Questions and Answers: Copyright Column

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**QUESTION:** A medical librarian in a non-profit hospital asks about republishing a chart or graph in a book or journal article written by a doctor on staff. The content is found in publications to which the library subscribes that are covered by its Copyright Clearance Center license. Does this republication require permission from the copyright holder?

**ANSWER:** Because the library has a CCC license, the answer to this question is controlled by the CCC license. Typically, the license permits sharing of content within the organization on intranets, in newsletters, and notification services but not outside of hospital employees. Republication in outside publications usually is not covered in the annual copyright license and requires permission for republication from the copyright holder, and the payment of royalties may be required. The CCC license for the organization should be consulted, however, to determine if this outside republication is covered.

**QUESTION:** A college librarian asks whether graphs, tables, and charts are subject to copyright protection. Or is the information (facts) contained in them not as much created as observed? If copyright protection does extend to data, is manipulating published data sufficiently transformative to become fair use?

**ANSWER:** Graphs, tables, and charts are graphic works which normally are protected by copyright. However, copyright extends to the expression of facts and data but not to the facts and data themselves. The crucial determination is what might be protected in one of these works. Typically, it is the selection of data or facts, the compilation, and the graphic design that qualifies for copyright protection. Someone else could take the data and create another way of depicting that data and produce a new work which does not infringe on the copyright holder's rights to the original work. The argument is not over who has the right to distribute the works but the terms under which that will occur, so it is not really a copyright issue.

**QUESTION:** A librarian in a for-profit educational institution is reviewing the library’s copyright policies and asks about the following statement concerning printed material (archives): “Librarians may make up to three copies “solely for the purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen.” Copies must contain copyright information. Archiving rights allow libraries to share with other libraries one-of-a-kind and out-of-print books.” If one makes a copy for the reasons stated in the first quoted sentence, is that copy solely for archival purposes and thus must remain on the shelves, or may it be circulated as if it were the original?

**ANSWER:** The first two sentences are absolutely correct. They come from Section 108(c) of the Copyright Act. Where the third sentence is coming from is unclear. Libraries are permitted to replace lost, damaged, stolen, deteriorating or obsolete copies of works after they make a good faith effort to acquire an unused copy at a fair price. A photocopied replacement copy may be circulated and used just as the original is used. If one of the three copies made is digital, however, the digital copy may not be used outside the premises of the library.

Libraries do not have a general “archiving right.” While making a copy (sharing) of a one-of-a-kind or out-of-print work at the request of another library which is exercising its section 108(c) rights to replace a lost, damaged, etc., work would be permissible; “sharing” is not supported by the Copyright Act. It is possible that this statement is referring to section 108(b) which relates only to unpublished works and not to either out-of-print or one-of-a-kind works. Under this section libraries are allowed to make up to three copies of an unpublished work for preservation or security or for deposit for research in another library. The same in-library use restriction applies to a digital copy that is one of the three.

**QUESTION:** The same librarian also asks about making copies of television broadcasts. The old policy states: “Broadcasts of tapes made from television programs may be used for instructions. Cable channel programs may be used with permission.”

**ANSWER:** This is a very odd statement. The first sentence is not correct even for non-profit educational institutions! Section 108(f)(3) permits libraries to record television news programs, but only those. The statute does not restrict it to broadcast programs, but it is likely that in 1976 this was what was inteded. So, recording television programs even for non-profit educational institutions outside of the news must be with permission. Some networks permit schools to record and reuse programs, however. Other networks sell video copies of programs which includes the right to perform them within the educational institution. Under section 110(1) of the Act, nonprofit educational institutions may perform audiovisual works in face-to-face teaching as a part of a class, but this section is not applicable to a for-profit institution.

**The Copyright Clearance Center, in partnership with the Motion Picture Licensing Corporation, now licenses the performance of television programs, and this may be the best alternative for this organization.**