pallante, former U.S. Registrar of Copyright (*Understanding Copyright — A Life Skill*, wipo.int): “It’s one of those life skills now, right? When you graduate from high school or college, you should know how to read a map, you should know how to use GPS, you should know a little bit about copyright. If you are somebody who is going to be in a field where you will encounter copyrighted materials all the time, you should know more. If you’re going to be an artist or musician and you’re getting a red-hot degree in the performing arts, you should know a lot. And I don’t think that’s quite the case — I don’t think it’s been built into the curricula.” Harris’ article describes what an effective copyright education program would contain (see Elements of Copyright Literacy Training).

ELEMENTS OF COPYRIGHT LITERACY TRAINING

I’m not trained as an educator. Having said that, a social studies or social sciences course seems an appropriate context in which to incorporate a unit that builds copyright literacy. Here are suggestions for components of a copyright literacy unit:

1. What are the basics of copyright law — creation, ownership, term, and Canada’s international obligations?
2. What is copyright infringement and what are the consequences of infringement?
3. What works are in the public domain and what works are still copyright protected?
4. How are licenses or permissions obtained?
5. What are types of licenses, and how does a user find the terms of a purchased license?
6. What are the fair dealing (Canada) and fair use (U.S.) exceptions to infringement?
7. How does a creator protect their musical, artistic, and literary works?

As with most educational exercises, a copyright literacy unit is best presented by teaching the principles, then applying them to real-life situations. As examples, students could analyze how copyright concepts apply when

- photocopying a poem, a chapter, a short story, or a textbook, first for research and/or private study purposes, and then for other purposes;
- downloading music, a book or a film;
- creating a mash-up;
- posting images created by others to a Facebook or other social media page; and,
- using photographs or images created by others on a website or an audio-visual project.

For more information, please see *Understanding Copyright — A Life Skill*, wipo.int, and Copyrightlaws.com websites cited in the main article.

Just as students are taught keyboarding skills, internet research skills, and the ability to discern misinformation and disinformation — life skills in the modern world — they must learn how to access content responsibly and use it fairly. Students who can delve into the depths of the worldwide web, analyze information, and then produce works that are in themselves copyright protected need not go to law school to identify other third-party materials that are copyright protected and therefore can only be used with permission.

While honing their copyright literacy skills, learners will ensure their creations are not infringed. Providing students with copyright literacy skills will yield behaviour that helps create a desirable situation — one in which copyright is respected. ■

Jeananne K. Kirwin, K.C., an Edmonton lawyer, practices in the areas of intellectual property and corporate/commercial law with an emphasis on trademark and copyright registration and enforcement (kirwinllp.com).