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Cases of Note-The Newsletter Revisited

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LEGAL ISSUES

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Cases of Note

The Newsletter — Revisited

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Washington Business Information, Inc. v. Collier, Shannon and Scott (D.C. Civ. No. 91-03050A 2/26/91)

Pasha Publications, Inc. v. Enmark Gas Corp. 1992 WL 70786 (N.D. Tex.), 22 U.S.P.Q.2d 1076 (1992)

For years, no doubt since the advent of the mimeograph machine, law firms have taken full advantage of the efficiency of duplicating legal newsletters and passing the copies out to whomsoever in their firms so desired an individual issue. Without question, most of the 100,000 plus firms in the United States systematically reproduced one or more of the seemingly equal number of legal newsletters published on every area of law, from Admiralty and Adverse Possession to Workers' Compensation and Zoning Laws. Perhaps the foremost reason for this phenomenon among law firms is that while most legal newsletters are outrageously expensive, so too are lawyers notoriously cheap when it comes to putting money anywhere except in their own deep pockets. Granted, most of the law firms and lawyers probably never questioned this practice as being a possible violation of the Copyright Act; if the subject ever came up, their response would be a quick and indignant assertion of their rights as provided under the "fair use" statute, 17 U.S.C. 107. In fact, it was not until publishers began an active campaign to protect their products and law librarians through their organization, AALL, took a formal position on the practice of cover-to-cover photocopying of newsletters, that attorneys and legal administrators took notice of the law and its applications to their own usage of copyrighted materials.

Two legal actions specifically address this practice. The first, instituted by Washington Business Information, Inc. against the Washington, D.C. law firm of Collier, Shannon & Scott, demonstrates the seriousness of publishers in their pursuit to end cover-to-cover copying and the ramifications law firms can expect in the future should they ignore copyright law and continue to reproduce

newsletters, law reviews, journals articles, and other copyright materials. The second, **Pasha Publications v. Enmark**, resulted in a brief but concise judgment which clearly expresses the attitude of the courts today toward this issue.

Washington Business Information, Inc. (WBII) publishes a weekly newsletter, *Product Safety News*, which initially costs subscribers \$657 and thereafter \$295 for the renewal. Collier, Shannon & Scott, a mid-sized law firm, purchased one subscription to the *Product Safety News* and, upon its arrival at the firm, made three copies of the single issue to distribute to attorneys.¹ WBII became aware of Collier, Shannon's duplicity after running advertisements in several of their publications offering anonymity and a \$2,000.00 reward to anyone who provided them with "conclusive evidence of illegal photocopying" of any WBII publication.² I am sure there were many guffaws at the total absurdity of such an idea from attorneys who happened to catch that item. However, it apparently piqued the interest of one whistle-blower who, for some unknown reason (salary, perhaps?), reported the illicit goings on at Collier, Shannon & Scott and WBII filed suit in early 1991 claiming \$14,000,000 in statutory damages (See *ATG*, February 1996, v.8#1, pg. 50). The Copyright Act allows for the award of up to \$100,000 against willful infringers for each infringement, plus costs and attorneys' fees. Although it is unlikely that a court would award the maximum amount, the total award could be many times the cost of additional subscriptions because several acts of infringement are frequently alleged.³

Apparently, WBII initially elected to write Collier, Shannon a "cease and desist letter" to which the firm responded that "internal circulation of a limited number of copies in order to speed distribution of the information for professional development purposes is entirely proper."⁴ WBII then filed suit, because, according to President David Swit, "illicit photocopying is on a par with theft through technology."⁵ Ultimately, this suit ended with a whimper rather than a bang when Collier, Shannon elected to settle in October of that same year prior to trial. The settlement amount, however, was undisclosed but estimated attorneys' fees were in excess of \$1,000,000.⁶

The Pasha Publications case is not unlike WBII in that Pasha owns and publishes a newsletter entitled *Gas Daily* which addresses interests in the natural gas industry. The annual subscription rate is \$947 with facsimile subscriptions costing an additional \$224 bringing to total to \$1,171 per year. Enmark Gas initially received a mailed subscription to *Gas Daily* and then subsequently utilized the fax service. Since the onset, Enmark regularly made unauthorized, cover-to-cover copies of the newsletter which it in-turn distributed

continued on page 50

Juris Libris from page 47

prison librarians do, that fostering reading, education and access to information among inmates benefits not just them but ultimately society as a whole.

Selective Bibliography

Prison librarianship is a specialized field, and as such its literature is less extensive than that of many other aspects of the profession. Nevertheless, a good many monographs, articles and books exist. This bibliography includes only a sampling of some of the current material available.

Prison Librarianship: Resources, Theory

American Library Association. *Library Standards for Adult Correctional Institutions*. Chicago: ALA, 1992.

William J. Coyle. *Libraries in Prisons: A Blending of Institutions*. New York: Greenwood Press, 1987. 141 pp. Index, appendices, bibliography. Coyle, who has served as a prison librarian and consultant, proposes that the public library model is not the correct one for prison libraries, which should avoid providing "recreational" materials and instead stick to supplying educational resources to those prisoners who want to improve themselves. His thesis has been challenged by others in the field. See Daniel Suvak, "Throw the Book at 'Em: The Change-Based Model for Prison Libraries," *Wilson Library Bulletin* 31 (October 1989).

Arturo A. Flores. *Werner's Manual for Prison Law Libraries*. Littleton, Colo.: Fred B. Rothman & Co., 1990. 2d ed. 173 pp. Index, appendices. Contains an introduction to law books and legal research, information on cataloging, shelving, and borrowing, and suggested resources for prison law librarians. Also includes the AALL's *Recommended Collections for Prison Law Libraries* and *Directory: Law Libraries Offering Services to Prisoners*.

Fred R. Hartz. *The Library in the Correctional Setting: A Selective, Annotated, Classified Bibliography of the Literature of Prison*

Librarianship, 1958-1983, Lyons, Ga.: Rue Chien Press, 1984, 70pp. Author index. Hartz, who has been a prison librarian, reflects in his foreword on the nature of and theories behind prison librarianship. The bibliography lists sources divided into 18 categories, including libraries and rehabilitation, libraries and education, history, law libraries, library service to female prisoners, and surveys.

Libraries Inside: A Practical Guide for Prison Libraries. Rhea Joyce Rubin and Daniel Suvak, eds. Jefferson, N.C.: McFarland & Co., Inc., 1995. 235 pp. Index, appendices, bibliography. Contains chapters by several contributors in the prison library field, discussions of planning, services, programs, collection development, automation and providing legal access. Contains a reading list for prison librarians.

Standing Committee on Law Library Service to Institution Residents, Contemporary Social Problems Special Interest Section, American Association of Law Libraries. *Correctional Facility Law Libraries: An A to Z Resource Guide*. Laurel, Md.: American Correctional Association, 1991, 146 pp. Contains the complete *Recommended Collections* (general, federal and state materials, and Canadian national and provincial material), and the *Directory* as well as a directory of legal publishers and a chapter on planning and staffing a prison law library.

Brenda Vogel. *Down for the Count: A Prison Library Handbook*. Metuchen, N.J.: Scarecrow Press, Inc., 1995. 193 pp. Index, appendices, bibliography. Also a practical handbook, with reflections by the author on her experiences as a prison librarian. Sections on collection development, censorship, using space, and staff development, among other topics.

continued on page 52

Cases of Note from page 44

to employees in Dallas, Houston, and Durham, North Carolina. Upon discovery of the practice at Enmark, Pasha filed suit alleging copyright infringement. In a consent judgment handed down from United States District Court, the court found Enmark liable for copyright infringement and in violation of the fair use provision of the U.S. Code.⁷ Briefly, the court found that:

1. *Gas Daily* is a newsletter which reports on natural gas markets, regulations, and industry news. It constitutes original material pursuant to the Copyright Act, 17 U.S.C. 102.

2. The Register of Copyrights has issued certificates of registration pertaining to each issue of *Gas Daily*.

3. Enmark Gas, on a regular basis, produced multiple, cover-to-cover copies of *Gas Daily* for certain employees, including those in Dallas, Houston, and Durham, North Carolina, the latter two of whom received the newsletter via facsimile.

4. Enmark was unaware at the time that it was producing and transmitting copies of *Gas Daily* that it was infringing on Pasha Publications' copyrights and Enmark never intended to infringe on the same.

And, as a result of the above, the court concluded:

1. That Enmark's repeated cover-to-cover copying of *Gas Daily* constituted an infringement of Pasha Publications' rights.

2. That the repeated, unauthorized facsimile transmission of *Gas Daily* from Dallas to Houston and Durham constituted an infringement of Pasha Publications' rights.

3. Despite the fact that Enmark was unaware and did not intend

to infringe on Pasha's rights, the copying of *Gas Daily* by Enmark did not constitute "fair use" in that:

a. Enmark is a commercial enterprise and by copying the newsletter Enmark was furthering its own commercial pursuits;

b. Newsletters are accorded broad protection under the Copyright Act (See H.R. Rep. No. 94-1476, 94th Cong. 2d Sess. at 73-74 (1976));

c. The entire newsletter was being reproduced and transmitted;

d. The above rendered unnecessary the purchase by Enmark of additional subscriptions.

Clear, concise and without question, the opinion by the court asserts how both the publisher should protect himself and how the subscriber should handle the publisher's rights under the Copyright Act.

ENDNOTES

¹L. Will, Do You Photocopy? Your Firm May Be Infringing Upon the Fair Use Doctrine, 19 (*Law Practice Management* No. 1, 1993).

²S. Smit, Make a Copy for the File...: Copyright Infringement by Attorneys, 46 *Baylor Law Review* 1, 29-30 (1994).

³Smit, 31.

⁴41 *Patent, Trademark & Copyright Journal* 387 (1991).

⁵*Public Relations Newswire*, February 26, 1991.

⁶Smit, 19.

⁷43 *Patent, Trademark & Copyright Journal* 450 (1992).