



# Covering Protests, Using Media, and Protecting Your Work: A Legal Primer



Nieman Foundation  
for Journalism at Harvard

Jonathan Gaston-Falk, Esq.  
[jfalk@splc.org](mailto:jfalk@splc.org)

*SPLC.org*

X: @SPLC  
Instagram: @StudentPressLawCenter  
Facebook: Student Press Law Center

# Student Press Law Center

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Provides free legal help and information on media law issues to student journalists and their advisers

*SPLC.org*



**Red Flag: My college adviser insists on prior review**

← →

Get legal help

Press Freedom in Your State

Legend:  
States with student press freedom laws  
States without student press freedom laws

# Brief Outline

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## I. Protest Coverage

*(Takeaway: it is your right to cover a protest and keep your materials restricted)*

- Violation of the rights of others
- Violation of your rights
- Other practical advice

## II. Copyright and AI

*(Takeaway: your work has legally-protectable value)*

- Violation of the rights of others
- Violation of your rights
- Artificial intelligence considerations

# Reminder: Always-Unprotected Speech

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- Defamation (libel/slander)
- **Invasion of Privacy**
- **Copyright Infringement**
- Student speech that advocates illegal drug use
- Obscenity (Legal Obscenity)
- “Fighting Words”
- “True threats”
- Incitement to imminent lawless action



# Violation of the Rights of Others during a Protest

“There’s a protestor  
whose photo we  
published and is  
asking for it to be  
taken down”

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# Property License in Brief (Especially Photos/Videos)

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- Traditionally Public Spaces
  - Open street or park, no expectation of privacy
  - Typically there is a right to speak out on public property (so long as access is not blocked)
- Hybridized Spaces
  - Businesses where anyone may patronize
  - Nuanced expectation of privacy, press passes?
- Traditionally Private/Closed Spaces
  - Owners can set rules as to assembly or speech
  - Greater expectation of privacy, press passes



# Violation of Your Rights during a Protest

“A police officer is asking me to unlock my phone to make sure I didn’t take a photo of something illegal”

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# Your Rights

- Journalists' rights are all citizens' rights
- You are most protected in a public forum
- First, Fourth Amendments and the PPA
- (Additional  
--- protections in CA and NY)

# The First Amendment

**Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech, or of the press;** or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

# The Fourth Amendment

The right of the people to be **secure in their persons, houses, papers, and effects, against unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

# The Privacy Protection Act (PPA) of 1980

Notwithstanding any other law, **it shall be unlawful for a government officer or employee**, in connection with the investigation or prosecution of a criminal offense, **to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast**, or other similar form of public communication, in or affecting interstate or foreign commerce...

# Other Practical Protest Advice

“Should I call SPLC  
if I get arrested?”

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# Think Ahead

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1. Make sure people know where you are going and what you are covering - doing your homework (e.g. permitting)
1. Work with a buddy - do different work
1. Identify an emergency contact in advance - write the number on your arm in Sharpie®
1. Bring safety (and medical, if necessary) equipment
1. Turn off your phone's fingerprint scanner and facial recognition (PEN.org "Digital Safety" seminar)

# During the Protest

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1. Have your press credentials readily available to show
2. Present as a neutral observer
3. Upload photos regularly and back up your data
4. You and your buddy must keep alert

# When law enforcement comes around

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1. Immediately identify yourself as press (before things heat up where possible)
  2. Stay calm and polite-- don't escalate
  3. Record any police encounter and get necessary information. This is a legal right. Keep the tape rolling!
  4. If you are stopped by law enforcement, immediately ask if you are under arrest
  5. If you're arrested, immediately ask for legal representation. Don't answer questions

# Policy Manual: Protest Coverage Protocol

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- Memorializes the steps anyone covering a protest can do so safely (e.g. equipment, turning off biometrics)
- Handles ethical questions of whether one can *participate* in the protest as well as *cover* (generally a bad idea)
- Require research in advance
- Establish a strategy (e.g. buddy system, emergency contact, equipment management) engagements with law enforcement



# Protest Coverage Protocol Continued

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- What to do in the event of an arrest
  - Memorize badge number and agency info
  - Claim Fourth Amendment and PPA rights
  - Remain silent
  - Have a local criminal defense attorney designated, number written on person
  - Bring quarters
  - Do not sign “post and forfeit” bonds



# Intellectual Property

- Patent
- Trademark
- **Copyright**
- Trade Secret



# Violation of the Copyright of Others

“May I use a still or short clip of a Netflix movie in reviewing it?”

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# Copyright protects property

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- Your work is your property much like your car or your computer



# Purpose

What's the point  
of copyright?

“To promote the progress  
of science and useful arts  
by securing for limited  
times to authors and  
inventors the exclusive  
right to their respective  
writings and discoveries.”

– U.S. Constitution,  
Art. 1, Sec. 8, Clause 8



# General Copyright Rule

- If you didn't create the work and/or own the copyright to it, you **must** get permission to use it
- Just giving credit is not enough

# Requirements for copyright

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- **Originality**
  - Something new
- **Minimal Creativity**
  - White Pages v. Yellow Pages
- **Fixation**
  - “Fixed in any tangible medium of expression”
- **Expression**
  - No protection for thoughts and ideas with nothing further



# So, how is a work copyrighted?

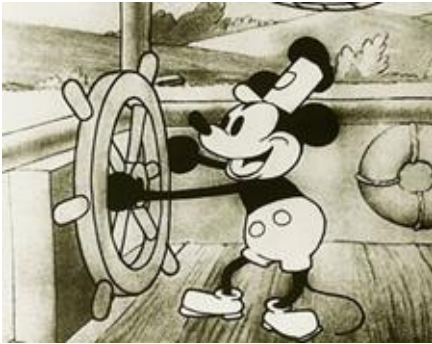
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Copyright exists from the moment a work is created.



# How long does copyright last?

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*In 1998, with the copyright on the original Mickey Mouse about to expire, Congress extended the protection of copyright works by 20 years. Mickey Mouse's current copyright expires in 2024.*

- It depends on creation: different timelines with the introduction and modification of the Copyright Act of 1976.
- One Simple Rule: In the U.S., as of 2022, works published before 1924 are in the public domain.
- Works created on or after Jan. 1, 1978 have copyright protection for the life of the author plus 70 years



# How do I get permission to use a copyrighted work?

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- **Locate the copyright holder**
  - Copyright notice will tell you or contact Copyright Office in DC
- **Submit a written request**
  - Your contact information
  - Expected date of publication
  - Number of copies
  - Publication price (if any)
  - Non-profit status (if applicable)
  - Description of intended use
  - Response deadline



# The Copyright Bots

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- Digital “watermarks” embedded within an image
- Auto generated copyright infringement notices
  - DO NOT ignore
  - Remove the infringing work
  - Do your research
  - Check statute of limitations
  - Respond in writing
  - Play the student media card



# Social Media



# Instagram

- User retains right to photos and content
- Grants Instagram all the rights of an original owner of the content
  - Can even relicense your stuff without your permission
- Users can violate copyright law on their own account by posting material they do not own the copyright to



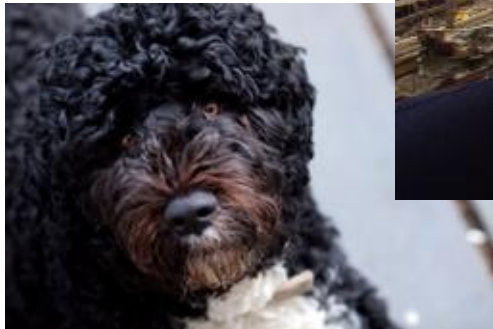
# Alternatives to Active Licensing

# Federal works are not protected by copyright

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Source: NASA, Photo by Rodney Grubbs



First Dog Bo (White House photo/Chuck Kennedy)

New York, NY, September 25, 2001 – A rescue worker overlooks the rubble from the collapsed World Trade Center. Photo by Mike Rieger/ FEMA News Photo ([www.photolibrary.fema.gov](http://www.photolibrary.fema.gov))

# Alternative Copyright Licenses

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## You are free to:

**Share** — copy and redistribute the material in any medium or format

The licensor cannot revoke these freedoms as long as you follow the license terms.

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## Under the following terms:



**Attribution** — You must give [appropriate credit](#), provide a link to the license, and [indicate if changes were made](#). You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.



**NonCommercial** — You may not use the material for [commercial purposes](#).



**NoDerivatives** — If you [remix, transform, or build upon](#) the material, you may not distribute the modified material.

**Fair Use**

# What is Fair Use?

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- An exception to our general copyright rule
- Using a limited amount of a copyright-protected work for news, educational, or informational purposes without consent



# Four Factors of Fair Use

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- Purpose/Character of the Use
- Nature of the copyrighted work
- How much of the original work is used
- The effect of the use on the potential market value of the original work



# Purpose/Character of the Use

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- Non-commercial uses for purposes such as news reporting, teaching, criticism, or commentary are more likely to be considered fair use
- Transforms the work's purpose, character



# Nature of the Copyrighted Work

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- Uses of works containing mostly factual material like maps or biographies are more likely to be fair than uses of highly creative and original works like novels and cartoons



# Amount of the original work used

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- No more of the work than what is necessary may be used fairly
- Quantitative (how many words of a 200,000 word book are reproduced?)
- Qualitative (using the “core” of a work – no matter how small – is less likely to be a fair use)



# Effect on the market for the original work

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Would consumers be willing to buy the new use as a substitute for the original work?



# Violation of Your Copyright

“We found a photo taken by one of our reporters on a different news site’s Instagram account. What should we do?”

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# True or False?

A work must be registered with the U.S. Copyright Office in order to receive copyright protection.

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FALSE

Formal  
registration of a  
work is **not**  
required.

# Who owns a copyright?

Generally, the creator of the work owns the copyright (including student journalists who work at campus publications.)

# “Work for hire” exception

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- Employer owns the works created by an employee when there is a formal employer/employee relationship
- Most student journalists are likely **independent contractors** who own the works they create
  - Generally, employer can only use your work once and you control all subsequent uses



# Copyright agreement

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- Every staff member and contributor should sign
- Student retains copyright to their work
- Student grants limited license to the publication to use their work



# Cease-and-Desist Letter and Other Methods

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- I. Notifying (often via certified mail) that this is your copyright; you found your product on their site; no licensing/permission sought or obtained.
  - **Remedies:** 1) properly attribute; 2) demand an apology; 3) immediate removal; and/or 4) seek money damages



- II. Find further remedy through the Digital Millennium Copyright Act (DMCA)
- III. Appeal to platform administrators.

# Artificial Intelligence Considerations

“Who owns this fully-  
AI created image?”

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# Copyright Litigation Related to AI

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- *Bartz v. Anthropic PBC* (first major ruling holding AI training on copyrighted books = transformative fair use)
- *Kadrey v Meta Platforms* (the “Sarah Silverman suit”)
- *Getty Images v Stability AI* (12 million photos used to “train” generative AI platforms)
- *Thaler v Perlmutter* (Supreme Court denial leaves “human authorship required” intact)
  - See further: the Théâtre D'opéra Spatial case

# University Server Warnings

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- Some schools are now implementing certain AI software that scans all student drives, including those of newsrooms with potentially confidential information (disincentivizing interviews and chilling work ideas)
- Software like Gaggle forwards findings on school servers to Gaggle employees to assess “hazards” flagged by AI, which then may be either deleted outright or forwarded to administration to handle (see “Gaggle for Higher Education”)
- Gaggle assumes that everything on servers are the



# Stay in touch!

Want the latest news about student press freedom, helpful legal guides, examples of bold student journalism, tips for your own newsroom and more?

**Sign up for the  
SPLC Newsletter.**



[splc.org/newsletter](https://splc.org/newsletter)

# Seek help when you need it.

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Hotline: [SPLC.org/legalhelp](https://www.splc.org/legalhelp)

Emergency: (202) 785-5450



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