Legally Speaking

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Legally Speaking

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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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 legally 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.

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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.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

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

ROUTING AND LIBRARY REPRODUCTION CONTINUED ON PAGE 51

<http://www.against-the-grain.com>
DUPTION: The Library may route originals and/or copies of tables of contents. When the length of the routing list becomes excessive, the firm should purchase additional copies of a copyrighted work.

The library or reproduction center may make one copy of an article in response to a specific request from an employee or partner for individual scholarship, research or educational use. Recipients are cautioned against systematic reproduction of articles for later (rather than current) use and creating personal libraries. Although in most instances making subsequent copies from the original copy requires permission, circumstances may exist — such as making a single copy for one client or co-counsel, or for submission to a court (see Nimmer on Copyright, 13.05[D][2]) — where the copying may be a fair use.

The library or reproduction center should not, nor should individuals, make multiple copies of articles, or cover-to-cover copies of newsletters, periodical issues or volumes. This practice should be observed for both standard library materials and materials obtained from online services.

NOTE: Because of the typically short length of newsletters, the library or reproduction center, as a general rule, may reproduce only small portions of newsletters subject to copyright protection.

INTERLIBRARY LENDING/DOCUMENT DELIVERY:

The library typically may borrow or lend only lawfully obtained original copies of copyrighted materials, or the original copyrighted work.

Lending: In response to requests from other libraries, the library may make one copy of an article so long as the requester attests, and the library reasonably believes, that the request complies with the Copyright Act or the CONTU guidelines.

Borrowing: In requesting materials from other libraries, the library may request a single copy of an article or brief excerpts from a book, so long as the request complies with the Copyright Act or the CONTU guidelines. (CONTU suggests that a library subscribe to a journal title if it requests photocopies of articles published in the periodical within five years prior to the date of the request more than five times within a given year).

COMPUTER PROGRAMS:

According to Section 117 of the Copyright Act, the firm may make one archival copy of software it has purchased, and may also adapt purchased software so that it can be used on firm equipment. Firm personnel should not load any unauthorized copy of any computer program, or portion thereof, onto any computer, file server, or other magnetic or electronic media storage device belonging to the firm. License agreements should be strictly followed with regard to the use of all authorized copies of software programs.

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

1. REVIEW AND IMPLEMENTATION CONTINUED ON PAGE 52
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TION: Firm management should review the copyright law—particularly 17 U.S.C. Sections 107-108—as well as firmwide coping 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/Waint Copyright Handbook, and Gasaway/Waint’s Libraries and Copy-

right: A Guide to Copyright Law in the 1990’s.
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).
   American Geophysical Union v. Texaco, 69 F.3d 913 (2nd Cir. 1994).

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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’, and 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 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 moviemaking—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 not 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
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adverse impact on the potential market” for the original” (quoting Nimmer, §13.05(A)(4), p.113-102.61). 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 peremptory 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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