Legally Speaking

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AALL Model Law Firm Copyright Policy

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In the fall of 1996, the American Association of Law Libraries Copyright Committee made final the Model Law Firm Copyright Policy, a document which consists of suggested guidelines which would promote law firm compliance with United States copyright law. The finished product is a result of several years of discussion and development among committee members both past and present. Law firms have a long history of using the copy machine to make duplicates of just about anything capable of being reproduced. Law firm libraries are frequently the central location for the dissemination of documents, books, articles and reviews that are often the subject of duplication. The below Model Law Firm Policy, provided with permission from James S. Heller, Chairman of the Copyright Committee and Director of the Law Library at the College of William and Mary, succeeds in defining the responsibilities of all firm employees with regard to copyright law and offers directions for handling a variety frequently encountered situations involving protected materials.

American Association of Law Libraries
Model Law Firm Copyright Policy
(October 10, 1996)

INTRODUCTORY STATEMENT:
Reproducing copyrighted materials is governed by the Copyright Act of 1976, 17 United States Code. AALL reaffirms the application of the fair use provision (17 U.S.C. Section 107) and the library exemption (17 U.S.C. Section 108) in the law firm environment. These Guidelines are intended solely for the consideration of law firm libraries as suggested procedures in complying with copyright law. Firmwide implementation should be done with the input and advice of firm management.

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[FIRM] does not condone the unauthorized reproduction of copyrighted materials, in any format. Unauthorized reproduction includes copying done beyond that which is permitted under the Copyright Act that is done without permission and/or payment of royalties.

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Compliance with the Copyright Act is the individual responsibility of every employee, including partners, associates, paralegals, and staff members.

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Under these Guidelines, sources of copies should be the lawfully obtained original copyrighted work, whether found in the library, obtained through ILL from a lending library, or retrieved from an online service or document delivery service that pays royalties to the copyright owner.

Definitions:
1. Copy: For purposes of these Guidelines, a copy is either 1) a photoreproduction of text or images via a copier; 2) transmission or downloading of text or images from a computer, or 3) any other replication by way of electronic means, or other form of transcription, of text or images subject to copyright restrictions.
2. Reproduction equipment: Reproduction equipment includes copiers, microform reader/printers, networked workstations, scanners and other electronic transmission devices. It is not intended that copyright notices be posted on individual computer workstations throughout the firm.
3. Reproduction centers: Reproduction centers include areas of the firm staffed by personnel, either employed by the firm or by a third party, who have the primary responsibility for attending to copiers and other reproduction equipment. Reproduction centers that are staffed by third party vendors likely fall outside the Section 108 library exemption. However, the personnel staffing these Centers work closely with firm personnel and the firm Librarian in accepting reproduction requests, and should therefore be included in the scope of these Guidelines.

SIGNAGE:
NOTICE ON EQUIPMENT: The firm should post the following signs on all reproduction equipment: "THE MAKING OF A COPY MAY BE SUBJECT TO THE UNITED STATES COPYRIGHT LAW (Title 17 United States Code)." Alternatively, the firm may elect to use the following notice recommended by the American Library Association—"THE COPYRIGHT LAW OF THE UNITED STATES (Title 17 U.S. Code) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL. THE PERSON USING THIS EQUIPMENT IS LIABLE FOR ANY INFRINGEMENT"—or the notice that appears below under "Signage: Notice Where Orders are Placed and on Request Form."

SIGNAGE:
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The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproduction of copyrighted material.

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This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would violate copyright law.

ROUTING AND LIBRARY REPRODUCTION
continued on page 51

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PERMISSIONS AND ROYALTIES:

These guidelines express minimum standards of fair use. Circumstances may exist where copying beyond these guidelines is permitted under the Copyright Act. However, reproducing materials beyond that which is permitted by these guidelines generally will require permission, and, when necessary, payment of royalties. Royalties may be made directly to the copyright owner or other alternative mechanisms such as the Copyright Clearance Center.

QUESTIONS/FOR MORE INFORMATION:

Please direct any copyright concerns to [LIBRARIAN AND/OR INTELLECTUAL PROPERTY ATTORNEY].

NOTES

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Legally Speaking
from page 31

TION: Firm management should review the copyright law — particularly 17 U.S.C. Sections 107-108 — as well as firmwide copying and other copyright related activities before implementing a copyright policy. At a minimum level, this should include a review of Copyright Office Circular R21: Reproduction of Copyrighted Words by Educators and Librarians, the Heller/Wiant Copyright Handbook, and Gasaway/Wiant’s Libraries and Copy-


2. Management should review carefully all firmwide online database, CD-ROM and software contracts.

3. Management should consider reviewing such seminal cases as:
   Washington Business Information v. Collier, Shannon & Scott, No. CA 91-
   0305-A (D.C. Va., filed 2/26/91). (Parties settled; no court decision. But see 41 Pat.
   Trademark & copyright J. BNA) 389 (case announced and described); 42 PTCJ 619
   (settlement announced).

   Pasha Publications v. Enmark Gas, 22 U.S.P.Q. 2d 1076 (BNA), Copyright L.
   American Geophysical Union v. Texaco, 69 F.3d 913 (2nd Cir. 1994). [8]

Continuing Evolution
from page 49

erty, and therefore might be expected to take a different approach from that of the USA or the UK, changes are also under way in Australia.

In September 1995 the then Commonwealth Government announced its intention to amend Australian copyright legislation to reflect modern communications technology. The resulting Bill was lost when the Government changed at the last election, but it is worth noting that it was proposed to introduce a new 'transmission right', to introduce moral rights into Australian law. There is some doubt about the Howard Government's commitment to moral rights legislation in the form proposed, but it is still worth noting that a number of jurisdictions are now considering such rights as having an important role to play in our brave new world.

The Balance Appears to be Shifting
Copyright serves publishers, record companies, television broadcasters and, not least, the film industry. The dominance of the United States in creative works, book publishing and movie making — drives the rigorous enforcement of US copyright law by the Courts. The position is much the same in the United Kingdom, another substantial exporter of intellectual property. If we believe that copyright, the currency in which Hollywood, the music and software industries, as well as publishers, all trade, is going to be abandoned or weakened, we are simply deluding ourselves.

The answer for scholarly publishing appears to lie in dialogue. Let us devote less energy to arguing as adversaries, and more to the constructive evolution of appropriate licensing arrangements and guidelines to the use of copyright material in the institutions for which that material is, after all, written and published.

Cases of Note
from page 48

adverse impact on the potential market" for the original" (quoting Nimmer, 513.05(A)[4], p.113-103.61). In view of all of the above, this factor weighed against a finding of fair use.

In concluding, the Circuit Court agreed that "KCAL's use of LANS's copyrighted tape was arguably in the public interest because it was a percipient recording of a newsworthy event. However, KCAL's use was commercial and came in the wake of LANS's refusal of a license." There was no evidence that alternatives were not available and, while the tape had been licensed and published before KCAL's use, "it was not obvious that there was no impact on the market for first publication rights as KCAL itself requested a license." Also, there was no dispute that KCAL used the heart of the tape. Therefore, a finding of fair use was not a reasonable conclusion in the view of the Court.

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