Copyright fight unfolds near campus

By Kathleen Schuckel, Globe Correspondent, 7/12/2003

INDIANAPOLIS -- Five major publishers filed a federal lawsuit here Monday against a copy shop in Bloomington, home to Indiana University, contending that the business and its owners have flouted copyright laws and stolen from authors and publishers by illegally duplicating articles and book excerpts for course materials.

The lawsuit was brought by HarperCollins Publishers, Pearson Education, Princeton University Press, Sage Publications, and John Wiley & Sons against Collegiate Copies and its owners, John E. and Thomas Seeber. The action is the latest effort by the publishing industry to get tough with copyright scofflaws.

Other recent lawsuits have involved copy shops providing materials to the University of California at Los Angeles, the University of Florida, the University of Illinois, the University of Minnesota and the University of Texas. The publisher plaintiffs have varied in each case.

In each case, however, the lawsuit is coordinated by Copyright Clearance Center, based in Danvers, Mass. The not-for-profit center is the world's largest licensor of text reproduction rights and was established in 1978 to facilitate compliance with copyright law. It manages rights relating to more than 1.75 million works and represents more than 9,600 publishers, including the Globe.

The Indianapolis suit alleges that Collegiate Copies engaged in routine and systematic reproductions of copyrighted material without first seeking permission to reproduce it in course-packs. The Seebers did not respond to requests for comment.

Coursepacks contain material, selected by an instructor of a course, that is required or recommended reading. Copy shops reproduce the requested material, bind them, and then sell them to students at a profit. In this case and in most cases, the publishing houses discovered the infringements because a competitor complained about them.

"They want a level playing field," said William S. Strong, a Boston intellectual property lawyer representing the publishing firms in the suit.

In a faltering economy like the current one, copyright violations are more frequent, said Frederic Haber, general counsel for the Copyright Clearance Center. "They try to cheat to maintain their profit margins," he said.
The copy shop crackdown has been successful, said Roy Kaufman, associate general counsel for John Wiley & Sons.

All the cases to date are either pending or have been settled out of court in the publishers' favor, he said.

Kevin Theile, manager of Tichenor Publishing, another Bloomington coursepack producer, said the case filed against Collegiate Copies was eye-opening. "It alerts everyone to the fact that we're being watched and monitored and affirms that we're doing the right thing in seeking permissions."

Yet Theile said that duplicating some copyright works is simply cost prohibitive. The fees are so high that professors decide not to include them in a course pack.

Haber countered that many copyright fees are just pennies a page, while some are free.

The fee for the articles in question in the Collegiate Copies lawsuit mostly range from 7 to 14 cents per page.

For example, Making the Body Beautiful: A Cultural History of Aesthetic Surgery by Sander L. Gilman and published by Princeton University Press charges a copyright fee of 12 cents a page. A 39-page excerpt was assigned for a body art folklore class. If 100 students needed the article copies, it would cost $468.

The suit alleges that Collegiate Copies illegally duplicated 19 articles or chapters, but said that the publishers' lawyers expect to find many more examples of illegal copying in discovery.

They are seeking unspecified damages, lawyers' fees, and a promise from Collegiate Copies to comply with copyright law in the future.

Kent Taylor -- who has owned White Rabbit, a two-man copy shop for more than 20 years in Bloomington -- said that a copyright infringement case against Kinko's Copies a decade ago forced many small copy shops, like his, out of the course pack business.

"It's a shame we can't make them any more, because it served a useful purpose," said Taylor. The authors don't care "if you make 50 copies for kids in a history class," he said. "They want people to read their stuff."

The publishers don't buy it.

"For every mom-and-pop operation flouting the law, I can guarantee you there's another mom-and-pop nearby following the law, charging a slightly higher price and suffering," Haber said.

This isn't a case of big conglomerates lining their own pockets by going after small, locally owned shops, said the publishing lawyers. Often, they're also helping to recover royalties for authors, small academic publishing houses, or nonprofit associations that produce journals.

To date, no professors have been sued along with the copy houses, and there are no plans to do so, said the publishers' lawyers.
That's probably because publishers don't want to alienate their customers, said Harvard Law School professor William W. Fisher III. He said it's conceivable that policy could change. The music industry, for example, has only recently begun to crack down on copyright infringement by individual consumers, Fisher said.

Another reason not to target universities or faculty members is because fair use law allows more copying when the works are being used solely for educational purposes, said Joseph Bauer, a University of Notre Dame law professor.

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