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Copyright Issues for School Districts: Exhibiting Copyrighted Works at School

by Adam S. Breipohl

Public schools often inadvertently venture into the realm of copyright law by exhibiting or displaying copyrighted works without the permission of the author. The most obvious example would be a teacher showing an educational movie or television show in class, but other such situations could include a teacher using photos in the slides accompanying a lesson or students performing a scene from a play in drama class. School districts must take care to ensure that their activities in this area do not infringe the intellectual property rights of others.

As a general rule, under United States copyright law, the author

of a copyrightable work such as a book or movie has the exclusive right to reproduce, distribute, perform, or display the work or to authorize others to do the same. However, Section 110 of the Copyright Act states that copyright is not infringed by a "performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible



for the performance knew or had reason to believe was not lawfully made." 17 U.S.C. § 110. This rule is known as the "face to face teaching activities exception." An important limitation to this rule states that teaching activities "encompass systematic instruction of a very wide variety of subjects, but they do not include performances or displays, whatever their cultural value or intellectual appeal, that are given for the recreation or entertainment of any part of their audience."

As an example of how this rule applies in practice, to ensure that no copyright infringement is being committed, teachers who show movies at school should ensure that the movie is being shown: (1) in a classroom or other place of instruction (e.g. not in the auditorium, cafeteria, etc.); (2) by a teacher or student in the course of teaching activities (i.e. during instructional time, not during recess); (3) for the purpose of education (i.e. not for the movie's entertainment value); and (4) from a copy the teacher has reason to believe is legitimate.

Although many instances where school employees exhibit copyrighted works at school are likely protected under the "face to face teaching activities" rule, some may not fall under that rule and may instead infringe copyright. For example, a school district should not hold a screening of a movie at a school fundraising event that takes place on a weekend and which

students and/or their families pay to attend. Movie studios have been known to closely monitor such activities and aggressively enforce their copyrights when possible infringement is discovered.

It is also worth noting that if a school district wishes to engage in an exhibition of a movie or other copyrighted work that would not fall under any copyright exception, the district still has the option of contacting the owners of the copyright directly and purchasing a license. The procedure to obtain such a license and the cost of doing so will depend on the particular work involved, the party that owns the work, and how the school district intends to use the work.

Overall, school districts must take care to ensure that their exhibition of copyrighted works complies with copyright law to avoid legal risk to the district and/or its employees. Districts with questions regarding the appropriateness of particular activities related to showing films at school should consider contacting their legal counsel.

Adam Breipohl is available to speak at your school district to provide training and guidance regarding compliance with copyright law. He can be reached at adamb@rflaw.com.

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New Version of Form I-9

by N. Roxane Mock

Beginning on September 18, 2017, employers are required to use the new version of the Form I-9 to verify the identity and work eligibility of their new employees. The changes in the new Form I-9 pertain to the U.S. Citizenship and Immigration Services ("USCIS") list of acceptable documents that establish employment authorization and when employers are required to complete and sign Section 1 of the form. The USCIS published the form in July. The new Form I-9 applies to new hires and reverification of employees. Employers should not complete the new Form I-9 for current employees. The USCIS storage and retention rules have not changed with the new Form I-9.

The Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment in the U.S. All U.S. employers must ensure proper completion of the Form I-9 for each individual they hire for employment in the U.S. Completion of the Form I-9 pertains to both U.S. citizens and noncitizens. In addition to completing the form, an employee must present to his or her employer acceptable documents evidencing identity and employment authorization. The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and

relate to the employee. Moreover, employers must record the document information on the Form I-9.

The list of acceptable documents that establish employment authorization can be found on the last page of the form in the form's List C. The new Form I-9's List C includes the most current version of the certification or report of birth issued by the U.S. State Department, including a certificate of birth abroad. All birth certificates issued by the State Department are now compiled into List C. Moreover, the new version renumbers all List C documents except the Social Security card and streamlines the certification process for certain foreign nationals.

The new form also modifies the form's instructions in completing Section 1 of the Form I-9. Section 1 of the Form I-9 pertains to the employee's information and attestation regarding the employee's citizenship or immigration status. The new form requires that Section 1 be completed and signed no later than the first day of employment, but not before the employee has accepted a job offer. Although the USCIS has not specified a reason for this change, the change was likely made to ensure consistency with the regulations and the completion of Section 1 of the Form I-9. Employers may want to revisit their I-9 policies and procedures to ensure that Section 1 of the form is completed no later than when the employee starts work for pay.

A new set of instructions is available for the form as well as an updated handbook

for employers on the USCIS website. Although the changes to the Form I-9 are fairly minimal and straight forward, failure to use the new form can result in significant fines. If an employer used the wrong version of the Form I-9, as long as the Form I-9 documentation presented was acceptable under the Form I-9 rules that were current at the time of hire, the employer may correct the error by stapling the outdated completed form to a blank current version and signing the current blank version noting why the

See <https://www.uscis.gov/i-9> to download the new I-9 form.

current blank version is attached (e.g., wrong edition was used at the time of hire). In the alternative, the employer may draft an explanation and attach it to the outdated completed Form I-9 explaining that the wrong form was filled out correctly and in good faith. Employers should ensure that their Form I-9 policies and procedures reflect use of the new form. If you have any questions about the new Form I-9, please contact your school district's attorney.

Haley A. Drusen joins RFR as Associate Attorney

Rosenstein, Fist & Ringold is pleased to announce that Haley A. Drusen has joined the firm as an associate attorney. Haley is an Oklahoma native and was admitted to the Oklahoma bar in 2017. She attended college at the University of Tulsa (B.A. in English and Education, 2012, magna cum laude). After graduating, Haley taught high school English in Bartlesville, Oklahoma before moving to Norman to attend law school. She graduated in May 2017 from the University of Oklahoma (J.D., with highest honors), where she became a member of the Order of the Coif. While in law school, Haley served as the Managing Editor of the *Oklahoma Law Review*.



Haley A. Drusen

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RFR's Dispute Resolution Team

J. Douglas Mann and Frederick J. Hegenbart have more than 70 years of litigation experience between them. Their experience in resolving matters through mediation and arbitration ranges from multi-million dollar claims to routine disputes in both the private and public sectors. [Read more >](#)

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Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

Please use the form on www.rfrlaw.com (located on the Resources page) to add or change *Chalkboard* e-mail addresses.