**Back to school checklist: who owns what**
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**Introduction**
Who owns the copyright to work created by a student journalist? It's a fascinating, important — and potentially complicated question. It's also one that can and should be addressed early on by every student media staff.

**Body**
Generally, the creator of a work owns the copyright. In other words, writers own the copyright to material they write, photographers own the photos they take and graphic designers own and have the right to control the graphical works they create. Allowing the material to be used as part of a "collective work," such as a student newspaper or yearbook, doesn't automatically strip a contributor of his or her ownership rights. As the U.S. Copyright Office has said:
"In the absence of an express transfer from the author of the individual article, the copyright owner in the collective work is presumed to have acquired only the privilege of using the contribution in the collective work and in subsequent revisions and later editions of the collective work."

That means, for example, that while you can reprint a particular issue of a yearbook as a whole without having to obtain additional permissions (assuming there are no agreements to the contrary), you can't simply pull out individual photos or stories to use in a new publication.

There is, however, an important exception to this general rule that arises in the employee/employer context. Under the "work made for hire" exception, employers own and control the copyright of works created by their employees while on the job. Distinguishing between an employee and a non-employee, or what the law refers to as an "independent contractor," is often an easy call. A teacher is an employee of a school district; a parent that occasionally volunteers in the classroom is not.

But what about a student journalist who works on a school-sponsored student publication? In many, probably most, cases the answer will also be pretty clear. Few schools treat student journalists as regular employees. They generally aren't paid (or taxed) like regular employees; they usually aren't entitled to the same benefits or subject to the same rules or expectations as traditional school employees. Even when a student journalist uses school equipment (a factor that weighs in favor of being classified as an employee), the traditional employee/employer model just doesn't fit.

The lack of a clear work-for-hire relationship can result in potentially big headaches for student media. If the publication/school is not an "employer" and the student journalist is acting as an independent contractor, the student author — not the school or student media organization — owns the copyright and can control future uses of the work, including preventing the publication from republishing the work separately or granting others reprint permissions. In such cases, for example, a yearbook celebrating its 75th year of publication that wants to do a commemorative edition in which it republishes old photos from past issues would, as a legal matter, need to obtain explicit permission from the photographer — wherever he or she might be (yikes!) — if the work was still subject to copyright protection.

Granted, if you only had to deal with this every 75 years or so maybe you could let things slide a bit. But that's no longer how it works. Today, student works that in years past

would have been published once in print and forgotten now have a potentially infinite shelf-life and ongoing "value" as they are archived online and available to anyone using the right combination of search terms. Additionally, copyrights now last longer than ever before with Congress seemingly unable to say no to corporate interests that want the right to profit from their work longer and longer. For these reasons and others, it's likely that ownership disputes, a rare nuisance in student media circles today, are going to become increasingly common.

Again, the ownership issue can get complicated and a full discussion can't really be had here. A solution, however, is relatively straightforward and can probably be accomplished by simply downloading and using something like this written agreement.

The best way to avoid a copyright dispute between a student publication and a reporter, artist or photographer is to deal with the issue in advance. Before starting work, both parties should establish the nature of their relationship and put the agreement in writing. A written agreement would determine the outcome of most potential controversies without having to go to court or otherwise fight to determine the "employee"/"non-employee" status of a particular student journalist.

The sample agreement we've linked to above is our best attempt to fairly balance the intellectual property rights of the student creators of a work against the business and practical requirements of student media organizations that publish such work. But whether you use this form or not, we urge student editors to make the discussion of copyright ownership (as well as copyright law generally) a regular part of their back-to-school regimen. If nothing else, those working on the student yearbook 75 years from now will thank you for it.

## Resources

•Principals, advisers and students face misconceptions about who 'owns' student work
http://www.splc.org/news/report_detail.asp?id=1584&edition=54

• Copyright and fair use (splc)
http://ww.splc.org/presentations/kyr-copyright.pdf
• Back to school checklist: who owns what?
http://www.splc.org/wordpress/?cat=13
• Guide to copyright law
http://www.splc.org/knowyourrights/legalresearch.asp?id=32
• Copyright law PowerPoint
www.splc.org/presentations/pp**copyright**law.pps
• Copyright and fair use
http://www.splc.org/presentations/kyr-copyright.pdf