

Shrem & Smith

ATTORNEYS AT LAW

11720 San Pablo Avenue, Suite C, El Cerrito, CA 94530

Phone: 510-882-9992 • Fax: 510-868-2620 • Jean@ShremLaw.Com • www.ShremLaw.com

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To Whom It May Concern:

I have been asked to write an opinion letter regarding the legality of Healthcare Training Institute's ("Institute") use of copyrighted materials in its continuing education courses. I have been a California licensed attorney since 1997 and have sufficient knowledge in the legal field of Intellectual Property rights to provide this opinion. I find that the Institute's use of copyrighted materials is permitted under the law. My analysis is set forth below.

The United States Code, Title 17, Chapter 1, governs the rights, use and applicable exceptions thereof, to copyrighted work. Under this title, the copyright owner has the exclusive rights to: (1) reproduce the copyrighted work; (2) prepare derivative works; (3) distribute copies to the public; (4) perform the copyrighted work publicly; and (5) to display the copyrighted work publicly.

Ms. Tracy Appleton, the Institute's founder and Continuing Education Director supplied me with the background information and nature of the Institute's use of copyrighted materials for my analysis. The Institute has provided continuing education since 1979 to mental health professionals. The Institute utilizes factual information and ideas provided in copyrighted materials for teaching continuing education courses to mental health professionals, as part of their license renewal requirements.

Fair use is a legal doctrine, set forth in §107, that permits limited use of copyrighted material without acquiring permission from the rights holders. It is one type of limitation and exception to the exclusive rights copyright law grants to the author of a creative work and provides for the legal, unlicensed citation or incorporation of copyrighted material in another author's work under the following four factor balancing test:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

Factor 1. To justify the use as fair, one must demonstrate how it is transformative and to what extent it either advances knowledge or the progress of the arts through the addition of something new. The Institute uses the original material for the purpose of educating mental health professionals. Having a commercial purpose does not preclude a use from being found fair.

Factor 2. Fair use also looks to certain aspects of the work, such as whether it is fictional or non-fictional. Facts and ideas are not protected by copyright, only their particular expression. The social usefulness of freely available information can weigh against the appropriateness of protecting an author's copyrights. The Institute only uses copyrighted work that contains factual information and ideas.

Factor 3. The third factor assesses the amount and substantiality of the copyrighted work that has been used. In general, the less that is used in relation to the whole, the more likely the use will be considered fair. In general, the Institute utilizes a small fraction of an author's copyrighted materials as part of its course materials.

Factor 4. The fourth factor measures the effect that the allegedly infringing use has had on the copyright owner's ability to exploit his or her original work. In evaluating the fourth factor, courts often consider whether the use in question acts as a direct market substitute for the original work or whether potential market harm might exist beyond that of direct substitution, such as in the potential existence of a licensing market. The sale of the Institute's continuing education course would not impact an author's ability to sell or license its work to literary publications.

In conclusion, given the Institute's nature and use of copyrighted materials, I am of the opinion that such use is protected under law, specifically under the fair use doctrine (17 USC §107), which permits use of copyrighted material without acquiring permission from the rights holders. If you should have any questions about this opinion, please do not hesitate to contact me.

Sincerely,



Jean Shrem
Attorney at Law