



A PRIMER ON THE L.A. TIMES IP PROPOSAL: WORK FOR HIRE DEFINITIONS

Let's walk through the company's full "work for hire" proposal. This is the first part:

Section 1. Work for Hire. Anything employees create within the scope of their employment including all writings, photographs, podcasts, copyrights, trademarks, trade secrets or other intellectual property of any type are the property of the Times. All work performed by Times employees within the course and scope of their employment are "works made for hire" ("Work") as defined in the U.S. Copyright Act of 1976, and employees waive any and all rights with respect to such Work in consideration for their employment.

This is probably standard and unobjectionable, depending on how the company would define "within the course and scope of ... employment."

There is a lot of nuance in U.S. copyright law, but in plain English it means you don't own the work The Times pays you to perform. If you're a columnist, for example, you can't publish a book of your best L.A. Times columns without first obtaining a license from the company. Similarly, you can't use reporting material you gather on the job for a book project without permission from the company.

So far, so standard. This is the second part of the company's proposal (underline is ours):

If for any reason the works are not deemed a work for hire, the employee must assign all such rights to the Times without further compensation to the employee. Employees must as a condition of their employment irrevocably waive, to the extent permitted by applicable law, any and all claims they may now or hereafter have in any jurisdiction to all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as "moral rights" with respect to the Work or associated materials. All rights associated with such Work, including without limitations rights to use, reproduce, distribute, perform, sell, display, synchronize the musical composition in, exhibit, prepare derivative works of, syndicate, republish, or otherwise commercially exploit in any format throughout the world, are the sole and exclusive property of the Times. The Times may

utilize and freely transfer such Work worldwide in all media, whether now known or later devised, in perpetuity without restriction of any kind. If requested, employees will execute any documents needed to assign or preserve the rights of any kind to such Works on behalf of the Times.

The underlined sentence, by definition, goes well beyond U.S. copyright law, as noted by our lawyers. But it's vague, and it's difficult to understand the scope of what the company is proposing here. Tronc also, at some point, inserted nearly identical language into our employee handbook (this type of thing is why we formed a union). So theoretically we've been living with this language for some amount of time, but the practice has been very different: Our staffers have continued to write books and pursue other creative projects outside of work, often in connection with the areas they cover.

That's probably what management means when they say "there is nothing new here." But the company made a choice to propose a terrible Tronc policy as part of our contract, and the company can choose to enforce and interpret that overly broad language differently than it did when Tronc owned us. That's why it's important for us to understand what the company thinks the language means.

What does the company mean when it says "within the scope of ... employment"? Under what additional circumstances might the company deem something a "work for hire" that would not fall under regular U.S. copyright law? How does the company intend to enforce and interpret this language?

We asked those questions on the record (which makes their answers legally relevant in any dispute) when the company brought in IP lawyer Alonzo Wickers to explain what the proposal meant. Here are some (lightly edited) notes from that exchange:

An Ruda (company negotiator): For everybody's reference I'm passing an amended Article 30 ... There were some concerns you had expressed about the ownership of your likeness. Some of those preliminary questions would be good to address.

Carolina Miranda (bargaining committee): Can you walk us through the amended language?

Ruda: if you go to Section 1, we actually have put a limitation in there that we hope will satisfy some concerns ... we have limited [it] to the scope and course of employment. So works for hire are works performed during the course and scope. And that's significant.

Alonzo Wickers (company IP lawyer): Hypothetically if you're a sports reporter and you've been working on your Italian grandmother's cookbook or your "Game of Thrones"-style novella. Those would not fall within this new definition. This would give

you greater rights for materials you create that have nothing to do with materials you do for the Times.

Anthony Pesce (bargaining committee): If I'm a Lakers reporter and I'm writing a book on Kobe?

Wickers: That doesn't fall outside course and scope.

We're going to stop here for a minute.

The company's IP lawyer said that a Lakers reporter writing a book about Kobe would fall within the company's definition of "course and scope of employment." Meaning, this passage from the company's proposal would apply: "If for any reason the works are not deemed a work for hire, the employee must assign all such rights to the Times without further compensation to the employee."

Under the law, a Lakers reporter writing a book about Kobe Bryant on his or her own time, without reusing L.A. Times material, would own the book and get paid for the book. The company would not be able to assert ownership over or control of that work.

Under the company's proposal, and in the company's own words, it could claim the rights to that project. That's new. It's a massive overreach compared to what the company would be entitled to under law, and it's a significant change in the company's "past practice." The bargaining committee continued to ask questions:

Hugo Martin (bargaining committee): What if it's fiction? What if I cover LAPD and I get an idea for a crime novel?

Wickers: I think if you're writing a truly fictional work that is not based on the cases you covered or the people you covered, if it's truly a fictional work that is not about the cases that you worked on it, it'd probably not be a work for hire. The Times is trying to grant you greater control over the works you create that are not part of your work for The Times.

Matt Pearce (bargaining committee): I covered Ferguson. I want to write a book about Ferguson. If I don't use any of the reporting that I did when I was in Ferguson, is that part of the work for hire?

Wickers: Yes, if you covered it as part of your work for The Times, it would fall into work for hire.

Pearce: I'm a national reporter on our national desk. I'm a general assignment reporter. I write about lots of things. I might write about a teacher's strike in West Virginia. I make a couple of phone calls. But if I decide to write a book ...

Wickers: If you wrote just a paragraph or two. I can't give you a definitive answer. But if you covered it extensively it might fall within the work for hire definition.

Let's pause again. At this point in the conversation the bargaining committee understood the company's proposal to be a sweeping land grab. But we wanted to clear up any doubts:

Pesce: I understand the first two sentences [of your proposal]. It says after that: "If for any reason the works are not deemed a work for hire, the employee must assign all such rights to the Times without further compensation to the employee."

Wickers: If it's work you performed during the scope of your employment but it wasn't work for hire by the Copyright Act, I think the point of that provision is that if the work were deemed not to be made work for hire, you'd assign that.

If you want to pursue a book (or other creative project) even remotely connected to your work for The Times, the company wants to control the rights, ownership, and profit from that project. If you want to pursue a project unrelated to your work here, such as a work of pure fiction, the company wants the unilateral ability to approve or deny that project for any reason.

We have about twenty pages of notes from this discussion with the company's team, where they detail very specifically what the rest of their proposal means. We understand the company's proposal, and we've fairly represented it.

Will the company "own" your name, likeness and biography? No, technically not. It just wants to act like it owns it. The company's proposed policy for "derivative" (movie and TV) deals says:

LAT shall consult employee(s) involved in creating the original work at the inception of any deal so that the employee(s) understand what obligations will apply to them under the agreement, including without limitation any representations and warranties that will apply to them, any issues concerning rights to use employee names, likenesses, biographical information, etc. LAT will need to gain the consent of independent contractors before proceeding to do any content derivative deals involving contractors.

Management says: "Our view is straightforward and consistent with our past practice and with the position taken by most media companies whose business models are similar to ours."

Contrast that sentence with the New York Times policy, which is quite straightforward: They get first look and, if they want it, they can bid competitively for it. See the whole policy at [this link: https://www.nytimes.com/editorial-standards/ethical-journalism.html#booksMoviesReprintsAndCopyright](https://www.nytimes.com/editorial-standards/ethical-journalism.html#booksMoviesReprintsAndCopyright)