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Publishers Sue Over Online Sales of Course Packs, Alleging Copyright Violations

BY ANDREA L. FOSTER

SIX LEADING academic publishers have filed a copyright-infringement lawsuit against a copy-shop owner in Austin, Tex., who sells packages of course materials online. The suit is believed to be among the first to take aim at digital distribution of unauthorized course packs.

The lawsuit names two copy shops located near the University of Texas at Austin, as well as a service that distributes course packs over the Internet. It accuses the owner of the three businesses of reproducing academic material for a profit without the permission of the publishers or their licensing agent, the Copyright Clearance Center.

The suit was filed last month in U.S. district court in Austin. The publishers declined to say how much they were seeking in damages and lawyers' fees. Under the Copyright Act, violators can be fined between \$750 and \$150,000 per item infringed. The suit says there were 57 counts of infringement, so the copy-shop owner could be fined as much as \$8.5-million.

In the past, similar lawsuits have accused copy shops of selling printed course materials in violation of copyright. But digital distribution of such materials is becoming popular.

Course packs consist of selected readings from books, magazines, or journals that are prepared for specific college courses. A professor or teaching assistant typically delivers the course syllabus to a copy shop, which obtains the reading material, copies it, and packages it for students.

The publishers' lawsuit says that the owner of the Austin copy shops created electronic versions of course packs by scanning published material into a computer and arranging the reading selections in Adobe Portable Document Format files. The packages, called "NetPaks," could be ordered online using credit cards.

APPEAL TO INSTRUCTORS

Much of the Netpaks reading material cited in the lawsuit was excerpted from psychology and government publications.

The lawsuit says that "this unauthorized copying is representative of a much larger pattern of unauthorized copying, which when examined will reveal infringement of numerous other works," and that the complaint may be amended to include other cases of infringement.

The plaintiffs in the lawsuit are Elsevier, John Wiley & Sons, Pearson Education, Princeton University Press, Sage Publications, and the University of Chicago Press.

The copy shops are Abel's Copies and Speedway Copying, and the online service is NetPaks. The suit says all three are owned and operated by either BISI Inc., of Austin, or Samuel Odunsi, of Buda,

Tex. Mr. Odunsi is the president and owner of BISI, according to the lawsuit.

Mr. Odunsi could not be reached for comment, and his lawyer did not return a call for comment. In a report published in the *Austin Business Journal*, Mr. Odunsi would say only that his lawyers were trying to resolve the dispute.

Managers of the copy shops did not return calls.

The Web site of Abel's Copies makes a direct appeal to college instructors. It reads: "Give us the opportunity to prepare your course packet and we promise to make you look good— whether you're a professor or a TA. Check out our Course Packet services and we dare you to compare with others around campus."

FALSE-ADVERTISING CHARGE

The lawsuit asks the court to order the businesses to stop selling academic material unless they have permission from the publishers to do so.

In addition, the suit accuses the businesses of false advertising. The publishers say that Mr. Odunsi in some cases assured professors and teaching assistants that he had obtained permission to distribute the materials on their syllabi, and that in other cases he told them they could sign "academic-use waivers."

"We obtain copyright clearance on the materials you submit if you so indicate," reads the Web site for Abel's Copies. "Otherwise you can sign our Academic Use waiver to save your students \$\$\$\$."

The lawsuit says that "by leading the public to believe that copyright fees do not have to be paid, Odunsi's false advertising induces customers to direct their business to Odunsi and away from competing shops that respect copyright."

Roy S. Kaufman, a lawyer for John Wiley & Sons, said that using online methods for the distribution of course material will continue to increase. "There's going to be more and more of these cases," he said.

He and officials of the Copyright Clearance Center declined to say how the Austin copyright allegations had come to the publishers' attention.

Allan R. Adler, vice president for legal and governmental affairs at the Association of American Publishers, said professors may think that copy shops do not need permission to sell the material.

"Many of them believe, mistakenly, that this type of activity is protected by fair use," said Mr. Adler. "Some of them believe that educational use, per se, is fair use." But the courts have not interpreted fair use that way, he said. ■

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