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Questions & Answers - Copyright Column

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better on works from a company that is willing to guarantee its products. Otherwise, I can just tell everyone to log onto **Wikipedia** for free.

Of course, minor errors do not make a reference work defective. (It was the fact that there were 80 pages with errors that made the *APA Publication Manual* a real problem.) While guaranteeing the quality of a reference work sounds like a potential issue for publishers, in reality this is what distinguishes reference materials from the open Internet. Therefore, I strongly believe that it is in a publisher's best interest to guarantee their work, admit their errors, and fix problems that arise. The *APA* has done just that with its second printing. Rather than being a sign of weakness, this is a sign of the true strength of reference publishing, and the real reason why libraries and individuals continue to buy reference works in the digital age.

Disclaimers: Please note that I am dealing with legal matters in a general way, and am not commenting on the laws of a particular jurisdiction. I think I got all the errors, but forgive me if you find a mistake. While the information in this article is correct as of the date of publication, new cases are decided every day. At this time I am only actively licensed in Kentucky, and am inactive in Ohio. I am not intending to establish an attorney-client relationship — even if we discuss the article via email. If you have a legal issue, do yourself a favor and consult the lawyer for your company, school board, municipality, university, etc. Both you and your counsel will be glad you did. — **BC**

Endnotes

1. **Howard, Jennifer.** Hot type: Psychological association offers to replace error-ridden copies of style guide. *Chronicle of Higher Education* (October 27, 2009).
2. *id.*
3. **Carson, Bryan M.** *The Law of Libraries and Archives*. Lanham, MD: Scarecrow Press, 2007. See my discussion of the duty of care owed to clients by the information professional on pages 194-196.
4. *EWAP v. Osmond*, 153 Cal. App.3d 842, 200 Cal. Reporter 674 (1984).
5. **Uniform Commercial Code** Article 2 § 105, available at <http://www.law.cornell.edu/ucc/2/2-105.html> (hereinafter "UCC").
6. *Brocklesby v. Jeppesen*, 767 F.2d 1288 (9th Cir. 1985), cert. denied, 474 U.S. 1101 (1986).
7. **Martha J. Dragich**, "Information Malpractice: Some Thoughts on the Potential Liability of Information Professionals," 8-3 *Information Technology and Libraries* 265, 270 (September 1989).
8. **UCC** Article 2 § 312, available at <http://www.law.cornell.edu/ucc/2/2-312.html>.
9. **UCC** Article 2 § 314, available at <http://www.law.cornell.edu/ucc/2/2-314.html>.
10. **UCC** Article 2 § 315, available at <http://www.law.cornell.edu/ucc/2/2-315.html>.
11. **UCC** Article 2 § 316, available at <http://www.law.cornell.edu/ucc/2/2-316.html>.
12. 28 U.S. Code § 1332 (2005).
13. American Jurisprudence, Monopolies § 46 (2009).
14. **Hovenkamp, Herbert.** (2005, Winter). "Exclusion and the *Sherman Act*." *University of Chicago Law Review*, 72: 147-164.
15. 26 Stat. 209 (1890), codified at 15 U.S.C. § 1-7. The *Sherman Antitrust Act* was later expanded in 1914 by the *Clayton Antitrust Act*, 38 Stat. 730 (codified at 15 U.S.C. § 12-27, 29 U.S.C. § 52-53) and the *Federal Trade Commission Act*, 38 Stat. 717 (codified at 15 U.S.C. §§ 41-58). The *Robinson-Patman Act*, 49 Stat. 1526 (codified at 15 U.S.C. § 13), further expanded antitrust law in 1936.
16. **Howard, Jennifer.** (2009, October 13). "College library directors protest huge jump in Scientific American price." *Chronicle of Higher Education*.
17. *id.*
18. *id.*
19. See, e.g., **Epstein, Jennifer.** (2009, October 13). "Correcting a style guide." *Inside Higher Education*. Retrieved November 29, 2009, from <http://www.insidehighered.com/news/2009/10/13/apa>.
20. See, e.g., **Carson, Bryan M.** (2009, October 22). *Dealing With Defective Copies of the APA Manual*. Retrieved November 29, 2009, from Libref-L. <http://listserv.kent.edu/cgi-bin/wa.exe?A2=ind0910D&L=LIBREF-L&P=R2&I=-3&m=32811>.
21. **Linklater, Magnus.** (2008, January 16). "Reference books? Give me Wikipedia: The sniffy critics of the Internet think we should be traipsing down to the library to do our research." *Times of London Online*. Retrieved November 29, 2009, from http://www.timesonline.co.uk/tol/comment/columnists/magnus_linklater/article3193083.ece.

Questions & Answers — Copyright Column

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QUESTION: What criteria are used to determine whether an organization is a nonprofit educational institution as part of the fair use exception? Does a not-for-profit community based teaching hospital meet the criteria?

ANSWER: The *Copyright Act* contains no criteria for determining what constitutes a nonprofit educational institution, but the common understanding among most lawyers is that the status is determined by how the institution is organized under the U.S. tax code. The institution described is a hospital and not a school but it does have a teaching "piece." This means that the reproduction of copyrighted items for general patient care, etc., is treated just as if it were in a non-teaching nonprofit hospital. Any copying done for classes, however, would be treated under the nonprofit educational exceptions in the *Act*, but only that activity.

QUESTION: A state agency library often has attorneys general (AG) who argue cases on behalf of the agency. Sometimes they need a copy of an industry standard for their case. They want a copy of the entire standard which can cost from \$40.00 to over \$200.00 for each depending on who created them (American Ladder Institute, American Society of Safety Engineers, etc.). May the library reproduce them for the AG? If not, then is it permissible to check out the library's copy of the standard to the AG and let them do what they will as long as the library gets its copy back? Is there any exception to copyright law that allows attorneys to make photocopies for court cases without the restrictions of copyright?

ANSWER: According to *Nimmer on Copyright*, if the material is going to be introduced into evidence in a court proceeding, reproducing it for this purpose is fair use. But if the

standard is used only for preparation for the trial and will not be introduced into evidence, it is infringement to reproduce the entire standard. If the AG staff reproduces the standard it still may be infringement, but the agency library has avoided liability. The state has not, however.

QUESTION: A librarian has created a children's promotional video that uses the song by The Jacksons from 1978 called "Blame It on the Boogie." The video will be used only for non-profit purposes. Is there

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any problem with playing the video on the local Government Channel?

ANSWER: Many people would respond that this should be fair use and it should be! Unfortunately, it likely is not. If the librarian simply played the video for classes in a non-profit educational institution as part of instruction, there would be little problem. To perform the video even on cable television, the library needs a license in order to use the **Jacksons** recording. In fact, the library needs both a performance license and a synchronization license (for synchronizing the video with the music). Both the underlying musical composition and the sound recording are still under copyright.

QUESTION: *An audio engineer maintains a Website that many engineers worldwide use as a reference concerning audio issues. The now defunct audio trade publication Record Engineer & Producer was a treasure trove of information about analog recording. People often ask about finding back issues which would be useful to help educate today's digital*

savvy but analog ignorant audio engineers. Someone has now offered 22 years of back issues to the Website owner. May the Website owner scan some of the various articles from this magazine for the Website? Or could he make articles available to folks who request them on an individual basis? The magazine ceased publication in the early 1990s.

ANSWER: The first determination deals with the publication dates of the magazine. Issues published before 1964 are very likely in the public domain. If they are in the public domain, then digitizing those articles for the Website would be no problem. Before 1964, publishers had to register the issues and then received 28 years of copyright protection. At the end of that 28 year period, the copyright could have been renewed for an additional 28 years. But many publishers of small magazines did not renew their copyrights which meant that the issues for that year passed into the public domain. Thus, determining whether the issues were registered initially and then whether they were renewed for copyright is necessary to make the determination about whether pre-1964 works are still under copyright.

Issues published between 1964 and 1977 still had to be registered for copyright. But

Congress automatically gave them an additional 95 years of copyright protection through a series of amendments to the *Copyright Act* and no renewal of copyright was required. So, the answer to the question about digitizing articles from the journals is dependent on the copyright status of those issues.

Even if the issues of the defunct magazine are still under copyright, there might not be anyone around to complain about any infringing activity. The Website owner may just decide to take a chance and make them available online, but it would be infringement. If there is no one around to enforce the rights, however, the potential benefit in making the articles available may lead the Website owner to take that chance. If the Website owner takes this view, it might be useful to include a disclaimer on the Website that asks the copyright owner to come forward and volunteers to remove the item from the Web if the owner objects.

It probably would be fair use to provide single copies of articles to individuals who request them occasionally, but even libraries that do this have a number of restrictions including that the reproduction and distribution may not be systematic. 🐾

Biz of Acq — Things to Consider When Planning Section Programming

by **Sylvia McAphee, M.L.I.S., AHIP** (Serials Librarian, University of Alabama at Birmingham, Lister Hill Library of the Health Sciences, LHL 240A-1700 University Blvd., 1530 3rd Avenue South, Birmingham, AL 35294-0013; Phone: 205-934-2299; Fax: 205-934-3545) <smcaphee@uab.edu>

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It is more than likely that an acquisitions librarian will have the opportunity to plan a program for a section of a national library association during the course of their career, but few have experience or background in doing this. It is important to plan ahead and pinpoint how to successfully plan an event where all participating parties will learn and grow from the experience, including the planner(s).

The first thing to consider when planning an event is what subjects will be covered and what the process will be to select them. If this was a section program for a national library association, topics could be gathered from members of that section at the annual section business meeting or via solicitation of that section's listserv. The members will most likely suggest "hot topics" dealing with current best practices or trend setting innovations that will make acquisitions or collection management faster and more efficient. The selection of topics could also be chosen using a committee and the voting process as well, depending on the section and the organization. Here again popular topics will be suggested and the topic with the most votes will be the basis for the program. If there are several topics, then the committee might send out a survey to narrow

down which topic will be selected for the final program. There are some library organizations that hold training sessions to assist with the selection process and to possibly partner with other sections who might have selected the same topic or a very similar one. Once the selection process is completed, the next part of the planning process is selecting how the program will be organized.

There are several ways that a program can be set up. A program can have presented papers, invited guest speakers, a panel discussion, or any combination of the three. Members of an organization look for opportunities to share their life's work or research with others. Therefore, they write papers and submit abstracts so that they can come and share what they have learned with their peers. So, when a library association sends out calls for proposals for their annual meeting, members are more than happy to submit their abstracts and wait on an acknowledgement from the section or organization that their paper has been accepted. The program planner can select reviewers to assist with the selection of submitted papers for the program. Reviewers can be solicited via email or anyone that is co-sponsoring or working with the committee can also review the papers.

Once papers are selected, the planners notify the authors and give them specifics about the program and what the expectations are. Some organizations offer travel grants to offset the costs of attending a conference. Other organizations offer a reduction in fees for presenters to attend their conference. This is something that should be expressed to presenters so that they know what options might exist for them when planning their travel budget proposals for their library. This is especially helpful during tight budget years when the economy has taken a turn for the worse. Guest speakers are another good vehicle for program planning.

Guest speakers are very good at giving expert training or advice to audiences and can provide a unique perspective on a hot topic or new job trend. They are usually very good with questions and answers, and can provide a wealth of knowledge to their listeners. The program planner can usually find out about good potential speakers via word of mouth or by remembering a speech or talk someone gave at another organization's program or training session. Some organizations keep a list of potential speakers that can be quite helpful in choosing the right candidates to speak at a

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