

Theft by Any Other Name

By Tammy Cardwell

Visit any of the used curriculum boards and what will you find? You will find, for sale, consumable workbooks that have supposedly never been used. Yes, some of them truly haven't been used – perhaps the curriculum, when it arrived, wasn't right for the family, or maybe it proved to be too easy for the student and Mom had to replace it with something else. This is not always the case.

There is a scenario that plays out in homeschooling households all over. It begins with a homeschooling parent on a tight budget. Mom (or Dad) decides she must have a certain curriculum for her children, but it is costly. So, she develops a plan. She will purchase the curriculum, photocopy the consumable pages so that the book is preserved, and then she will resell the curriculum so that she can recoup some of her cost.

There are many variations on this plan, of course. Down the street, another homeschooling parent sits with curriculum she has borrowed from a friend. She, too, will copy so that the curriculum can be preserved and returned to its owner. Both parents think of themselves as frugal homeschoolers, but in both cases, if the parent has chosen to make copies of the workbook and unless the publisher has made special provision, “frugality” is another word for theft. No, they are not merely being frugal. They may have done this with the most honest of intentions, but they have stolen nonetheless.

No, they won't be hauled off to the police station. This kind of theft isn't considered a crime under criminal law. However, there are civil statutes that address the limits on copying other people's work.

You see; there's this thing called copyright. It means that the producer of the material has certain rights concerning the way that material can be copied. When one of us purchases a publisher's material, curriculum in this case, from either the publisher or a homeschool supplier, we are purchasing it with the understanding that the copyright owner has certain, specific rights. These rights are governed by law, and some of the law's details may appear on the copyright page. US copyright law makes it clear that it is illegal to copy the material except in very specific instances. Many believe that educational fair use allows them to copy any work, but that's not true. The congressionally endorsed Guidelines for Classroom Copying state that single or multiple copies for the classroom must be brief: a chapter from a book, an article from a publication, a short story or short poem, one illustration (chart, graph, picture). In addition, multiple copies for classroom use must be spontaneous. The time between discovering the piece and the need to use it in the classroom must be close in time to the point that it is unreasonable to expect a timely response to a permission request. The guidelines also state that multiple classroom copies abide by the cumulative effect test and include copyright notice on each page. The cumulative effect test states that copies must be made for only one course in the school, limits the amount of work you can copy from one author, and that a total of nine instances of multiple copies is the limit for one course during one term. Exclusions apply to current events and news articles. Even if all of these guidelines are followed, there are still several prohibitions, which must be followed. You cannot make copies to create your own anthology, compilation, or collection of works whether you specifically accumulate them or copy and use separately. In other words, you cannot create your own short story collection that includes copyrighted works. You cannot copy from consumable works. That includes workbooks, exercises, standardized tests, testbooklets, and answer sheets and anything similar. The prohibition section states that any copying cannot be done to substitute for purchasing books, periodicals, or reprints. Copying cannot be directed by higher authority – your school board can't tell you that you have to violate the guidelines. The same educator cannot make the same copies from term to term. If you want to use a particular copyrighted short story for each of your children in third grade, you need to consider another source for using that short story. The guidelines include more specific directions as to amount of material that can be copied. You can read them at the Association of American Publishers.

You cannot make copies that fall outside these guidelines not for extra students, not for sharing with homeschool friends, not with the intent to resell it later. If the book is a consumable workbook, you cannot make extra copies. Extra students each require their own, purchased copies. That, convenient or not, is the law. It's also important to note that since March 1, 1989 a copyright notice does not have to appear in the book for the copyright laws to apply to the work.

"But that's not fair!" some might cry, "No one does it that way!" The second statement, of course, is ridiculous; every parent knows that "But everyone is doing it!" has never been an acceptable excuse. The first statement, however, many homeschool publishers agree with to a point. This is why they either offer extra student books at reduced prices or add extra clauses to their copyright notices, granting the purchaser more rights than the standard notice allows. Cindy Rushton, for instance, includes an extra proviso in her copyright notice in one book that I have on hand. I include the complete copyright notice here, to illustrate the wording of a standard notice, highlighting her extra clause.

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This is a generous move, and one that Mrs. Rushton is in no way required to make, but she's a homeschooling parent too (Most homeschool publishers are!) and she's on a tight budget too (Most homeschool publishers are!), so she understands the financial needs of a family and helps in any way she can. Note, however, that she is not giving anyone the right to make copies for other people. Nor is she giving anyone the right to make copies so that the book can appear unused and thus be easier to sell on the used curriculum market.

At least one publisher goes even further than this. On the copyright page of LightHome Publications titles, you will find the following note.

We want to be sure you know that our curriculum materials are REPRODUCIBLE, meaning that the purchaser is allowed to copy any and all pages for multiple children in the same family (emphasis mine), as often as needed. That is our family friendly policy. In addition, if you know of a needy home schooling family who need this book, you may make copies for them as needed, if they truly cannot afford adequate curriculum. (Again, emphasis mine)

This is a rare and very generous offer, one inspired by the owners' homeschooling history and a concern for homeschoolers who may be at risk, legally, because they cannot afford adequate curriculum to meet their state's requirements. As owner Joy Marie Dunlap explained to me in email...

Our specific policy is worded as the Lord showed us as we prayed. If a home schooling family cannot otherwise afford to provide their children with a fully adequate home education (i.e. if there is any lack that could become a legal liability along the lines of educational neglect due to lack of adequate materials in ANY aspect of their children's education), we want our customers to feel free to share our LightHome curriculum as needed with that home schooling family.

We are determined that no home schooling family ever get in trouble for anything we could help with. That is the carefully prayed-through reasoning behind our copyright notice.

Here is a company that has chosen to make a generous exception where the right to copy (copyright) is concerned. It is necessary, however, to remember that they are the exception, and that even their exception has specific boundaries. Step outside the boundaries of the specific copying rights that they grant and you have violated copyright law.

Too, the buyer may have been granted the right to make copies for extra children within their household, but the book remains a consumable item and the publisher expects the buyer to consume it – not to preserve it and resell it. Consequently, the one who purchases a consumable product, makes copies for all their children, and then resells the workbook as unused, is taking advantage of the publishers generosity and then cheating them of another family's purchase.

Think about it from the author's or publisher's point of view. Between them, the people involved in this project have likely invested more than a year of their lives in this one book. The buyer may look at it and see that it is a certain sized book selling at a specific price and judge whether or not the book is worth its cost, but they are not simply buying the book itself. They are buying access to the ideas that someone has labored over, both to conceive and then to present in a usable manner. They are not merely paying for the book and what it actually cost to manufacture it. They are paying the author, the copy editor, the designer, the publicist and more. They are paying for the printing, the advertising, the shipping of review copies, the author's travel expenses as he goes to book signings, and more. All of these things are figured into the cost of the book? Of course! How else is that cost to be recouped? Each book sold puts the publisher closer to making a profit – or, all-too-often, just breaking even. Publishers risk a lot every time they publish new books. The risk is compounded when others steal from them by acting as if they have rights that they have never actually purchased. The Bible says the worker is worthy of his hire, and in this case, the worker is not paid adequately when the used curriculum market is flooded with copies that shouldn't be there.

Since homeschoolers tend to follow this copy/sell path in the name of saving money, perhaps it would help to consider the money situation from the other side.

A publisher prints a book. Let's say the book sells for \$20.00. Most of the book's sales will not be direct; they'll be through distributors, wholesalers and bookstores, each of which gets a hefty discount. On average, that works out to about 50%, so the publisher is now down to \$10.00 on the book. If the publisher printed a massive quantity of books up front (Which most homeschool publishers cannot do!) and did well on his printing costs, he paid around \$3.00 for the book, which brings him down to \$7.00. No book sells if it is not advertised, so he'll have sent out review copies (which costs money), put it on his website (which costs money), put ads in various places (Which costs huge amounts of money!), gone to book signings and made conference appearances (Need I repeat myself?), etc., to the tune of about \$1.00 per book. Now he's down to \$6.00.

I could keep going, taking out all of the company's overhead (electricity, employee pay, telephone, etc.), author's royalties if the author isn't the publisher (Self-publishing authors are seldom able to pay themselves royalties.) and more until you'd see that on a \$20.00 book a publisher is doing well if he clears \$2.00 – and our fictional publisher only clears that \$2.00 per book if he sells all of the copies he has printed. Believe me, that as much as the homeschooler on a budget needs to save money when possible, the publisher has an equal or greater need to sell every book he can!

The next time you consider buying or selling on the used curriculum market, think carefully about the transaction before entering into it. If the book you are selling or purchasing was copied in order to preserve it for sale, you're cheating the publisher out of a sale. The next time a friend down the street asks to borrow your curriculum, consider her purpose. Does she plan to copy all of the pages so she'll not have to buy it herself? In both cases, you are hurting the curriculum publisher, whether the hurt given is obvious or not.

Call it frugality. Call it careful planning. Call it what you will. Theft, by any other name, is still theft.

For more information about educational fair use and consumable workbooks visit these sites:

Guidelines for Classroom Publishing

An excerpt from the legislative history of the 1976 Copyright Act establishes congressionally endorsed guidelines relating to classroom copying for educational use. Note item B under Prohibitions: There shall be no copying of or from works intended to be "consumable" in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

United States Copyright Office

Reproduction of Copyrighted Works by Educators and Librarians

Jefferson County Public Schools Copyright Guidelines

Copyright guidelines covering all types of materials including software, graphics, music and other formats not discussed in the article. This is presented in an easy to understand and straightforward manner.

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