

Website Seeks Partial Dismissal Of College's Copyright Claim

By Aaron Keller

Law360 (August 17, 2023, 8:14 PM EDT) -- A study-aid website on Thursday asked a federal judge to dismiss portions of a copyright lawsuit by Post University Inc., arguing that its own copyright notice was "far away" from the online materials in question and there was no confusion surrounding ownership.

California-based Course Hero Inc. calls its website a "platform for course-specific study resources" and currently touts its ability to provide artificial intelligence-driven answers in response to user uploads. Post University, of Waterbury, Connecticut, accused it in September 2021 of direct, contributory and vicarious copyright infringement and a violation of the Digital Millennium Copyright Act, among other causes of action.

According to amended complaint filed in November 2022, Course Hero asks users to upload course documents, including exam questions, to its website. From those uploads, the website in turn creates "preview" documents, which are alleged derivative works. Some pages are allegedly deleted, and other areas, including copyright notices, are allegedly blurred.

"Post University is the owner of all documents created by faculty and staff of Post University including, upon information and belief, thousands of documents which have unlawfully been made available for distribution and sale on Course Hero's website," according to the amended complaint.

Course Hero moved to dismiss the DMCA claims with prejudice in February 2023, arguing it did not provide false copyright management information, or CMI, in conjunction with its provision of the course materials on its site.

The website argued that a "generic ... copyright notice at the bottom" of its web pages was not false CMI because it was not sufficiently connected to the works in question. Therefore, DMCA liability does not attach, according to Course Hero.

Additionally, the website said watermarks superimposed on downloaded materials assert only that the contents were "shared via" and "downloaded from" Course Hero, not that Course Hero owned the files in question.

During oral arguments Thursday, U.S. District Judge Janet Bond Arterton quoted the DMCA and questioned whether Course Hero's own copyright notice was "conveyed in connection with" the works at issue.

"Why is it that the copyright notice on the Course Hero website meets that criteria?" the judge asked.

Annie A. Lee of Morrison Foerster LLP said Course Hero's copyright notice was "visually distinct and separate," or "far away" from, the file at issue on its site, thus rendering it impossible for a reasonable juror to conclude that the website was laying claim to the university's works via providing false CMI.

The judge pondered whether the proximity questions could be decided on a motion to dismiss, suggesting that the "visual disconnect" argument "sounds as if it needs people to decide it" — in other words, a jury.

Attorneys for the university agreed, reiterating that "thousands" of documents were at issue.

However, Judge Arterton challenged the university's arguments surrounding Course Hero's watermark on downloaded documents, saying it appeared to show Course Hero was only the source, not the owner, of those files.

"Putting your name on it is enough," the university responded. "It's facially suggestive of ownership."

According to the complaint, the DMCA generally immunizes online service providers for material "controlled or operated ... at the direction of a user." Post University alleges Course Hero cannot be shielded by the DMCA because its "preview" documents are edited versions of user uploads.

Besides copyright infringement and DMCA claims, the amended complaint alleges trademark infringement, false designation of origin, unjust enrichment, common law unfair competition and a violation of CUTPA, the Connecticut Unfair Trade Practices Act.

Judge Arterton said she would issue a ruling on the partial motion to dismiss at a later date. She further noted that Post University's other claims were headed for discovery.

Attorneys for the parties declined to comment at the conclusion of the hearing.

Post University is represented by Benjamin J. Lehberger of Dilworth IP LLC, Timothy Andrew Johnson of Getz Balich LLC and Alisha L. McCarthy, Ashley N. Robinson and Yonaton Aronoff of Harris St. Laurent & Wechsler LLP.

Course Hero is represented by Allyson R. Bennett, Joseph C. Gratz, Annie A. Lee, Ian Alexander Bennett, Justin Kareem Rezkalla and Vera Ranieri of Morrison Foerster LLP and Patrick M. Fahey of Shipman & Goodwin LLP.

The case is Post University Inc. v. Course Hero Inc., case number 3:21-cv-01242, in the U.S. District Court for the District of Connecticut.

--Editing by Caitlin Wolper.