Questions & Answers -- Copyright Column

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**Questions & Answers — Copyright Column**

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**QUESTION:** An academic library has a scanner that is available to students. Not surprisingly, students often want to use it to digitize parts of library books which the library does not allow. Now the question has arisen about scanning images from books for use in class presentations and projects. Should the library permit students to scan images for these purposes? Should students follow the Classroom Guidelines just as faculty do such as limiting use to one class, etc.?

**ANSWER:** The library likely has been more restrictive than is necessary. Libraries typically do not restrict copying by students on unsupervised photocopying equipment; the library’s only responsibility is to post a notice that reproduction of copyrighted work is subject to the copyright law. See section 108(f)(1). Scanning is really no different. If the library is not doing the scanning for the student, the equipment is “unsupervised.” Other than posting the 108(f)(1) notice on or near the scanner, there is no statutory responsibility to restrict the reproduction. On the other hand, should the student asks the librarian if she may copy an entire book, the librarian may want to say no and refer the student to the copyright law.

For presentations, it is section 110(1) and (2) for performances and displays that applies to the student. While subsection (1) relates to display of images and does not mention reproducing images, it is common practice to do so by making a Powerpoint slide, etc. For a transmitted performance through course management software or a password protected Website, the statute does envision making a copy in order to facilitate the performance, but only if there is no digital version of the work available.

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**Cases of Note from page 55**

The Sixth Circuit had not taken a published stance on this, but had affirmed a district court’s refusal to make the inference from a bare showing of corporate receipt. In Glanzman, a secretary at Columbia Pictures received a script which the corporate receipt theory would require that quantum leap to Stephen King then having access to it despite the complete impossibility of that under the facts.

This was Stephen King’s novel Christine and a ten-page plot sketch called “Side-swiwe.”

Other circuits required evidence of reasonable possibility of the work getting into the hands of the infringer. Towler v. Sayles, 76 F.3d 579, 583 (4th Cir. 1996) (requiring a “close relationship” for the corporate receipt doctrine to apply).

The Sixth Circuit noted it’s hard for plaintiff to show chain of possession once the CD enters the maw of a giant corporation. But Blige had clear evidence of independent creation. “[A]n inference of copying is rebuttable by evidence of independent creation of the allegedly infringing work.” Ellis, 177 F.3d at 507.

Dr. Dre documented the various states of development and was finished with “Family Affair” by January 10, 2001. “Party Ain’t Crunk” was not in final form until March of 2001 and was not in MCA’s hands until May of that year.

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**QUESTION:** Are libraries considered to be an educational institution?

**ANSWER:** For copyright purposes, the question is not whether an institution is educational in nature but whether it is organized under the U.S. tax code as a nonprofit educational institution. Nonprofit educational institutions have certain privileges and exceptions that apply to them in copyright which are not available to for-profit educational institutions or to non-educational organizations.

So, to answer the question, libraries are not necessarily educational institutions. To some extent, the answer depends on the type of library. A library in a school or college or university is a part of an educational institution, and therefore it is educational. A corporate library, even a nonprofit corporation library, is not an educational institution. A public library, while it definitely has an educational mission is a nonprofit library but not a nonprofit educational institution.

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