

PUBLIC INSTRUCTION, DEPT. OF: Unauthorized use of material for physical education course of study from text books an infringement on copyright; legal danger of plagiarism.

April 17, 1933.

Hon. Grover VanDuyn,
Assistant Superintendent,
Dept. of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of April 12, 1933, which is as follows:

“The physical education course of study committee is confronted with the following question. I shall appreciate your official opinion relative to this matter.”

Then you present the following inquiry:

“1. May we legally embody in our physical education course of study descriptions of stunts and games as they have appeared in copyrighted textbooks and materials?”

Your second inquiry is as follows:

“2. Since this is to be published as a non-profit making state enterprise, is there any legal danger of plagiarism?”

First

The answer to your first question must be in the negative. The copyright of a book confers on its proprietor the exclusive right to print, reprint, publish, copy, vend, translate, make other versions, dramatize, and accordingly the unauthorized use of any of these rights is an infringement of such copyright. To constitute an infringement it is not necessary that the latter work should be calculated to serve as a substitute for the original work, or that there should be any actual or possible competition between the respective works on the market.

H. Blacklock Co., Ltd. v. Pearson, Ltd., 2 Ch. 376;
Hanfataengl v. Empire Palace, 3 Ch. 109, 130.

The fact that an infringer acknowledges the source from which the appropriated matter was derived has no bearing on the question of infringement and it does not relieve him from legal liability.

Pike v. Nicholas, L. R. 5 Ch. 251;
Walter v. Steinkopff, 3 Ch. 489, 497.

In the instant case, it would seem that the very object of inserting the descriptions of the stunts and games as they appear in copyrighted textbooks in the proposed "course of study" is to relieve the teachers of the necessity of buying or consulting such texts. It has been held that it is illegitimate to publish extracts to such an extent that the publication may serve as a more or less substitute of the work from which they are borrowed.

Harper v. Shappell, 26 Fed. 519;
Falsom v. Marsh, 9 F. Cas. No. 4901, 2 Story 100;
13 C. J. 1128.

In view of the above, we would suggest that you obtain the permission of the copyright holder before appropriating any of his copyrighted property.

Second

We must answer your second question in the affirmative. It is immaterial that copies are distributed gratuitously and not sold for profit or that distribution is to a limited class of persons.

Ager v. Peninsular, etc. Nav. Co., 26 Ch. D. 637,
641;
Novello v. Sudlow, 12 C. B. 177, 138 Reprint 869;
Macmillan Co. v. King, 223 Fed. 862.

Strictly even a single copy made for private use is an infringement. Hence, if the act constitutes copying or an infringement in the first instance, the fact that it is published as a non-profit making state enterprise would not legalize it.