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Questions & Answers -- Copyright Column

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QUESTION: Many librarians write reviews of books and music. This question relates to reuse of these published reviews without permission of the reviewer.

Outside of my job as a music librarian, I have written reviews for FANFARE, a national CD magazine. The Web was in its infancy, so the understanding was that all work was for one-time publication in the print edition. There was no online version at the time. Whenever anyone asked permission to use portions of reviews (or even whole ones) in advance, I granted it. But recently, it came to my attention that a batch of my reviews were posted at a commercial Website not owned or operated by FANFARE. To my dismay I have found many more reprints on the Web done without my knowledge or consent. Several of those who have appropriated this material claim copyright to it themselves, according to the marks on the files.

I challenged the publisher, who said that he believed that his copyright entitled him to sell portions of the magazine (or whole books) as he saw fit even though my reviews are not works for hire. Is there anything I can do?

ANSWER: One important matter is whether the reviewer ever assigned the copyright in his work to the publisher of the journal. Transfers of copyright must be in writing. If so, the publisher owns the copyright. Putting the journal online, however, raises all of the issues from the New York Times v. Tasini case which held that freelance authors own the electronic rights to their works unless the copyright transfer to the publisher specifically stated that the electronic rights were being transferred. It might help to remind the publisher of this. Unfortunately, however, the only real threat is filing suit.

Legally Speaking from page 76

cause to believe that a crime has been committed, that the suspect has committed the crime, and that the search will turn up evidence proving that the suspect committed the crime.

The concept of particularity keeps officers from using a search warrant as a license for a general search. The warrant must specify the location to be searched, the type of records that are included, and the specific person whose records are being investigated. The police are not allowed to look at records with information about people who are not named in the search warrant.

The requirements of probable cause and particularity help to keep library and bookstore records private, while still providing a way for investigators to do their jobs. The purpose of the 4th Amendment is to establish rules by which everyone must live. These rules help our society achieve the delicate balance between the need for security and the right of privacy.

QUESTION: The library has some 16mm films from the Federal Aviation Authority (FAA) that are used by the Aviation Department. If federal government materials are in public domain, is it possible to convert the format of the films to video? If the library does change the format, does the film still remain in public domain?

ANSWER: If the films were actually produced by the FAA, a government agency, then they are public domain. This means that continued on page 78

Brill’s New Pauly

Encyclopaedia of the Ancient World in 20 volumes with index

Edited by Hubert Cancik, Helmut Schneider, and Manfred Landfester
Managing Editor English Edition: Christine F. Salazar

Brill’s New Pauly is the English edition of the authoritative Der Neue Pauly, published by Verlag J. B. Metzler since 1996. The encyclopedic coverage and high academic standard of the work, the interdisciplinary and contemporary approach, and the clear and accessible presentation have made the New Pauly the unrivaled modern reference work for the ancient world.

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Questions & Answers
from page 77

the library or anyone else may reproduce them, convert the format, etc. It might be a
good idea to examine the films carefully to make sure there is no copyright notice. It is
possible that they were actually produced for the FAA by a government contractor which
actually does hold the copyright. Changing the format of a public domain work does not
create any new copyright in the underlying work. It remains in the public domain.

QUESTION: There is a video produced by the BBC in 1988 called “Race for the
Double Helix.” It is out of print but available used through several vendors. The
BBC will not respond to the library’s request for permission to make a copy. Various
offices respond that they are not the one responsible and cannot help. If the library
makes every effort to get permission and fails, must it purchase a used copy or could
it make a copy from a loane?

ANSWER: The question omits some critical information. Did the library once own
the tape which has now been destroyed or damaged? Is this an acquisitions question? If
it is the former, Section 108(c) applies. The library may duplicate the tape from a loane
after it makes a reasonable effort to find an “unused” copy at a fair price. In other words,
it may replace the lost or damaged copy but only if new copies are no longer available.

On the other hand, if the library is trying to acquire something it has never had in
the collection, the Copyright Act provides no permission to reproduce the tape at all. Thus,
purchasing a used copy may be the only way to lawfully acquire the video.

QUESTION: One of the public library’s in the system is located near the Emily
Dickinson homestead, and it has a significant collection of material about her and
her work. The library has copies of a number of dissertations. Researchers frequently
ask the library to copy entire dissertations for their use. Academic libraries in the area
have a variety of practices they follow, but most have a reference copy and a circulating
copy of the dissertations created at their institutions. Some do reproduce the disser-
tations and charge for the copy. As degree granting institutions, do they have some
rights to the material?

The practice here has been to refer the public library and its request-
ors to UMI’s Dissertation
Demand service because
none of the librar-
ians is uncomfortable
recommending that any-
one copy anything in its
entirety. Are disserta-
tions different?

ANSWER: Most universities require graduate students to sign
some sort of release that
includes the copyright.

Once the university gives the library the right
to hold the dissertation and use it to fill library loan requests. If LIL results
in making a copy, there is not much problem since the release signed by the
student author grants this permission. However
if the release or agreement from the student author says that the library may
not lend only the original or not reproduce the dissertation, then even the degree
granting institution has no right to copy it for researchers.

QUESTION: May a corporate library archive and put its Internet searches on the
company Intranet? If the library conducts a search and downloads it to a li-
brary hard drive, archives it on one com-
pany server and then emails the results to a patron, there are now three copies of the
material. Is this a problem?

ANSWER: The term “Internet searches” indicates that the search really
involves material on the open Web or digital products for which the company has a
license. For licensed material, the terms of the license control what use may be
made of the search results. Material on the Internet is copyrighted just as it is in print.
Reproducing the material widely and putting it even on an Intranet raises copy-
right concerns. If putting the searches on the Intranet means simply putting the
question and then the url’s where the information was found, this is no problem.
It is the reproduction of the copyrighted work that is of concern.

Normally making one
copy for a user is permitted under Section 108(d) but multiple copying is
not permitted. Having works accessible by multiple users within the company
counts as multiple copying. However, if the copies are “transitory” and are de-
stroyed as soon as the patron has received the results, there is no problem. But if
the library is indeed making three copies and retaining them, it should seek per-
mission.

Cases of Note - Commercial Appropriation

by Bruce Strauch (the Citadel) <strauchb@citadel.edu>

SURF NEKKID or You Should be So Lucky

Yes, those lusty lads and lassies at
Abercrombie are at it again.

George Downing, Paul Strauch, Rick
Sterre, Richard Buffalo Keaulana, Ben
Alpa, Mike Doyle, Joey Cahill v.
LEXIS 20377 (9th Cir. 2001).

The long string of names are of course
surfer dudes among whom we find one of
the illustrious Strauss of this world.

Abercrombie is that famous outfitter
that loves to use hunks and hunkettes to peddle
shorts, khakis, jeans and outerwear. Its
subscription catalog “Abercrombie and Fitch
Quarterly” (Quarterly) is a national mini-
scandal that uses 80% of the company’s ad
budget. This sex-oozing 250 page tome has

seasonal themes, photos of hot models, sto-
ries, news and editorial.

In 1998, Abercrombie held a photo shoot
at Old Man’s Beach, San Onofre Beach, Cal-
ifornia. While there, they purchased photos of the
above dudes from surf photographer LeRoy
Grannis for $100 each. Said photos had originally been snapped at the 1965 Makaha
International Surf Championship in Hawaii.

Thus making the surfers into fairly old
dudes as the Strauss who authors this fabu-
ous column was only a senior in high school
in that year. And I can guarantee you he’s
old.

Abercrombie put together the Spring
1999 Quarterly, “Spring Fever”, with a sec-
tion called “Surf Nekkid” and a 700-word
story “Your Beach Should Be This Cool.” Old
Man’s Beach was described, not Hawaii. But
the story was illustrated with the dudes—
names captioning the pics — in Hawaii.

Two pages later featured ads for “Final
Heat Tees” shirts based on what the dudes
were wearing in the Hawaiian competition.

The dudes saw this as a commercial mis-
appropriation of their names and likenesses
and sued.

It’s not stated in the facts whether there
were nekkid models. It’s only way down in
the opinion that you learn that — gasp —
there were!

Abercrombie won in the district court on
summary judgment and dudes appealed to
continued on page 79