

YEARBOOK Top20

The Student Press Law Center answers common questions from yearbook journalists

Q: Can we use the logos of companies (on candy bar wrappers) for the cover of our book? What about CD labels?

A: It depends on what you want to do. Product labels are protected by both trademark law and copyright law, and both areas place limits on what you can do.

Trademark law prevents the use of another's mark "in trade"—that is to say, in a way that could confuse a consumer about the origin of goods or services. This means you can't use a logo or label from another product in a way that is so prominent that someone might get the idea the yearbook is published or endorsed by the owners of the logo. Because trademark law is particularly interested with what potential buyers might think, the analysis is stricter when evaluating cover images than it is when evaluating the use of images within the book.

Copyright law gives the owner of an image the exclusive right to reproduce, distribute, and display an image, as well as the exclusive right to make new works from the image (called "derivative works"). This means, among other things, that you can't choose to print a book cover that looks exactly like a specific brand-name candy wrapper, or like that candy wrapper with a few details changed.

"Fair Use" is a limitation on both copyright and trademark law, and permits you to use a portion of copyrighted and trademarked works without seeking permission from the owner. In any fair use situation, you want to use as little of the work as you possibly can.

When you put all of these limitations together, using logos on the cover of a yearbook is safest when you use a large number of logos from a variety of sources that are printed relatively small and overlap each other. This ensures that no logo is prominent enough to be confusing to potential purchasers and that as little as possible of each logo is used.

Q: Can we use song lyrics in a parent ad? If so, how much?

A: One or two lines of a song lyric would probably constitute a Fair Use. But there is no absolutely certain measure of how much of a song lyric you can print before it becomes copyright infringement.

Copyright law prevents you from taking "the heart of the work," a test that is both qualitative and quantitative. That means it's not just about how much is taken, but how important the excerpt is to the overall work. In theory, a court would measure that by asking whether the portion taken would serve as a substitute for seeking out the full lyrics. But the problem is that, because of the nature of parent ads, the portion taken is almost always the most interesting or important part of the song.

Parents wanting to use more than one or two lines should probably be asked to either seek out a license for the work or replace the lines with their own words.

Q: Can we use a distinctive font in a section heading – like say the Star Trek font from the JJ Abrams movie?

A: It's possible, but some limitations apply. First, you would have to have the legal right to use the font, whether it's officially licensed or just a similar-looking font created by a third party. Second, you can't use the font to re-create the actual logo of the program or other underlying work unless you could use the official logo in the same context. And finally, if you couple a distinct font with images and symbols from the underlying series, that could constitute the creation of a derivative work, which would raise another set of legal problems.

Q: Can we print parent ads that use the student's official senior photo, which has a copyright notice on it from a photographer?

A: Not without a license from the photographer, which the parents should attempt to secure and provide to the publication.

Q. Can we put a “name that song” spread in the yearbook, where you have to match the line of lyrics to the song title?

A. Yes, provided only one or two lines of the song are used. The song titles are not protected by copyright law, themselves, and should not raise trademark problems when used in an editorial context like this one.

Q. Can we use magazine titles/movie titles/song titles as section headers? What about quotes from famous people as section headers/in senior ads?

A. Yes, as long as you don't create a derivative work by adding elements from the song or movie to illustrate the page. For example, you could use the title “Fantastic Four” as a section header, but if you add images of a man on fire and a man made of rock, you're running into legal trouble by creating a work based on the Marvel comic.

Copyright law typically doesn't protect short phrases or slogans – they're not considered “original” or “creative” enough. If the quote is just a verbal observation made by a famous person – such as a quote from an interview – then that person probably doesn't have a copyright interest in the quote anyway. (We don't “copyright” the words that come out of our mouths unless they're scripted, like lyrics from a song or lines in a play.) Even using a lengthy quote from a copyright-protected literary work, like a book, would almost certainly qualify for the “fair use” exception to copyright law. You are using such a small percentage of the book that your use will not undermine sales of the author's work.

Q. Do we have to let portraits by third party photographers into the yearbook? We have an exclusive photography agreement with one company.

A. Student editors should have the right to enforce a student-created policy of rejecting portraits by third-party photographers. In most cases, school officials have the right to enforce an exclusive photography agreement if third-party photographers are seeking to challenge it. But school officials can't enforce the exclusive photography agreement against students who want to submit photographs from third-party photographers.

This slightly odd situation is caused by the type of rights each party is trying to defend. School officials are trying to defend a contract, while students with photographs from third-party photographers are using, in essence, a First Amendment right. The contract rights of the school can't trump the First Amendment rights of students. The student editors, however, have the First Amendment right to determine what gets published in the yearbook, and the editors' control of the yearbook trumps the right of other students to submit non-conforming pictures.

Q. Can we use game pieces on a cover/in a layout? Like, Scrabble tiles to spell out the name of the book?

A. It depends. Game pieces can be subject to both copyright and trademark protection, and accordingly need to be evaluated in much the same way as logos would.

If there is an editorial connection between the pieces and a layout, there would be a much larger fair use right to protect that use. For example, if the layout was about favorite games students play, and Scrabble was voted the favorite game, it would probably be a fair use to spell out the words “FAVORITE GAMES” in Scrabble tiles.

On the other hand, using Scrabble tiles to spell out the name of the book on the cover of the book, in the absence of any other games or anything else to change context, would probably be both copyright and trademark infringement. Scrabble tiles are arguably most distinctive element of the game and are used in the actual marketing of the game. Less distinctive game elements, or game elements in the presence of elements from other games from different publishers, might face fewer legal obstacles.

Q. Can we take pictures of famous people and “Photoshop” students into them?

A. Generally not, unless you have a license from the photographer to alter the image or the image is no longer protected by copyright law. A common misconception is that if you change an image somewhat in Photoshop, you don't have to get permission to use it. It doesn't work that way. Because owners of the image have the exclusive right to prepare “derivative works,” taking an image and adding someone into it just means you need license to prepare a derivative work on top of the license you need to print the image in the first place.

Some alterations may qualify as a parody of the original work, which could constitute a Fair Use. A parody is created when a work is changed in order to criticize or make some point about the underlying work. (Note that this is different

than a satire, which is the use of a work to make a point about something other than the work itself.) But just adding a student to these images wouldn't typically create a parody.

An image that is no longer protected by copyright law, that image is said to be in the "public domain." (Some people incorrectly think the term refers to a photograph that's widely distributed—the term actually has nothing to do with that, and widely distributed images are not automatically in the public domain.) Images that were created before 1923, or images that are works of the Federal Government, are in the public domain, and can be altered without seeking special permission.

Q. Can we use old video games as a yearbook theme if we don't use any original images from the game and use original designs to evoke the games?

A. Probably yes, though it would depend on the specific details. The important thing is to make sure that the new artwork evokes the original games, but at the same time, is easy to identify as different. For example, if you do a layout inspired by Pac-Man, but you give Pac-Man arms and a hat and you color him green, it effectively reminds you of the game character and but also is easy to see as something other than the original video game character.

Q. Can we post the photos we take for the yearbook onto a Facebook page?

A. If they are staff-generated photos and not photos taken by a private contractor, yes – a private photo studio will have contractual limits on how its photos can be used, and typically (without a substantial extra charge) they are licensed for one-time-only use in a print publication. Make sure your student photographers understand at the start of the school term how their photos are to be used. When there is no salary or employment contract, the copyright stays with the photographer, and the photographer has the right to object if her work is used in a way that goes beyond her consent.

Q. Do we need to get permission from parents to run quotes from students under 18?

A. Not under any state or federal law. This is a myth – the law recognizes that students are old enough to consent to be interviewed if they are mature enough to understand the concept of what it means to be interviewed. Double-check your school and district policies if there's an issue, but if you are told parental consent is required by law, ask to see a copy of the law.

Q. Can we use unpublished pictures left over from last year? Can we reprint pictures from prior yearbooks?

A. While it's unlikely that many yearbook editors would object to the use of their works in future books, the short answer is that you cannot use the works created by prior staff members, published or unpublished, without permission.

This is because yearbook staff members own the works they create, and grant one-time permission to the publication to print the works. Contract photography studios similarly retain the copyrights in the headshots they provide. While there may have been implicit permission to publish the works in one book, that permission would not extend to future books, whether or not the works were ultimately printed.

There are a number of exceptions to this, however. Works older than 1923 are in the public domain and you don't need any permission to use them however you want. Works created by yearbook staff members prior to 1978 were created under a different set of copyright laws and are probably property of the yearbook editors. And of course, if there is an editorial context for the use, there may well be a fair use claim—for example, if the basketball team goes to the state championship for the third year in a row, it would likely be a fair use to reprint the team photographs from the prior three years.

Q. Can we print an ad from an advertiser that ran originally in another yearbook?

A. It depends on who designed the ad. If the ad was designed by the staff of the other yearbook, you need a license from that yearbook to run the ad they designed. You can, however, design a new original advertisement with a similar look.

Q. What do we do if we find out someone snuck a “hidden message” in the book?

A. Pranks are a sad and unfortunate reality of student publishing. Get to the bottom of what happened immediately and find out where the slip-up occurred. If the message targets a particular person, get to them immediately with an explanation and an apology. Be prepared to defend your procedures – enemies who don’t like the yearbook (or the yearbook adviser) may use this slip-up as a weapon to say students can’t be trusted to edit their own book. Don’t let them. And consider legal action against the culprit if the prank is bad enough to require spending money to reprint the book.

Q. Can a coach stop us from running pictures of his wrestlers losing their matches?

A. Not at a public school. Because public schools are government agencies, they’re bound by the First Amendment, and they can’t overstep the students’ editorial decisions without a lawful justification. Sparing the feelings of athletes who don’t like to be reminded that they lost wouldn’t qualify as a lawful justification – losing is part of the sport, it’s newsworthy, and it’s an event open to the public.

Q. Can the administration require us to cover a story in the yearbook?

A. At a public school, the First Amendment gives student editors some protection against government interference in their choice of editorial content. The school generally can override the students’ wishes if there is a reasonable justification that goes beyond just a difference of opinion or taste. If the event is a judgment call, then that should be the students’ to make. But if it’s a glaring omission – if the staff refuses to mention graduation or decides to omit the entire freshman class – that may give the school a reasonable justification.

Q. Can we identify students who are in special education classes, or special needs students in regular classes?

A. This is one time when parental consent really is a good idea. You want to avoid singling out students as “special ed kids” unless it’s essential to the story – some states consider a student’s special-ed status to be private information that is not to be revealed without consent. If the story requires mentioning special ed, then get parental sign-off or find ways around picturing or naming the kids whose families won’t consent.

Q. Our school has a “do not picture” list of students who aren’t supposed to be photographed at school. Do we have to go through the book and cut them out of the photographs they’re in?

A. Legally, you probably do not – the “do not picture” list applies to official publications of the school, and a yearbook is the work of the students, not of the school. However, diplomatically, the answer may be different. If you have a parent who feels strongly that she does not want her student photographed, then it may be worth eliminating identifiable photos of that student to avoid a blow-up that threatens the well-being of the entire yearbook. (Note that the “do not picture” list should, by law, be a parental “opt out” rather than a parental “opt in.” If your district has an “opt in” policy, see if you can get it changed.)

Q. Can we print memorial pages for students who passed away during the year?

A. There is no legal reason that a student’s death cannot be memorialized in the yearbook. If administrators attempt to prevent any mention of a student death, that may well be unlawful censorship. (It may be legal, however, for them to insist that the manner of death – especially if it is suicide – be kept out of the yearbook, since some studies support the fear of “copycat” suicides.) It also is important to consider the wishes of the family, especially any siblings still in the school; if they are adamantly opposed, then it may be the diplomatic thing to downplay or avoid coverage.



For more information about your rights and responsibilities, contact the Student Press Law Center
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