



Texas Association of School Boards

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Intellectual Property in Schools

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In today's competitive digital environment, sophisticated intellectual property owners have surprised many school districts with threats of litigation over misuse of protected property. This article answers common questions board members may have about copyright, trademark, and patent issues at public school districts.

1. What is intellectual property?

Intellectual property describes categories of assets created by the human intellect, including copyrights, trademarks, and patents. When someone writes an op-ed, creates a video, or designs a unique school mascot or logo, the resulting works are all forms of intellectual property. Intellectual property laws protect owners or creators of these assets from unauthorized use by others.

2. What laws govern intellectual property?

Three federal laws protect intellectual property: the U.S. Copyright Act of 1976 (17 U.S.C. §§ 101-1401) for copyrights; the Lanham Act (15 U.S.C. §§ 1051-1141n, also known as the Trademark Act of 1946) for trademarks and service marks; and Title 35 of the United States Code for patents. These laws enable intellectual property owners to take legal action to protect their intellectual property from misuse by others and, in some cases, to recover damages. Additional rights may come from state laws.

3. Who owns a district's intellectual property?

In Texas, the trustees of an independent school district may acquire and hold real and personal property in the name of the district, with all rights and titles to the property vested in the trustees. Tex. Educ. Code § 11.151(a), (c). Therefore, unless otherwise provided by law, such as for patents that are owned by the inventor, a school board of trustees is generally the owner of a district's intellectual property.

4. What are examples of intellectual property owned by districts?

Districts that assert ownership rights to intellectual property often do so for copyrights and sometimes for trademarks. It is rare, if at all, that a district would own a patent.

Districts acquire copyright ownership in “works made for hire” created by employees within the scope of their employment or by independent contractors under written agreements. 17 U.S.C. § 201(b). Any original work fixed in tangible medium is protected. This includes literary, musical, dramatic, choreographic, pictorial, sculptural, sound, and audiovisual works. 17 U.S.C. §§ 101-102. Thus, some districts seek protection for original school songs, dance routines, statues, test questions and answers, curriculum scope and sequence, or even blueprints of building designs.

A *protected mark*, including trademarks and service marks, is any word, name, phrase, symbol, device or design, or a combination, that identifies and distinguishes a provider of goods and services. 15 U.S.C. § 1127. Some districts seek to protect school trademarks, such as unique logos, seals or crests, mascots, or even mottos.

Because patents may only be owned by the inventor or person who made the discovery, it is rare that a school district would own a patent. 35 U.S.C. § 101.

5. Why might a district want to protect its copyrights and trademarks?

Infringing activities can deprive the original owner, including a school district, of potential revenue derived from legally owned materials or of legal control over how the materials are used. For example, a school may lose potential revenue when someone uses the school’s logo, seal, mascot, or motto to sell school merchandise for personal gain. Some districts have discovered mock or unofficial school websites that use the district’s insignia to disseminate incorrect or conflicting information. Such misuse can adversely affect the district’s reputation, decrease student enrollment, and erode public trust or general goodwill with the community. Therefore, districts often protect their marks and copyrights to reduce public confusion, prevent bad publicity, and protect the public from fraud.

6. What steps should a district take to protect its copyrights and trademarks?

While registration of a copyrighted work or trademark is not required for legal rights to attach, federal registration with the U.S. Copyright Office and the U.S. Patent and Trademark Office can provide a district significant legal advantage. 17 U.S.C. § 411(a); 15 U.S.C. § 1125. By formally registering its copyrights and marks, a district can take legal action against misappropriation, unauthorized use, or misuse by bad actors. Districts should work with school attorneys who specialize in intellectual property law to ensure proper registration.

7. May the board give permission for others to use its protected copyrights or trademarks without violating the prohibition on gifts of public funds?

Yes. A board may take board action to approve or to delegate authority to approve use of property that benefits the district. The district then may grant specific permissions, or licenses, to use district intellectual property for a limited time or purpose in exchange for a return value to the district. For example, a district may grant a movie company a license to play a copyrighted school song in a film about a well-known graduate in return for a royalty each time the film is played. Or, a district may grant a parent-teacher organization complimentary permission to use school logos or seals for the purpose of fundraising to benefit students. A district may also grant a vendor a limited license to use school insignias during limited time periods to provide families discounts on yearbooks, class rings, jackets, or graduation mementos.

8. How do intellectual property rights violations occur in districts?

There are many misconceptions in this area of law, from mistaken assumptions that anything found online is free or part of “the public domain,” to incorrect beliefs that any use by a district employee or governmental official is excepted by law. Thus, violations can occur in both directions—by district employees and board members against a third-party copyright or trademark owner or, conversely, by a violator against the district. Legal mishaps often occur when districts lack clear policies, training, resources, or consistent enforcement to deter violations. Without clear parameters for acceptable or prohibited use of intellectual property, a district increases legal risk for infringement actions, requiring time and resources to defend or pursue.

9. What are some examples of copyright and trademark violations in schools?

Unfortunately, far too many scenarios at school may lead to potential violations. Consider the following:

- A teacher scans an entire textbook or study guide and uploads the copy to a virtual classroom to share with students so that students do not have to purchase their own copies.
- A teacher inserts entire popular song recordings into instructional presentations to make them more engaging and uploads the presentations to the internet for the public to view.
- A parent-teacher organization downloads and prints multiple copyrighted images of popular movie or book characters to decorate schools without permission from copyright owners.
- A school-sponsored after-school program uses an employee’s personal streaming service subscription to show movies to keep students entertained.

- A student uses the district’s network and equipment to download and duplicate the latest music videos for distribution without permission from video owners.
- A board member downloads an image from the internet to use for a district-affiliated social media page without permission from the image owner.
- An employee copies various content on the internet to create the website, logo, mascot, and other promotional items for a new campus.
- A private company uses the district’s name and motto to create and sell merchandise without the district’s approval.
- An individual uses the district’s logo and mascot to create a crowdfunding page to solicit donations for personal gain.
- An individual uses photos and videos found on the district’s website for unauthorized purposes.

Without proper permissions from the copyright or trademark owner, the activities above deprive the owner of potential revenue derived from a work and control over use of the work. The law protects against such violations and provides avenues of legal action.

10. Are there special exceptions from copyright infringement for teachers?

Yes, though care should be taken not to exceed the scope of these exceptions. Typically, a teacher may claim a “classroom use” exception to use limited amounts of copyrighted materials under specific conditions without permission of the copyright owner for performances and displays during in-person classroom instruction and for online distance learning. 17 U.S.C. § 110. Note, however, that various conditions must be satisfied to claim the classroom use exception. *See* H.R. Rep. No. 94-1476, at 81-83 (1976) (setting minimum allowances under 17 U.S.C. § 110 for how much material may be used for face-to-face teaching activities); *see also* 17 U.S.C. § 110(2) (the Technology, Education, and Copyright Harmonization Act, or TEACH Act, prescribing conditions for which copyrighted content may be used when providing virtual instruction).

Additionally, anyone, including a teacher, may claim a “fair use” exception when using copyrighted content for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. Like the classroom use exception noted above, however, courts will assess alleged infringement against legal restrictions on a case-by-case basis. *See* 17 U.S.C. § 107 (outlining a four-part test for the fair use exception: purpose and character of the use; nature of the copyrighted work; amount and importance of the portion used in relation to the copyrighted work as a whole; and effect of the use upon the potential market for or value of the copyrighted work).

When in doubt, the safest approach is to obtain specific authorization from the copyright owner or purchase the appropriate licenses for use of the materials.

11. Do instructional materials created by a teacher belong to the district?

Yes, if the employee created the materials within the scope of employment or as an independent contractor under a written agreement for a commissionable work. 17 U.S.C. § 201(b). Under the works-for-hire exception from copyright protection, works that would normally belong to the original author belong, instead, to the hiring entity. 17 U.S.C. §§ 101, 201(b); TASB Model Policy CY(LOCAL). *See Shaul v. Cherry Valley-Springfield Central Sch. Dist.*, 363 F.3d 177 (2004) (noting that federal copyright ownership in tests, quizzes, and other educational materials prepared by a teacher in the course of employment belonged to the district and, thus, were not illegally seized by the district from a teacher’s classroom); *see also Pavlica v. Behr*, 397 F.Supp.2d 510 (2005) (allowing a high school teacher to enforce copyright of works against a university training program using his materials that were created outside of employment, i.e., at home, on the teacher’s own time, without school compensation, direction from the school, or any other involvement from the employing district).

Ultimately, whether materials were created within the scope of employment is a case-by-case analysis. In order to ensure that a district can legally claim ownership in works created by its employees, the district should establish the scope of employment in board policy, set clear expectations for employee conduct in employee handbooks, and, when contracting for work, include clear provisions for copyright ownership in the hiring agreement. In turn, teachers desiring to own copyright to certain works subject to the works-for-hire exception should not be using district time, materials, resources, equipment, other personnel, students, or such district involvement in their personal pursuits.

For more information about Works for Hire, see the U.S. Copyright Office’s [Circular 30, Works Made For Hire](#).

12. May a teacher show movies to students for noninstructional purposes, such as for a reward or for entertainment?

No, unless the teacher has obtained a proper license or permission from the original rights holder to do so. If showing a movie simply for entertainment purposes, a person or entity must obtain a proper permission or license first. The classroom use and fair use exceptions do not include showing the movie for recreation or entertainment purposes, even if there is cultural value or intellectual appeal. *See Can I Use Someone Else's Work? Can Someone Else Use Mine?*, at the [U.S. Copyright Office's Website](#).

13. May a teacher read a copyrighted book or story over the internet to students?

Yes, but only if the content:

- is in the public domain,

- qualifies as fair use,
- is being delivered as distance education in compliance with the TEACH Act, or
- has been licensed to the district for this purpose.

Conservatively, teachers would be wise to obtain proper permissions from copyright owners for the intended purpose.

14. Who owns the copyright to a student work or the patent to a student invention?

In accordance with copyright laws, the student, or the parent of a minor student, holds the copyright in the student's original works—even those created at school or generated for school assignments. *See* 17 U.S.C. § 201(a) (vesting initial ownership of the copyright in the author of the work). *See also* TASB Model Policy CY(LOCAL) (providing that a student shall retain all rights to work created as part of instruction or using district technology resources). A student (or all students, in case of a group invention) owns the patent to an invention or discovery, regardless of motivation for the invention or nature of resources used. 35 U.S.C. § 101.

Thus, before a district uses student works, such as using student art or writing to decorate the district website or for school publications, the district should seek parental permission or, for students 18 or older, student permission. Districts may seek general permission with a single, broadly worded permission slip at the beginning of the year or may seek specific permission for each incident of use. The broader the projected use of the student work, the more the district needs to seek specific permission instead of relying on a general permission slip. TASB Policy Services offers a sample Release Form for Display of Student Work and Personal Information, which can be found under myTASB access in the Regulation Resource Manual at FL(EXHIBIT), Exhibit E.

15. What is the penalty for infringing on a copyright or trademark?

An owner of an exclusive right under a copyright is entitled to sue for either actual damages and profits or statutory damages, and in certain cases may seek punitive damages. 17 U.S.C. §§ 501(a)-(b), 504. Although there is no immunity from being sued, there is some relief from recovery of damages by copyright owners against instructional staff acting in good faith under a legal exception. 17 U.S.C. § 504(c)(2). Under limited circumstances, a district may also claim legal relief under a safe harbor rule for infringement by users of its technology under the Digital Millennium Copyright Act (DMCA), discussed below.

Likewise, any person infringing on the rights of a mark registrant may be liable for civil remedies provided in 15 U.S.C. § 1114 for unpermitted use, including profits or damages if infringement was knowing or intentional. An infringer may also face federal criminal charges. 17 U.S.C. § 506. In Texas, state law further provides both civil remedies for trademark infringement, such as injunctive relief and damages, including attorney's fees, as well as criminal penalties for counterfeit activities, up to a first degree felony depending on the value of the counterfeited items or services. Tex. Bus. & Com. Code §§ 16.101-.104; Tex. Penal Code § 32.23.

16. Is a district liable for infringing activities that occur on district technology without the district's knowledge?

Not necessarily, if the district complies with safe harbor procedures under the DMCA. School districts qualify as an eligible service provider and may claim safe harbor from monetary liability for copyright infringement by district technology users under Title II of the DMCA, sometimes referred to as the Online Copyright Infringement Liability Limitation Act. 17 U.S.C. § 512(e); see 17 U.S.C. § 512(k) (defining *eligible service provider*). Required procedures to remain under safe harbor include, among other requirements, the designation of an agent with the U.S. Copyright Office and the immediate removal of allegedly infringing materials. 17 U.S.C. § 512(c); TASB Policies CY(LEGAL) and (LOCAL).

Failure to designate an agent with the U.S. Copyright Office may leave a district vulnerable to certain types of copyright infringement claims without the ability to claim legal relief under the DMCA. 17 U.S.C. § 512(c)(2). TASB Policy Services offers sample procedures for designating a notification agent and other resources in its Regulation Resource Manual at CY(REGULATION) and (EXHIBIT).

For more information about a district's rights and responsibilities under the DMCA, see the U.S. Copyright Office's [Digital Millennium Copyright Act Website](#).

17. Is there insurance coverage for intellectual property claims?

Yes, some insurance providers will provide legal defense against alleged violations of intellectual property rights. School districts should contact their liability carriers to determine limits of coverage. TASB's Risk Management Fund recommends that districts contact their insurance providers immediately upon receiving notices of alleged violations to assess potential liability.

18. What can district employees do to avoid allegations of copyright infringement?

The best way for district officials and employees to avoid claims of copyright or trademark infringement is to use original works. However, creating original content

requires time, money, specialized skills, and other dedicated resources. The next best option is to obtain proper permissions from original content creators or owners for use that exceeds statutory exceptions. However, seeking permission may require both time and money, and may be difficult if under a deadline. Another option is to use a third-party service to broker permissions or create original works for the purpose of licensing them for use by others. For example, one non-profit organization, Creative Commons, aims to increase free content to the public by crowdsourcing content that does not require usual permissions. Finally, a less costly but arguably less creative option is simply to use nonoriginal content in a manner that complies with the law.

19. How can a school board reduce legal risk associated with intellectual property infringement?

With proper oversight, boards can enable an optimal district environment for intellectual property compliance to protect their schools from costly consequences.

In addition to avoiding activities that may constitute infringement, school board members can help their districts reduce infringing behaviors by:

- (1) adopting policies that establish clear parameters concerning use of protected intellectual property;
- (2) establishing clear expectations for acceptable use, such as directing the creation of administrative regulations guiding use of intellectual property of the district or others;
- (3) supporting education and training about proper use of intellectual property;
- (4) providing necessary funds that enable legal use of copyrighted content; and
- (5) authorizing legal action, if appropriate, to protect the district's intellectual property.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/business/documents/intellectual-property-in-schools.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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