

# PUBLICATION

---

## Copyright Protection for Community Papers in the 21st Century [Ober|Kaler]

2013

This article originally appeared in *Free Paper Ink*.

HELLO PUBLISHERS AND EDITORS! I am so pleased that INK invited me to submit a few articles on copyright and related legal issues for community paper publishers. I talked with many of you about these issues in the past, but media and the law keep changing. I hope to help you keep pace with legal changes.

I started my legal career in print, clearing and protecting direct mail newsletters. Today I represent many content-oriented businesses, including free community papers! It's been a turbulent and exciting time for publishers and lawyers keeping up with changes in technology and law.

The wonder of the Internet is the speed and ease it allows readers to share and disseminate content. Content is, however, procured and published using valuable time and money. As media companies explore ways to monetize content, they increasingly challenge "free-riding" by blogs or others who recycle content to divert traffic to their sites. Why give content and traffic away? Here are five copyright "Pro Tips" for publishers to more easily protect print and digital content from copyright infringement:

**Pro Tip 1** - To effectively challenge an infringer, a publisher should own the copyright. Identify the author of the content and ensure the publisher owns the copyright before approaching an infringer. A publisher owns two types of copyrights: the copyright in articles (or ads) prepared by staff or "work made for hire" freelancers, and the copyright in entire issues of the paper or publication, as a "collected work." The latter copyright protects all of the content as formatted in the publication, but not individual articles or images submitted by third parties. If the infringed content was written by a freelancer and used without publication formatting, the publisher will need the freelancer's cooperation as copyright owner to stop the infringement.

**Pro Tip 2** - Have written agreements with all freelancers, especially writers and editors. If the publisher owns the content, it is easier to control. Copyright law says that the person who writes the content (the writer) is the author and owner of the content's copyright. If the writer is employed to write the content for the publisher as an employee, then the publisher is the author and copyright owner. If the writer is not an employee but is treated as an independent contractor under income tax law, the writer is the author and retains copyright. To own the copyright in the content, the publisher seeds a written "work made for hire" agreement with the freelance writer that "assigns and transfers" the copyright to the publisher. If the publisher is not interested in owning the content, it is best to have a written license agreement with the writer so that the scope of rights language covers the ways the publisher uses the content.

**Pro Tip 3** - Use a copyright notice. Use of a copyright notice can prevent infringers from claiming "innocent infringement" of content that they "repurposed" from your paper or Website. Otherwise, the infringer can mitigate the perceived damage from the unauthorized use. Under the Digital Millennium Copyright Act (the DMCA), removing a copyright notice from content can be a criminal copyright offense. Watermarking high resolution image files and photos with a copyright notice also makes copying or scraping images more difficult, and traces the image back to the publisher.

**Pro Tip 4** - Develop a strategy to register key copyrights. Registering copyrights in content prior to infringement allows for very effective policing of infringed content. If the content has a copyright registration, the owner may more easily be awarded damages in court which encourages prompt settlement. Each application is \$35 online at [www.copyright.gov](http://www.copyright.gov) and protects one copyright in all of the content the application covers. Content can be registered in groups under one application but would result in only one copyright no matter how many items are included. An entire Website can be filed in a single application and be supplemented with additional applications for key articles or important series. Some publishers seek periodical registrations that allow every issue of a publication to be covered by registration upon issuance.

**Pro Tip 5** - Have a copyright policy and publish it in editorial policies and Website terms of use. It should reflect the publisher's actual practices. If the Website has tools to share content on social media Websites, provide a non-exclusive license in the policy for personal use and prohibit commercial uses like boardroom copies of articles or use of content on ad-supported Websites. If properly written, the license would be revoked for those prohibited uses.