Editorial

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Intellectual property: a cautionary tale of three cases

Imagine that you have just received an acceptance letter for one of your cases. It has been a long journey through the peer review process, and you are relieved to have gotten to an "Accept" after three rounds of review. Now imagine receiving an e-mail from *TCJ*'s publishing team requesting you obtain written permission from the copyright holders of a diagram in the case before publication. As a US author, you believe that the diagram's inclusion meets the requirements for Fair Use, and thus no permission is needed.

In a second scenario, you have written a terrific case about a politically charged situation that will provide students with a powerful learning opportunity regarding diversity and inclusion issues. You have taken care to include plenty of dialogue from the case protagonists to make your case lively and engaging. The reviewers loved the case, and after one round of revision, you have received an acceptance letter. You then receive an e-mail from *TCJ*'s publication team requesting changes in the dialogue or citations for specific statements made in the case before it can be published. As an author, you believe making the requested changes will take too much time and diminish the case's learning value.

For the third scenario, imagine that you have received an acceptance letter for a case about a well-known organization with a dynamic, equally famous and somewhat brash Chief Executive Officer (CEO). The case does not present the CEO in a favorable light, as its focus is on an internal change in performance evaluation methodology at the firm. The *TCJ* editor has warned you that a Consent to Publish – Release Form will be needed before the case can be published. You tried to get the executives to sign the release, but they sent it to the legal department, and the firm's attorneys have advised against providing the release. You send an e-mail to the *TCJ* Editor suggesting to disguise the organization and the protagonists as a solution to the release problem. However, the Editor tells you that the organization's identity, industry and CEO's personality are too central to the case's focus to publish it as disguised. Your tenure deadline is fast approaching, and you need this publication.

These three scenarios are based on actual situations I have encountered as the *TCJ* Editor in the past year. All have involved a significant commitment of time on my part and for the authors to address the issues. The case was ultimately published in only one scenario. In the other two, the otherwise excellent cases were withdrawn by the authors, much to the Editor and reviewers' disappointment. The authors were upset about not getting a publication after having spent so much time carefully revising their work based on reviewer feedback. Reviewers were upset at spending considerable time providing constructive feedback to improve cases ultimately not published. The Editor was disappointed that good cases did not get published.

How can we prevent these publication tragedies from occurring going forward? I believe that *TCJ* authors, reviewers and editors need to better understand the UK intellectual property rights. As Emerald Publishing Group, our publisher is headquartered in the UK; the applicable intellectual property laws for *TCJ* are those of the UK. 1

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Scenario 1: Fair Use versus Fair Dealing

In the first scenario, the author was asked to obtain written permission from the copyright owners to include a diagram in the case. The author believed the diagram could be included under the legal doctrine of Fair Use. Fair Use permits "limited copying of copyrighted works without having to seek the author/copyright holder's permission, when use is for purposes such as teaching, research, scholarship, reporting, criticism or parody" (Copyright Basics & Fair Use 2020).

Professors in the USA commonly use copyrighted materials to include financial statements, photographs, diagrams or tables in cases and instructor's manuals under the guise of Fair Use. Evaluation of Fair Use depends on four factors: Purpose, Nature, Amount and Effect. These factors are briefly defined in Table 1. A "Fair Use Evaluator" allows online users to evaluate whether a Fair Use claim is appropriate and also create documentation of "good faith" usage, which may be beneficial if the usage is legally challenged [American Library Association (ALA), 2008]

For our purposes, it is essential to note that a finding of "Fair Use" is not sufficient for publication in *TCJ* due to the publisher's legal address within the jurisdiction of the UK. In the UK, the determination of when permission is needed to include others' work depends on an assessment of "Fair Dealing."

Fair Dealing specifies the instances in which copyright material may be used without seeking copyright permission from the copyright holder. The UK law permits the use of certain types of "copyright material for the purposes of research and private study, criticism or review or for the reporting of current events" (Oxford University Press, 2020). The use must not infringe on the original copyright and must include sufficient acknowledgment of the source. Evaluation of fair dealing considers six factors: the purpose, character, amount, and effect of the dealing, nature of the work and alternatives to the dealing. These six factors are briefly defined in Table 2.

A "Fair Dealing Evaluator Tool" (Brewer and ALA Office for Information Technology, 2020; based on the "Fair Use Evaluator" cited previously) is available to allow users to evaluate whether a Fair Dealing claim may be made. The tool also permits the user to document their reasoning of Fair Dealing.

Fair Use and Fair Dealing seem to be similar at first glance; however, there are significant differences. Fair Use is a more general concept and provides explicit exemptions for using another's work in teaching, scholarship or research applications. Fair Dealing provides for

Table 1 Fair use factors as viewed by case authors

Factor	*Explanation*	*As applied to case writing*
Purpose	Fair Use can be claimed when the purpose of the use is for teaching, scholarship or research. The use is socially beneficial (such as learning), and the use is non-profit	Inclusion of financial statements from company annual reports, diagrams, tables, timelines and the like are often justified in cases due to the intended purposes of learning and scholarship
Nature	Fair Use can be claimed when the work has been previously published, is primarily of a factual nature and was not created for the same purpose as the proposed use	Because cases are created for a learning and scholarship purpose, authors claim the inclusion of financial statements, etc., may be used under Fair Use. The items often included in cases are also of a factual nature
Amount	Fair Use can be claimed when only limited portions of the work will be used, and these portions are not the central focus of the original work	Case authors claim that the financial statements are a small part of the annual report and thus may be included in cases under Fair Use
Effect	Fair Use can be claimed if the market value of the original work will not be harmed by the inclusion in the new work. Fair Use requires that proper attribution given to the original creators of the work	Case authors are required to provide appropriate attribution for any non-original content in their cases. Including a published financial statement in a case does not harm the market value of the firm or its annual report

Source: ALA (2008)

Table 2 Fair dealing factors as viewed by case authors

Factor	*Explanation*	*As applied to case writing*
Purpose	Fair dealing can be claimed when the purpose of the use is non-commercial	Cases published in *TCJ* are sold to libraries worldwide through a subscription model – clearly a commercial use. The law is currently uncertain and depends on interpretation of individual situations
Character	Fair dealing can be claimed when the use is new or transformative	A new or transformative use may be difficult to demonstrate in the typical use of quotations, financial statements and the like in cases unless the authors have made adaptations, consolidations or otherwise transformed the original materials
Nature	Fair dealing can be claimed if the use of the work is for criticism or review	Academic publications often claim quotations from other works are used under the "review" exception. Case authors are required to provide appropriate attribution for any non-original content in their cases
Amount	Fair dealing can be claimed when only limited portions of the work will be used	Case authors claim that the financial statements are a small part of the annual report and thus may be included in cases
Effect	Fair dealing can be claimed if the market value of the original work will not be harmed by its inclusion in the new work	Including a published financial statement in a case does not harm the market value of the firm or its annual report
Alternatives	Fair dealing can be claimed if there are no alternative materials that can be used	Case writers may have difficulty proving that there are no alternative ways to provide data such as financial results

Source: Brewer and ALA Office for Information Technology (2020)

specific uses of another's work but does not provide exceptions for teaching, scholarship or research. Thus, US-based authors may claim that quotations or financial statements in cases are allowed under Fair Use. At the same time, UK-based publishers may see these applications as an infringement of the copyholder's rights. Case authors can reduce conflicts over intellectual property rights by avoiding "cut and paste" inclusions of diagrams, charts, tables, timelines and so forth in their cases. Spending time to adapt, consolidate, reinterpret or otherwise transform these materials may provide a way to include them in the case without requiring permission from the copyholders of the original materials. Proper acknowledgment of the source would still be required.

In the first scenario, case authors were asked to obtain permission for a diagram to be included in the case. Under Fair Use, the diagram would have been permitted, as the case was for teaching purposes, and the authors had acknowledged the source of the diagram correctly. Emerald refused to publish the case with the diagram until the authors obtained permission from the copyholder (the organization). Permission was finally obtained, and the case was published, albeit after some delay.

Scenario 2: defamation/libel issues

In the second scenario, the case focused on a politically charged situation and included dialogue that concerned the Emerald publishing team. Emerald's defamation and libel policy states that the publisher "reserves the right to request changes to the text from the author or to reject the case before publication" for comments that might "expose groups or individuals to hatred, ridicule or contempt" (The CASE Journal: Author Guidelines, 2020). The Emerald publishing team asked the case authors to provide better documentation of the quotations deemed as possible libelous or defamatory. The case incident had been documented by several news sources that could have been cited for many quotations contained in the case.

Other quotations came from personal interviews with the protagonists. The concern was not that the individuals would file lawsuits against the publisher but that the organization described in the case, as a "bad actor" might pursue legal action against the publisher.

In this situation, the authors were asked to cite secondary sources to substantiate the emotive statements in the case.

The authors could have also cited personal interviews with the protagonists provided that they had maintained appropriate notes of these personal interviews. Harvard (preferred reference style of the UK journals), APA or MLA reference guides suggest that personal communications (whether by interview, phone, letter or e-mail) be documented by including the source, date and "personal communication" in parentheses in the text following the quote. Personal communications are not included in a list of references, as they are not recoverable by later researchers. Although including personal communication references or citations from secondary sources would have alleviated the publisher's possible defamation/libel concerns, the case authors declined to do the work. The authors asked that the case be withdrawn from publication (after going through four revisions to get an acceptance). They felt that the publisher's requests would take too much time to address and did not want to take the risk that the case would ultimately be rejected. If the authors had addressed the issues, the case would have been published to great acclaim.

Case authors writing about sensitive issues should be aware that the publisher may seek protection from defamation and libel lawsuits by requesting changes in citations or in the case itself. Citations from secondary sources and impeccable documentation of personal communications will often alleviate the publisher's concerns and allow publication of the case. As case reviewers, we should also recognize potential defamation/libel risks and address them earlier in the review process.

Scenario 3: Consent to Publish Releases and Disguise

In the third scenario, the case presented a well-known organization in an unfavorable light. Primary sources had been used in the case's research, and signed permission from the organization would be needed before the case could be published. The legal department of the organization had advised against signing the release. The peer review process for the case was almost complete, and acceptance was inevitable. Could the case be published by disguising the organization?

The *TCJ* author guidelines specify that cases "must include appropriate signed permissions from case protagonists" for publication. A sample "Consent to Publish – Release Form" is provided on Emerald's *TCJ* website (The CASE Journal: Author Guidelines, 2020). Almost every case writer I know has had at least one instance where a "brilliant" case could not be published because the organization or individual refused to sign the Consent to Publish. Most authors have learned to secure a preliminary commitment from the protagonist before completing the case research. The preliminary commitment alerts the protagonist to the need for granting formal permission before the case can be published. If the protagonist balks or expresses concern at the early stages of the research, the case writer may do well to end the work.

Release problems can be anticipated if the case presents the organization or the protagonist in an unfavorable light. For this reason, most business ethics cases are based on secondary instead of primary research. Well-documented secondary sources may eliminate the need for a signed release especially if obtaining a release may be difficult.

When warned that a signed release would be needed before the case in Scenario 3 could be published, the authors asked if the case could be published by disguising the organization and the protagonists' names. As I have written in an earlier editorial letter (Morris, 2020), cases using primary data MUST have signed consents for publication regardless of whether the case has been disguised. A signed release would be necessary to publish the case in Scenario 3 even if the organization and protagonists' names were disguised.

Disguise also presented an additional problem for the Scenario 3 case. The organization and the executive were so well known as to be impossible to disguise effectively. The organization's industry could not be changed, as it was central to the issues of the case. The case became unpublishable once the organization refused to sign a publication release. All

Table 3 Cases in this issue

Case title and target audience	*Authors*	*Synopsis*
Changing the Quality Mindset at Ashok Leyland (Parts A & B) Target Audience: MBA and Executive Education courses in Organizational Theory, Organization Culture and Leadership	MV Anuradha, CR Rajan & Uma Ganduri	In 2011 when Vinod Dasari took over as the Managing Direct and CEO of Ashok Leyland, he hired R. Sivanesan as the Senior Vice President (Quality, Sourcing and Supply Chain). The quality standards of the vehicles produced in the AL plants in 2011 was far from satisfactory. He decided to change this Part A of the case discusses the challenges faced by Sivanesan and Vinod Dasari in bringing about a change in the quality management practices at AL. Part B discusses the steps they actually took and the change that resulted from it
Novo Banco – What good out of a bad bank? Target Audience: Graduate and undergraduate students in courses in Finance Valuation or Strategy	Joao Silva & José Pereira	The bank named "Novo Banco" (New Bank in Portuguese) was created because of an emergency intervention by the Bank of Portugal to save the "good" assets of the once great but bankrupt Banco Espírito Santo (BES) on the 4 August 2014. The toxic assets remained in BES (dubbed "bad bank") BES was one of the biggest private banks in Portugal, with origins mounting back to the year 1869. In 2013, it was headed by the founder's great-grandson, Ricardo Salgado, when an external audit revealed several problems with the bank's accounting and concluded that BES had a severe financial problem (the risky credit represented 11.1% of the bank's accounts). The bank underwent a public capital increase (endorsed by several public figures, including the Portuguese president at the time, Cavaco Silva), of 1.045M€ to reposition itself, that was 100% successful. However, continued suspicions led Ricardo Salgado to be replaced in July 2014. At the end of that same month, BES announced imparities totaling 4.253,5 M€. This led the European Central Bank to suspend BES's access to the financial operations, forcing it to reimburse its credit to the Eurosystem in the value of 10.000M€
Asian Football: How Corruption Disrupted Marketing Value in the Game's Largest Fan Market Target Audience: MBA or upper level undergraduate courses in Corporate Strategy, Leadership, International Management, Sports Management, and Sports Marketing	Susan Myrden & Muralee Das	This case focuses on the role and influence of the Asian Football Confederation (AFC) as the Asian football governing body. The AFC is a member of the world football governing body- FIFA. With a US$1bn budget, the AFC has a strong impact on the future of football amongst Asia's three billion people. Unfortunately, the AFC has been unable to create the value in its sports events or properties that attracts fans and investors. Central to this problem is the issue of corruption and corruption allegations within the AFC, especially with regards to its leadership. This case therefore attempts to highlight the various issues, discusses the circumstances around these challenges and brings forth the complexities of leading a truly international organization across 47 countries. Such factors are then tied to the value of the organization's products or services in the marketplace
Heard It Through the Grapevine Target Audience: Undergraduate and graduate students in Human Resources Management	Rumana Anam	This case deals with the tricky situation faced by Sabrina, an employee of an international development organization, (an institution focusing on aiding development in economically underdeveloped countries), Sabrina, inadvertently comes across some negative information about a job candidate currently in the middle of the recruitment process, who, if successful, will become her colleague and work closely with her in the future. It has taken months to find this candidate and if hired should lighten Sabrina's workload tremendously. The preliminary decision-maker in the case is Sabrina, but the ultimate management decision will have to be made by her boss John Nash. What should Sabrina do?
Cleveland Clinic Florida "Pay-For Performance" Reimbursement: Why the Best Care Doesn't Always Make the Happiest Patients Target Audience: MBA, Masters in Health Sciences or Public Health students	Miriam Weismann, Sue Ganske and Osmel Delgado	Osmel "Ozzie" Delgado, MBA and COO of Cleveland Clinic Florida (CCF), was faced with a dilemma. Under the new Centers for Medicare and Medicaid Services (CMS) reimbursement formula, patient satisfaction survey scores directly impacted hospital reimbursement. But, the CCF patient satisfaction surveys revealed some very unhappy patients. Delgado pondered these results that really made no sense to him because CCF received the highest national and state rankings for its clinical quality at the same time. Clearly, patients were receiving the best medical care, but they were still unhappy. Leaning back in his chair, Delgado shook his head and wondered incredulously how one of the most famous hospitals in the world could deliver such great care but receive negative patient feedback on CMS surveys. What was going wrong and how was the hospital going to fix it?

reputable case journals follow the same standards regarding the need for publication release for cases based on primary research. Submission to a different case journal with hopes for a better outcome was not a possibility. The authors received a painful lesson that might have been avoided by understanding case writing conventions and publication standards.

Avoiding publication tragedies

The goal of this article was to avoid publication tragedies such as those presented in the three scenarios. I hope that authors will take care in developing their cases to avoid conflicts over intellectual property issues. It is heartbreaking to lose otherwise excellent cases due to copyright issues or libel/defamation concerns – for the authors, the reviewers and the editors. We want to publish your cases but can only do so if they meet applicable intellectual property standards.

In this issue This issue includes five cases (Table 3) focused on a wide variety of companies, locations and issues. Each case has a strong IM providing effective teaching strategies, theoretical linkages and complete answers and analysis to all discussion questions. *TCJ* IMs have been rigorously peer reviewed to ensure that adopting faculty can teach these cases and the authors. Enjoy!

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