

A Textbook Case of Charity

1. Identify the ethical dilemmas.

- The first and most obvious ethical dilemma in this case is the copyright infringement of the *Great American Literature* textbook (written by Dr. C.R. Breach) made by three professors from the *Humongous State University (HSU)*. Copyright infringement is illegal, and unethical because it refers to the reproduction, display, and distribution of a product that does not belong to the individuals infringing it. Eastlane, Inc. had a corporate policy to prohibit the resale of used textbooks and avoidance of the resale of the book to online retailers.
- The second dilemma: It is less obvious but still of great significance. How can the accused professors be able to commit this tortious act in plain sight of university management? What safeguards did the university had put in place to prevent or even monitor this type of misconduct? Does *HSU* have any documentation to prove that the professors in question attended an *Ethical Training* at the university? Furthermore, can university management demonstrate that copyright infringement was one of the topics covered on the training presentation?
- Third dilemma: An implied yet dubious fact is that if these professors were trying to aid impoverished students, why selling the book half-price? If their intentions were legitimate, why were the professors obtaining a profit? Why not place the book online for free?
- Fourth dilemma: The suggestion of the establishment of a lawsuit against all the students who have accessed the professors' website may not be suitable in court. How can the plaintiff demonstrate that those students accessing the website knew that the professors were committing a copyright infringement? In anyone's eyes, these three professors could have been acting with the support of the Fair Use Exception. Without previous knowledge, some individuals may see the selling of the book half-priced as a generous gesture but may not see it as unethical.
- Fifth dilemma: The textbook is heavily used by students that attended English literature survey courses and was sold at \$210 each copy. The book is only sold through university stores and used textbooks cannot be resold or bought online. As stated in the case, the publisher enforced these practices to sustain the price of the textbook. In my opinion, the publisher has created a monopoly with the product and I believe that is morally and ethically wrong to impose this hardship in individuals that are still studying to obtain a degree.

2. Evaluate how stakeholders would be affected by various solutions to your dilemma (s).

- On the first dilemma: Property rights were granted by federal statute were violated. It was clearly stated in the case that the publisher forbidden the reselling of used books and avoided the online retail selling. In that regard, it can be assumed that the textbook was not copyrightable. If sued, the three professors will be liable for damages or perhaps may face criminal penalties. It may be considered as actual or

statutory damages which are imposed at the court's discretion (even criminal proceedings for willful violations may be placed). The statutory damages are capped at \$150,000. The court may grant an immediate injunction against the infringers (Business Law Today, 11th Edition, Ch. 6, Pg. 151). If a clause in the contract made with Eastlane, Inc., included the forbiddance of reselling used textbooks or selling to online retailers, not only the three professors will be in jeopardy of a lawsuit but also the university may face criminal charges. The publisher may claim that *HSU* breached the contract. The publisher, as well as the book writer may be affected with financial repercussions from the fewer book sales. This may affect Eastlane, Inc. profits as well as, Dr. C.R. Breach's royalties. Nowadays, new technology allows individuals to save documents on a device or online; therefore, augmenting possibilities of a third-party reproduction of a textbook. A third-party piracy may be subject to another set of individuals reproducing the textbook. These acts would be unethical for those individuals that play a role in obtaining the textbook (either online or printed).

- In the second dilemma: Since it would be nearly impossible to determine if faculty staff is unethical or committing a tort without the help of a whistleblower, it is of great importance to have systems in place to establish preventing measures. *HSU* must prove that faculty staff received training on ethical behavior. The university may need to provide sign-in sheets that evidence that the three professors attended an *Ethical Training*. Moreover, *HSU* will need to provide a copy of PowerPoint presentation or handouts that demonstrate that copyright infringement was one of the topics discussed at the presentation.
- In the third dilemma: If sued, the three professors may contend that there was not an intend of copyright infringement. The professors may claim that reproduction of the textbook was intended to assist students in financial need. However, by making a profit, it placed the professors in a questionable situation. These professors may face legal charges against them, and a remedy may be imprisonment or a fine.
- In the fourth dilemma: This may be brought up as a *Class-Action Lawsuit*. As dictionary defines it, a *Class-Action Lawsuit* occurs when a group of people is sued for an specific tort. In this case, the students accessing the website and/or buying the online textbook may have legal charges against them, and as a remedy they may face imprisonment or a fine.
- In the fifth dilemma: Social Media had become convenient and efficient because it is viewed as the fastest way of communicating news. Due to the high-priced books, both the Eastlane, Inc., and Dr. C.R. Breach may be victims of the proliferation of bad propaganda.

3. Discuss the pros and cons of alternative courses of action.

- First Dilemma: One of the cons is that if the publisher sues the professors, the defense attorney can claim that the professors acted on the *First Sale Doctrine* of the Copyright Act. As indicated in section 109(a) of the *First Sale Doctrine* of the Copyright Act, once a copyright owner sells or gives away a particular copy of a work, the copyright owner no longer has the right to control the distribution of that copy (Business Law Today,

11th Edition, Ch. 6, Pg. 153). Unless a contract with university and Eastlane, Inc., clearly states the banning of the reselling of the book and the online sale, it is possible that the use of the *First Sale Doctrine* of the Copyright Act may use as a defend for the professors.

- Second dilemma: One of the cons is that if the university do not have any proof of trainings on ethical behavior, the court may infer that poor management practices may have allowed these professors to make this copyright infringement. On the other hand, having proof of ethical trainings may give the university some relieve of criminal charges.
- Third dilemma: One of the cons is that the professors may be accused of malicious intent or willful violation to obtain illegal earnings. In other words, more than “a textbook of charity” may be misconstrued as “a textbook of profit.”
- Fourth dilemma: One of the pros is that it may be difficult to proof that students knew that the three professors were committing a copyright infringement. The students may claim that they believed this access was totally permitted by the publisher; therefore, malicious intend in the students’ part would be difficult to proof.
- Fifth dilemma: Students may access their social media applications and tell the world about their side of their story. They may portray themselves as victims and describing everyone else, including the publisher and author of the textbook, as villains. In this era, many firms and individual’s live have been destroyed due to the creation of bad reputation. In a blink of an eye, Word-to-Mouth information can do much damage and if the word is out that the publisher customarily imposes high prices on textbooks, the aftermath can be devastating.

4. Recommend a decision. Rationale for the decision.

- To avoid disputes over ethical violations, the university should first create a written ethical code that is expressed in clear and understanding language. The code should include established and specific procedures that employees can follow if they have questions or complaints. A well-written code might also include examples to clarify what the company considers to be acceptable and unacceptable conduct copy (Business Law Today, 11th Edition, Ch. 9, Pg. 230). Also, university management should provide trainings on ethical behavior not only to faculty staff but also to their pupils. At the end of the trainings, both faculty staff and pupils should sign a *Code of Ethics Contract*. This *contract* should specify all the actions that a university staff and a student may find as unethical.
- I recommend that Eastlane, Inc., follows through with the advice of their general counsel and gives the approval for a lawsuit against the three professors who committed this copyright infringement. I believe that Eastlane, Inc., has standing to sue and given the circumstances, it may win. In my opinion these professors, committed an intentional tort and acted out of malicious intent to obtain illegal profits. More than being enraged for the high prices of the textbooks, I believe these professors saw that situation as an opportunity to make a buck. A precedence needs

to be established that when someone uses piracy (specially to obtain profits) will need to receive the consequences. What kind of example were these professors setting? To me, it is embarrassing. I would have expected this type of behavior from high school students but never from these type of professionals. The court should have an injunction on the infringement. Requesting that the website be shutdown immediately. These professors should go to court and a fine should be given for this copyright infringement.