



# QUICK PRINTING

By Kelly Campbell

## It's the Law

*Keeping abreast of copyright law can keep you out of hot water*

**B**efore Johann Gutenberg invented the printing press in 1450, there was no real need for copyrights. But with that invention, everything changed.

And as the number of presses grew, some rules were enacted—more to allow authorities to control the publication of books than to give authors protection. In 1710 however, the Statute of Anne, a milestone in the history of copyright law, was passed. According to the Association of Research Libraries, the Statute of Anne recognized that authors should be the primary beneficiaries of copyright law; it also established the idea that there should be a limited time period on the copyright laws, after which works could pass into public domain.

Almost 300 years later, this idea is still true. Also still true is that copyright infringement remains a hot topic, particularly to those in the printing industry. Printers have faced numerous lawsuits from publishing companies and most have not been found in their favor.

### Who Can Reproduce the Work?

Title 17 of the United States Code governs federal copyright protection. Generally, that statute gives the author—or owner of the original work—the exclusive right and authority to allow others to use or reproduce the copyrighted work. Copyright protection lasts for the duration of the author's life plus an additional 70 years after the date of his or her death. In some cases, it may last even longer.

Many state laws, however, vary from federal law, making it confusing for business owners to determine what rules apply to them. Since copyright violations can result in hefty fines the matter is worth some investigation.

Because of technological advances many of the current lawsuits involve electronic media, but print still presents its share of potential pitfalls and the lists of lawsuits continue to add up.

In February, six leading publishers filed a copyright infringement suit against Austin, TX-based BISI Inc., the owners and operators of

Netpaks, Abel's Copies and Speedway Copying. The BISI lawsuit was settled on March 30 and the defendants have agreed to pay undisclosed damages to the publishers and adopt compliant business practices going forward.

"It is unfortunate that legal action was necessary, but in some cases it is required to ensure a level playing field for the majority of businesses that adhere to copyright law," says Bob Weiner, vice president of licensing, Copyright Clearance Center (CCC), the licensing agent for the six publishers which included University of Chicago Press, Princeton University Press, and John Wiley & Sons Inc.

In January, five major publishers filed a copyright infringement suit against KB Books, a college bookstore chain in San Diego that also prints documents. Harvard Business School Publishing, *The New York Times*, Elsevier Inc., Pearson Education, and John Wiley & Sons Inc. alleged that KB Books has routinely produced and sold coursepacks to college students in the San Diego area without obtaining permission to use the content from the publisher or the publishers' licensing agent.

In November, Elsevier Inc., John Wiley & Sons Inc., The MIT Press, Sage Publications Inc., and the University of Chicago Press settled their copyright infringement lawsuit against Paradigm Books Inc. of Austin, Paradigm Course Resource Inc. of Minneapolis, and its president and owner. The lawsuit, filed in February 2003, charged the defendants with substantial unauthorized photocopying of materials from the plaintiffs' publications. As part of the settlement, Paradigm Books has agreed to pay an undisclosed amount in damages, to respect all copyrights owned by the plaintiffs, and pay associated royalties through CCC, its rights licensing agent.

### College Coursepacks

In January of last year, four major publishers of scientific, technical, and medical publications filed suit against Los Angeles-based Westwood Copies for copyright infringement. The suit, filed by Elsevier Science Inc., The MIT Press, Sage Publications Inc., and Wiley Periodicals Inc., charged that the defendants routinely photocopied materials from the plaintiffs' publications without their authorization for courses at UCLA.

Last July, five major publishers sued Collegiate Copies of Indiana and its owners. HarperCollins Publishers, Pearson Education, Princeton University Press, SAGE Publications, and John Wiley & Sons Inc. allege that Collegiate Copies provided coursepacks to local universities in Indiana, including Indiana University at Bloomington without obtaining permission from the copyright holders.

While some might see these lawsuits as frivolous, some say that law-abiding printers are the ones being hurt.

"Coursepack producers cannot lawfully photocopy others' intellectual property and then sell those copies without first obtaining rights and paying royalties to do so," says Mark Seeley, vice president and general counsel of Elsevier Science. "This is a clear example of copyright infringement. This type of practice inflicts harm on rights holders and puts law-abiding copy services at a competitive disadvantage in their markets."

## Reproduction without Permission Equals Trouble

The list goes on and most of the lawsuits against printers are related to these coursepacks—collections of book chapters, magazine articles, and textbook excerpts professors require students to read for their courses. They account for an estimated four percent of all bookstore sales, according to a study by the Washington, DC-based Association of American Publishers.

Before the landmark 1991 suit against Kinkos, coursepacks may have seemed like a harmless way to make a few extra bucks. But, as is now fairly well known, to comply with copyright law, copy shops must get permission to distribute the materials they reproduce and pay royalty fees to fairly compensate the respective copyright holders.

In the Kinko's case, a Federal District Court in New York ruled that Kinko's Graphic Corp. infringed copyrights and did not exercise fair use when it photocopied coursepacks that included book chapters, and then sold them to students for classwork. The court found that most of the fair use factors worked against Kinko's in this case, especially given Kinko's profit motive in making the copies.

Five years after the Kinkos case, in November 1996, a similar case was tried. The Sixth Circuit Court of Appeals decided in an eight to five ruling in favor of publishers who sued Michigan Document Services, an off-campus, for-profit photocopy shop whose owner made coursepacks that included substantial portions of copyright protected books and sold them to students.

As a result of the legal wrangling, professors now are turning to companies that obtain copyright permissions before photocopying and binding excerpts.

Of the handful of such businesses, most, like Book Tech Inc. and Courier Corp., both in Massachusetts, started in the last few years in response to the coursepack lawsuits.

However, the companies do the work for a price, often charging three times as much as copy shops and the costs get passed on to the students.

## What Is "Fair Use"?

The distinction between "fair use" and infringement may be unclear and not easily defined, according to the US Copyright office website. There is no specific number of words, lines, or notes that may safely be taken without permission.

"The safest course is always to get permission from the copyright owner before using copyrighted material," reads the website.

## Innocent Infringement

Under current copyright law, "innocent" infringement is an infringement nonetheless. The minimum statutory damage award is \$750 for each infringement and in some states, each copy printed is a separate act of infringement. A defendant is entitled to a reduction to as low as \$200 per infringement if it proves both its good faith in attempting to ensure that the work was owned by the customer and that it was reasonable in believing the customer—often a difficult thing to prove.

While there are certain "innocent infringer" provisions in federal law, these are often so limited in scope and effect that they do not protect printers from expensive, time-consuming lawsuits.

The Allegra Network has an interest in protecting the owners and operators of its 450 locations, which include Allegra Print &

Imaging, American Speedy Printing, Instant Copy, Insty-Prints, Quik Print, Speedy Printing, or Zippy Print in the United States, Canada, and Japan. As part of its franchisee orientation, the company makes its company guidelines clear. "We make sure that we give franchisees our prohibited printing list in our business management manual that includes what items cannot be printed and explains that copyrighted material cannot be printed or reprinted without the permission of the owner of the copyright," says Tina

Virga of Allegra. "If our franchisees have a particular question about copyrighted material that we cannot answer, we recommend they visit [www.copyright.gov](http://www.copyright.gov) [the website for the United States copyright office]. We have the site posted on our franchise member website and direct them to it as needed."

The Graphic Arts Information Network (GAIN) has been pushing for years new laws that would implement a reasonable innocent infringer defense for printers. GAIN says that printers should not have to be enforcing the law for copyright owners. Nor should they end up paying copyright owners for careless or intentional infringement actions taken by their customers.

And the use of more and more digital files is increasing printers' legal exposure since it is much more difficult to determine ownership but that doesn't matter to the copyright holders.

"It makes no difference whether the content is reproduced and distributed as photocopies, or as digital copies accessed and transmitted via the World Wide Web," says Allan Adler, vice president for Legal and Governmental Affairs for the Association of American Publishers. "Businesses must recognize that permission is required for commercial distribution of copyright-protected content, regardless of format."

The bottom line is that printers have a responsibility to know at least the basics of copyright law. ▶▶



## Additional resources for information on copyright

American Society of Composers, Authors and Publishers  
[www.ascap.com](http://www.ascap.com)

American Society of Media Photographers [www.asmp.org](http://www.asmp.org)

Association of American Publishers Inc. [www.publishers.org](http://www.publishers.org)

Graphic Artists Guild [www.gag.org](http://www.gag.org)

International Federation of Reproduction Rights Organisations  
[www.ifro.org](http://www.ifro.org)

Media Photographers' Copyright Agency [www.mppca.com](http://www.mppca.com)

National Writers Union [www.nwu.org](http://www.nwu.org)

US Copyright Office [www.copyright.gov](http://www.copyright.gov)

Copyright Clearance Center [www.copyright.com](http://www.copyright.com)