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Anne F. Jennings
Sinkler & Boyd

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Cases of Note — Copyright

Column Editor: Anne F. Jennings (Sinkler & Boyd) (jenningsa@cofc.edu)

In our last issue we previewed this new column which will provide updates on recent court cases and legislation pertinent to those of us in the library and publishing fields. Currently, it seems as if **everyone** is talking about Texaco and what effect, if any, it will have on the issue of fair use. This case is discussed in detail in this issue by **Laura Gasaway** (page 18), **Sanford Thatcher** (page 1), and **Joseph Alen** (page 20). Reference is also made to the article by **Marcia Baum** in vol. 6, no. 5 of *ATG* (November 1994), page 13. Several other recent opinions which address copyright are summarized below.

Copyright/Fair Use/Commercial Copy Service

Princeton University Press, MacMillan, Inc. and St. Martin's Press, Incorporated v. Michigan Document Services, Inc. and James M. Smith, 855 F. Supp. 905 (E.D. Mich. 1994). This case echoes the 1991 Kinko's decision in that in the opinion filed on June 9, 1994, the court held that duplication of excerpts from copyrighted works for compilation into "coursepacks" by a commercial copyshop did not constitute fair use. The plaintiffs were awarded \$30,000 in statutory damages plus reasonable attorney fees. A second, unpublished opinion issued December 5, 1994, determined those attorney fees to total \$326,318.52.

Copyright/Fair Use/Unpublished Letter

In Lish v. Harper's Magazine Foundation, 807 F. Supp. 1090 (S.D. N.Y. 1992), the U.S. District Court found that the defendant **Harper's** unauthorized publication of 52% of author Gordon Lish's unpublished letter was a violation of fair use as determined by 17 USC 107. The violation occurred when **Harper's** published excerpts of a letter Lish sent to potential students as an introduction to his fall 1990 creative

writing class. The letter was obtained by a freelance employee or "stringer" with Harper's who, in turn, received it from one of the prospective students. The edited version appeared in the December 1990 issue and had been reduced from 2308 to 1206 words in order to conform to the available space. The deletions were not marked by ellipses and the only indication that it had been edited was the statement "from an introductory letter sent last summer by Gordon Lish to students enrolled in his fall fiction writing workshop."

The Court awarded Lish damages in the amount of \$2000 but denied his claim with regard to damages effecting the present and/or future market value of the letter. The issue of damages was appealed by **Harper's** and on January 7, 1993, the Court, in an unpublished Order, amended its previous decision by striking the \$2000 award.

Public Domain Citation System

Another issue pertinent to copyright which has long been simmering and is now apparently about to reach the boiling point is that of the establishment of a uniform public domain citation system. The apparent catalyst for this surge of interest is the development of the **National Information Infrastructure** (NII) and the plan for it to provide public access to government and many other types of information. West Publishing, which holds the copyright to the published formats of its case reports objects to such a system; however, the lines are being drawn and this issue is becoming more and more political. Those pushing uniform citation have been encouraged by the move by several states to enact such a system for legal citations and opinions. As of January 1994, the State of Louisiana has enacted a statute wherein all such decisions by the Supreme Court of Louisiana and the Louisiana Court of Appeals will be cited in a public domain format with a parallel citation to the *West Southern Reporter*. Use of the public domain cites is mandatory.

The State of Wisconsin Supreme Court recently set a public hearing for March 21, 1995, to address the issue of citation reform and is calling for professional librarians, lawyers and others to submit papers to assist the court in making a determination as to this issue.

Copyright/Internet Accessible Documents

And finally, on a lighter note, we've spotted **ELVIS!** And would you believe it, he's in violation of copyright law? The King was briefly spotted on the Internet via a billboard that allowed users to access photographs, sound clips, and images of Graceland. Alas, his estate claimed some of the material was copyrighted and requested that the service be removed. Also, it appears that Elvis Presley Enterprises, Inc. may be planning their own cyberspace program (Charleston SC *Post & Courier*, November 26, 1994). ☹