

“We Believe in Being Honest”: Using Copyrighted Material in Teaching

Roger K. Petersen and R. Devan Jensen

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The Religious Educator held the following interview to help teachers and other Church members avoid common mistakes while using copyrighted material.

RE: Please tell us about what you do.

Petersen: I am manager of the Intellectual Property Office at the Church Office Building. That name is sometimes confusing. When people first hear it, they think, *Wow! Intellectual Property*. Actually it is very simple. Church intellectual property consists of words and ideas we want to protect. We do it with copyrights, patents, trademarks, trade names, and service marks. We also do it by declaring certain materials as “private and confidential.”

RE: What is Intellectual Reserve, Inc.?

Petersen: To assist with its intellectual property work, the Church has established a corporation called Intellectual Reserve, Inc. (IRI). Most large companies around the world have similar corporations with which they protect their own intellectual property.

For an example of how this works, if a person goes to the Church Archives to view a document, that document may actually belong to the Corporation of the Presiding Bishopric. But the rights to use the words on the paper belong to IRI. This distinction is basically to protect the Church, and it creates an entity with specific responsibility to protect against misuse.

RE: For our teachers' benefit, will you explain what a copyright is?

Petersen: A copyright simply stipulates into law that a person or organization that places a piece of writing or artistic creation into a tangible form has rights to determine how that creation is used. These rights do not have to be registered, although it is best if they are. Any person or organization may register a copyright with the U.S. Library of Congress.



Roger K. Petersen, manager of the Intellectual Property Office

Photographs by Craig Dimond

A copyright also means that reproduction rights to a writing or artistic creation are considered property. These rights can be marketed; they can be transferred; they can be inherited. These rights are property.

The Church has many different artists who do work for its organizations. Literally, it has hundreds. There are also many volunteers. Usually, we try to fix the rights to copy these creations via contract or agreement. Always it is certified and attested. A Church employee must sign over to the Church his or her copyrights to writings and other creations made while at the job site. Other artists from whom we purchase creations will often assign the copyrights over to the Church. Some do not, however, because they often wish to sell prints of their

creations, meanwhile allowing the Church simultaneously to use them in whatever way the Church wishes.

As the contracts are entered into, the Intellectual Property Office (IPO) assigns a code to each contract and work of art. These codes are a quick way to identify exact terms of most contracts. Finally, before a Church designer or producer is able to use these works of art or writing in a Church publication, he or she must report that code to the IPO; thereby, we can specify what rights the Church has to use the work, and we can ensure that the Church does not infringe against any individual's or organization's intellectual property rights.

RE: Must a copyright be registered?

Petersen: Whenever the Church publishes a magazine, manual, or other creation, the IPO registers the copyright with the Library of Congress. But, contrary to what many people think, a person does not have to register a copyright with the Library of Congress to have it valid. Actually, the moment a creation is fixed in a tangible form, it has copyright fixed as well. That copyright belongs to the creator. These rules guide photography, art, music, and the written word; anything an individual creates is protected. A person can take pictures, and each time a new picture is taken, a new copyright is created.

RE: How does the Church protect copyrights?

Petersen: Here in the Intellectual Property Office, we are vigilant about protecting all copyrights, both those the Church owns and those that private individuals own. As a result, we track infringing Web sites and other forms of copyright abuse. Once a Church member came to us with a product he had made featuring a beautiful painting by Harry Anderson. He actually wanted to use the Anderson painting to sell his products. Now the Church holds the copyright to that painting. It hangs in nearly every temple in the world. We told him he could not use the painting. He had invested a great deal of money in his product, and he was incensed that we would deny him permission to use that painting. But we had to protect the sacred character of that painting. So we simply invoked the copyright law.

There are several ways to defend against copyright infringement. We do not always have to sue people or companies. One of the best is called a UDRP. It means Universal Dispute Resolution Process. It is much less expensive than going to court. The parties come together and submit the case to a panel of experts. Before going to the panel, each of the parties must agree to abide by the decision of the panel.

The process was created because of the many, many cases of infringement caused by the proliferation of the Internet.

It is so easy to place pictures on the Internet or download them. People have come to use it as an open source for materials. And usually they don't think about copyright infringement. But whenever someone takes the intellectual property of another and uses it without permission, that is copyright infringement.

RE: What advice do you have for teachers who want to use Church materials?

Petersen: Here are some questions and answers that I just finished writing for a group of teachers. These are the most commonly asked questions that we have relative to copyright law.

“Can I copy music?” If you want to use the songs from the Church hymnbook or Children’s Songbook for Church purposes, you can usually copy that music unless there is a specific notation that says “Do not copy” following the song. Our hymnbook contains a few wonderful old Protestant hymns. Usually, these may not be copied, so watch for that notation. Most important, you may not go down to the music store and buy one copy of music for the choir, take it back to the ward library, or any library, and make dozens of copies for choir members. Your bishops will just have to invest in enough music for the entire choir. As bishop of my ward, I invest \$300 a year for choir music.

“Can I download music off the Internet, or some other electronic medium, for Church purposes?” Almost always the answer is no, unless you are paying a licensing fee to some organization. You should always contact the publisher of the music before such downloading. Even though the electronic means have made such downloading very easy, we must be honest. Our Church teaches honesty. Think how you would feel if you had created a beautiful piece of music—perhaps it was your livelihood to sell this music—and then someone simply stole your creation, paying you nothing. There was a very prominent musician who was giving a fireside not too long ago. A woman came up to him and thanked him for writing such beautiful music. She told him that she hoped he would be able to continue doing it forever. He asked her where she had purchased the music. She said, “Oh, I just downloaded it off the Internet.” She had no clue that she had stolen his livelihood. He said, “How can I keep writing beautiful music if my children cannot be fed?” Those were his words to me.

“Can I copy Church manuals?” We encourage you to copy the materials in Church manuals for family, home, and personal use. You

may not, however, sell the materials that you copy. These materials may not be used for commercial profit. They were created through consecrated effort, meaning those who created them did not receive pay. Their work was done because of a priesthood calling. The Church does not want such efforts to enrich someone publicly or privately. I have worked on many, many occasions late into the night with these committees. Their efforts are truly remarkable. You cannot pay someone to do what these committees do.

“Can I copy pictures from the Church magazines?” You may copy these pictures for your family, home, and personal use unless it says “May not be copied” near the picture. When the Church purchases the rights to use a painting, the artist specifies the extent of copyrights he or she is willing to give. We must abide by the terms of the specific contract that allows us to use that painting in the magazines.

I would like to talk more about the Internet here. The Internet has exploded on us in the last five or six years and has changed the way we actually live. I just returned from a conference in San Francisco. It was the Eighth Annual Internet Law Conference. I was astounded to learn what the Internet has actually done to business. The ease of response, the quickness of a business transaction, and the rapid movement of money across the airwaves have all created a climate of increased commerce. But the Internet has also created a climate for outright larceny. Many people do not hesitate a second to use the Internet to get any advantage they can economically. A little belatedly, businesses are waking up to new ways their products are being taken without appropriate payment being made. These same businesses are now investing in ways to track illegal copying, and they are going after even the small-time infringement cases.

“How can I get permission to use Church materials for a commercial purpose?” When the Church clearly owns the copyright, trademark, or patent to intellectual property, we do license others to use it. A good example is the CTR shield. We license several companies to make rings. This brings in enough revenue each year to serve the missionary program of the Church well. All the proceeds go directly to further the cause of the gospel. We would appreciate it if people wanting to use Church intellectual property would first send us an e-mail requesting such use. Get permission before you use material for profit. Write to cor-intellectualproperty@ldschurch.org. Or just call us at 1-801-240-3959.

“Can I show commercial videos and DVDs at Church functions?” Generally, no. You can, however, under certain circumstances. It is

okay to show a movie in the course of face-to-face teaching (if it relates to the topic of the lesson). But if you are going to show a commercial movie to a large gathering of seminary students, you must buy a public performance license. If you are showing a commercial movie in your home to a few friends, then you may do that simply by purchasing the movie. But this does not allow you to show it to large groups. The cover or jacket to any movie will usually have licensing information on it. At least it will give you a number you can call.

“Can I alter Church-produced audiovisual materials to make special programs for Church activities?” No. Before I came to the Intellectual Property Office, my wife was known in my local stake as the “video lady.” I often helped her. She would take Church-produced videos and cut and clip them so as to make wonderful backdrop scenery for our stake youth choirs. The programs were lovely and inspiring. What we did not realize, however, was that embedded into every Church audiovisual product are materials with special rights attached. These materials may be used only in the context they were originally planned to accomplish. Every composer, lyricist, or photographer has rights. They have the rights to determine how their products appear. A local cutting table does not accomplish this. And it is illegal. I remember what a shock it was for me to learn that even the individual paintings on the wall during an interview that is taped by our Audiovisual Department have copyrights that must be taken into account. Our office requires every designer or producer to submit a copyright Intellectual Property Report before any product is released to the public. Every element of a production must be accounted for—every painting on the wall, every song, and every selection of poetry. All of these have rights attached to them. We must be vigilant in protecting the rights of others.

“What about Church copy machines? Can we use them?” Recently, our office had a sticker made up for every Church copy machine in the world. On this sticker, we quote the specific laws that Church members are bound by when they make copies. Everyone should read this sticker before making copies. You should not use Church copiers to make personal copies, especially when you are duplicating copyrighted work. Keep in mind the fact that every time you make a copy on a Church copier, you should ask yourself these questions: Does this material have a copyright? Am I violating that copyright? Am I creating a derivative work? Am I making money out of this either personally or for the Church? Do I need to pay a royalty? Does the Church need to pay a royalty? Now, if a Church teacher is just trying to put together something good for his or her seminary or Sunday School class and Church-produced materials are being used, we would usually allow

copying as long as such copying does not violate copyright law.

RE: When can teachers use copyrighted materials in a classroom?

Petersen: In section 110 of the U.S. Copyright Code, there is a part of the law called face-to-face teaching. Let me read from that: “[The] performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction,” is allowed. This, however, does not apply “in the case of a motion picture or other audiovisual work . . . that was not lawfully made . . . and that the person responsible for the performance knew or had reason to believe was not lawfully made.” (See also www.copyright.gov/title17.)

RE: Some instructors like to create Web sites to pass along their instructions. Is that okay?

Petersen: The First Presidency has asked that Church teachers and members not create unofficial Web sites. I know of several teachers who literally load Web sites down with “extra stuff” to use in Sunday School classes. You can see teachers coming to class with their arms loaded with things to pass out to their class members. They often get this material from these unofficial Web sites. The Church works hard to keep the members studying directly from the scriptures and the words of the prophets. The curriculum plans developed by the Church contain sufficient materials to call forth the Spirit. Remember, a teacher’s goal must be to have the Spirit testify to the student that the gospel is true. That is not usually accomplished by having the student pack away an armload of paper. As good as these handouts are, most of them end up on the floor, in the garbage cans, or stuffed into a drawer somewhere. I know because I have cleaned up the chapel after Sunday classes on numerous occasions.

RE: What is “fair use,” and how does it apply to teachers?

Petersen: Section 107 of the U.S. Copyright Code says this: “In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include . . . the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.” Therefore, first, your use must be for noncommercial purposes. Most research would be dead if we did not have “fair-use” laws. Teachers and students doing research need to quote from authorities, but if the final research

paper contains 80 percent quotations, that is hardly “fair use.” I know students and some professional writers who have simply dovetailed together quotes of prominent men and women and published them. Wherever we can, we stop these kinds of publications. As a bishop, I do not like to see youngsters giving talks where they read entire articles from Church magazines over the pulpit. I have tried an experiment in my ward. I require the youth to go to the pulpit with nothing more than their scriptures and one or two quotes from the prophets. It is amazing how much more the Spirit testifies in these talks.

The second thing to consider in defining “fair use” is “the nature of the copyrighted work.” There are occasions where instructors will take the very essence of another person’s work and just copy the idea. This violates “fair use.” It doesn’t take many key words of a central idea to place a person in violation. President Gerald Ford once sued an author who had copied just three words from one of his writings. The court held in favor of President Ford because these words, of course, were the very heart of his article. The party being sued said, “Well, we only copied three words!” But those three words were the very essence—the heart—of the writing.

Generally, we say in this office, trying to establish a guideline that fits, that a person can copy less than a paragraph or about four lines. If it is more than that, you may be better off using your own words. Usually, the copied material has to support or buttress something you are saying yourself.

A third point to consider is the effect your copying has on the potential market for, or value of, the copyrighted work. Sometimes copying entirely destroys an original author’s ability to profit from his or her creation. A good example of this occurs when people make copies of famous artistic works and reprint them for resale. The copies may only be small notebook size or they may be a simple cross-stitch, but people begin framing them and selling them. This dilutes the market for the original artist. One of the hardest things we do is protect Elder Neal A. Maxwell’s quotes. Everyone, it seems, wants to make something to go on the wall out of one of his statements. They want to engrave the sayings in metal or print them up with burnt edges. Usually, this is not considered wrong if it is done for personal or family use, but to make them up for commercial sale without specific, written permission is a violation.

There are people who develop entire cottage industries around statements on Primary or General Authority gems; they want to use Church trademarks and symbols for commercial sale. You would not believe the number of people who want to do this. We write letters to them asking

them to refrain, and sometimes we even contact their priesthood leaders.

Fourth, sometimes people will blatantly misuse materials. I have a letter from a member who wants to use a General Authority's quote to support a particular political position the member has. It may be a good idea, but it is not right to imply endorsement of a General Authority to one's idea. This person wants to write to a New York newspaper. He has all kinds of research to back up his idea. Just to "salt" his argument, however, he wants to throw in a famous quote from one of the Brethren. We simply deny such permission. Again, the idea may be good; it may be a moral stance that is right. But it is not right to imply another's endorsement without specific, written permission. We do not ever give



R. Devan Jensen, executive editor at the Religious Studies Center

such unless the Church Correlation Committee approves.

RE: What material is off-limits to reproduce in any form?

Petersen: Photos of temple interiors require First Presidency permission. So, if a teacher wants to use these, he or she will most likely not receive permission.

RE: What about the booklet *Temples* that the Church produced?

Petersen: The photos in the *Temples* booklet were all approved for publication by the Office of the First Presidency, and they may be used in classes and other Church discussions about the temples.

I have an interesting story relative to temples and copyrights that I

find fascinating. There was a time when Church administrators believed it was cost effective to contract out the photography of temples and temple interiors to local nationals. We were preparing a brochure using these locally produced photos. We found that in most countries outside the United States, copyright laws are somewhat different. In this case, copyright automatically stayed with the photographer no matter what kind of contract we had in place. So here we had a situation. The copyright to many interior temple pictures belonged to a nonmember. The legal costs to unravel that situation far outstripped any cost for sending a Church photographer to that country to take the pictures.

Copyrights are funny things. When we write contracts for intellectual property rights, we try to protect the Church as much as possible, so all rights are placed within IRI, the Church's intellectual property holding company. Words like the following often scare people: "IRI is and shall be considered to be the author of the Material and, at all stages of completion, the sole and exclusive owner throughout the universe in perpetuity of the Material and of all right, title, and interest therein." This is just an example of how careful the legal world has had to become. The Church is very kind in administering its contracts, but the language nevertheless of the legal documents must protect the Church. I often have artists and writers who call me, complaining, "This seems like the Church has become very legalistic!" It really has not, but at the same time, the Church has had to come to understand that these are real issues; we must face them with complete understanding. And we must follow the strict codes laid down by the laws of the world.

***RE:* What are the most common copyright infringement problems you encounter?**

Petersen: Most of them occur on the Internet. People inside and outside the Church have come to think of the Internet as their own domain—their world. In reality, it is just another form of publication. And when materials are posted on it, copyrights must be considered. I had one young man who created a Web site using the name of the Church as a lead. Now, the logo of the Church is a registered trademark in most countries. This man was using it to attract customers to his Web site. He even used the same design on his portal as the home page design on lds.org. Once a person entered this site, it would immediately link him into the Web site's showroom. In other words, he was just using the Church's trademark to attract customers. This is very common. But we address this issue vigorously. In the above case, we finally took over the man's domain name (his URL) because it violated

the Church's trademark.

Sometimes terms become so "washed" that it is very difficult to stop the infringement. A good example is the term LDS. We have LDS book dealers, bicycle sellers, clothing manufacturers, and so forth. We even have an LDS clipart company. As much as we can, we try to limit this kind of infringement.

RE: What kind of a Web presence does the Church have worldwide?

Petersen: The Church owns well over one thousand domain names worldwide. The most important are our key identifiers. We turn such terms as Mormon, familysearch, Liahona, and the name of the Church into domain names such as mormon.org, familysearch.org, or lds.org. This protects us around the world. When an ICANN extension opens, we quickly register these key identifiers. Sometimes we're not quick enough. We have nonmembers who own domain names that are important to the Church. Sometimes good members of the Church see the opening of these extensions before we do, and they register key domains and then donate them to the Church. This happens a lot. Sometimes divine intervention has helped us secure key domains around the world.

During the past two years, the Church has opened country sites in nearly fifty countries. All of these sites link directly back to lds.org. It is an amazing effort. It allows Church members to have instant access to Church information in many, many languages. As far as I am personally concerned, this will be a key method for bringing the gospel to every nation, kindred, tongue, and people. It is an exciting day in which we live.

RE: What relationship does copyright law and all these guidelines have with the thirteenth Article of Faith on being honest? What are some overall principles?

Petersen: I do not think the vast majority of Church members ever intend to be dishonest, but in this area, there is probably more dishonesty than we would like to admit. Worldwide, it has become almost common practice to copy materials without permission. Our Church members are not exempt from this. The Internet has made it so easy. With just the flick of a switch, we can have unlimited information at our fingertips. We can copy it just as easily. And we can send it around the world.

Last week I wanted some information from a person I had served with in a bishopric, but I didn't know where he was. I had his e-mail

address. I plugged that address into the computer, and within fifteen minutes, I had located him. He was in an airport in East Africa. He had been in Africa for four years on a mission for the Church. I was amazed. We are all linked together, but we must be very careful. This makes it easier to violate people's privacy, to misuse their rights to materials they have created, and to violate the law.

We preach honesty. We tell the world to be honest. It is one of the temple recommend questions. Are we honest in our dealings with others? As members of the Church, we ought to live a higher standard.

RE: Do you have any other area that we may not have talked about?

Petersen: I'd like to talk more about privacy. With stake and ward Web sites coming on line, Church members need to be very careful about violating people's privacy. We maintain a form here at the IPO called the "Release to Use Image" (RUI). We are translating the RUI form into all the major languages spoken in the Church. Before we post members' pictures and private information on these local Web sites, we must get their permission. A man wrote to me, asking, "By what right does the Church post my private information and pictures of my family on this stake Web site?" It is a good question. We should not be doing this without the individual's permission. This simple form can assist the stake and ward clerks. You can get copies of this form in PDF format by contacting our office. When it is desirable to post members' pictures on a stake or local Web site, get the members to sign the RUI and store it locally. Do not send it to Church headquarters. If you have this form, it is legal to place members' pictures on the site. It will give you a wonderfully warm Web site containing personal pictures of members.

Finally, it is a great day to be a member of the Church. It is a great day to be a teacher. We have almost reached that state spoken of in Revelation 2:17 in which "a white stone" will help us know all things. Who knows whether our electronic communications devices are a precursor to this celestial device? But we must be wise. We must use these devices with care and honesty. **RE**