

# Ads your paper creates are copyrighted too!

## Rate card needs language addressing this issue

Copyright law and intellectual property rights are areas of the law near and dear to the hearts of all of you reading this column. It's how we make our living, but it is more than that.

From the first day you put three words together on paper and thought to yourself how great they sounded, protecting your creative work product has been important, as much for the pride in your work as for the financial benefit it brings.

And it doesn't matter whether we are talking about the news story we create, the editorial we use to persuade readers or the advertising copy that makes our customers' products shine, all of them are created by our sweat and blood and we take pride in them, our children.

That's the basis in copyright law, you know. It protects that feeling of pride we have, but it also makes sure that when we allow others to use our work product — our words — we are adequately compensated for that use.

While some of the material may require more "sweat of the brow" than other material we create, the basis of copyright law is that it is all equally protected.

And that is the issue I want to discuss with you today.

I know I've discussed this before, but when I start getting frequent calls about an issue, I think it's time to discuss it again, and so perhaps it is time to raise this issue for your careful consideration. The issue I'm talking about is the issue of who owns the advertising content in your publication.

When you drill down to the essence of this issue, it becomes the question of whether the creation of the advertise-

ment was paid for by the advertiser or not.

In some cases, a customer will want to create an advertisement (probably, in this case, an entire advertising campaign), and so they will hire a design firm or a marketing company to create a concept, and then prepare a number of advertisements of various kinds — print, video, maybe web-based — that the customer can distribute to various media entities to promote the product. In the case of that set of facts, where the customer pays the marketing company for the work it created, the material is called a "work made for hire" under the law and the copyright belongs to the person who paid for

the campaign.

(Think about this concept in terms of your employees. When they write stories for you, do they own the stories? No, of course not. They are paid by you to sit at their computers and write the stories. Your company owns the stories. They get the paycheck. You are both happy!)

On the other hand, many of you are working in smaller media operations. Your advertising staff goes out and convinces a local business to buy a 4x4 ad in this week's paper. You ask them what they would like to see in the ad. You put it together (sometimes late at night in your ad department) and you run it by them to get their approval, then it appears in print.

But here's the important part of that set of facts. We are assuming here that they write you a check only for the 4x4 space the ad takes. They pay you nothing for the advertisement you have created.

Under those circumstances, your company owns the copyright to that ad.



Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, [jmaneke@manekelaw.com](mailto:jmaneke@manekelaw.com).

It does NOT belong to your advertiser.

And, when it shows up in some other publication, whether a flier for the community fair, the local historical society newsletter, or any other publication that might exist, you have a right to be upset that your copyrighted material is being used wrongfully.

How do you handle this situation and keep your advertiser happy? I have a few suggestions.

First, I suggest it is critical that you have a rate card that every single advertiser gets, and that you go over it with them when they start talking about buying an ad, and that you then leave it with them and encourage them to read it.

In that rate card you need this language: **All advertisements created by the Publisher are not considered a**

**"work made for hire" and the Publisher retains the copyright to all advertisements created by the Publisher for the Advertiser. The advertisement may not be reproduced without the written permission of the Publisher.**

Then you find a tactful way to go to your advertiser, remind him that you actually own the ad and suggest, gently, that you could, for a reasonable fee, create some other advertisements that he would own and could use elsewhere, if he would like, so that neither of you will be doing anything that would create legal problems.

Certainly, if you want, you have a right to send a letter to the other entity and advise him that this is copyrighted material that you own and that the advertiser doesn't own the ad or the rights to place it in other publications.

If we need to talk further about this, don't hesitate to call me. The hotline is here to not only serve the news departments of our members, but our advertising departments, too.

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