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## Questions and Answers: Copyright Column

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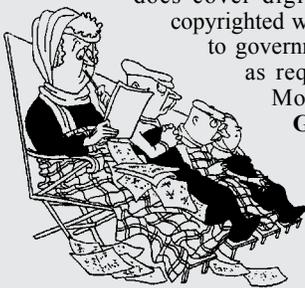
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# Questions & Answers — Copyright Column

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**QUESTION:** *A corporate librarian asks about providing copies as required by U.S. Government agencies under a variety of regulations for seeking new drug approvals, various applications, etc. When a company must provide these copies, is it fair use or is it covered under the Copyright Clearance Center (CCC) license that the company has for internal company copying? Has the law changed recently?*

**ANSWER:** There is no change in the law that permits the supply of copies to a government agency as a part of a required filing. The Annual Copyright License from the CCC does cover digital copies of copyrighted works provided to government agencies as required filings.



Moreover, **Paul Goldstein**, in his multi-volume treatise on copyright, has long posited that

supplying copies as required by a government agency as a part of an application process or other regulation is a fair use.

**QUESTION:** *A new faculty member is publishing a book with a university press. She wants to include three photographs in the book, and the status of the copyright of each is unclear. (1) The first photograph was published in 1921. (2) The second photograph was taken in the 1930s, and the photographer is unknown; it was provided to the author by a family member who had a copy of the photograph. Is there a copyright owner? Does it matter that the photograph had no notice of copyright indicating when the photo was taken? (3) The third photo was from a local college yearbook and was taken in 1946; the identity of the photographer is unknown. Is the photographer the copyright holder? Or is the college the owner the photograph was published in its yearbook? Is the work in the public domain if the copyright was never registered?*

**ANSWER:** Each of these three photographs presents different issues. (1) The photograph first published before 1923 in

the United States clearly is now in the public domain. (2) For the second photograph, as with most photos, the problem is that they are unpublished works. No notice of copyright was required unless the work was published. Notice was essential on published works or the copyright holder lost rights in the work. More than likely, this photo has never been published. Unpublished works that existed as of January 1, 1978, entered the public domain at the end of 2002 or life of the photographer plus 70 years. Assume that the photo was taken in 1930. If the photographer died soon after, then it entered the public domain at the end of 2002. But, if the photographer lived until 1960, the copyright will not terminate until 2030. So, it is likely that this photograph is still under copyright, but it is unclear without knowing the name of the photographer and his or her death date. On the other hand, if the photograph is a family photo that has never been published, then the chance of anyone complaining is very slight, especially if it is a snapshot and not a studio photograph. Often it is worth taking the risk to go ahead and publish such a photograph because the likelihood of any complaint is so slight.

(3) The third photograph presents yet another issue because it was published in a college yearbook in 1946. It is not certain who owns the copyright in the photograph since it may or may not have been a work for hire. In all likelihood, the college owned the copyright in the photo because the photographer was hired by the college and the photograph was published in its yearbook. If published, not only would the work have had to contain a notice of copyright in 1946, but registration was also required. Even if both notice and registration were present, unless the copyright were renewed in 1974, it would have entered the public domain that year. If renewed, the copyright would not expire until 2041. However, renewal of a college yearbook copyright is unlikely, so the photograph is probably public domain.

**QUESTION:** *A U.S. academic institution sponsors a study abroad program taught by its faculty and staff. The students are U.S. students who are studying abroad, and some courses are offered online from the home institution. Students access databases from the home institution. Does operating in a foreign country make any difference? What if there are a few foreign nationals enrolled in the U.S. study abroad program?*

**ANSWER:** The good news is that U.S. law applies to students enrolled in the U.S. institution's study abroad program. Typically, students who access licensed databases from the U.S. institution are covered under the license agreement for that college or university. This is

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And if you're still unconvinced and long for another cite on this profound point of law, see *Armour v. Knowles*, 512 F.3d 147, 153-54 (5th Cir. 2007) (holding that district

court properly granted summary judgment for defendants where copyright holder admitted writing song after defendants wrote allegedly similar song).

And if that wasn't silly enough for you, let's go to the next frivolous appeal.

## Copyright — I Know You've Got My Money. Give It To Me.

*Michael Joe Chapman v. Airleaf Publishing and Book Selling and Brian Jones*, United States Court of Appeals for the Seventh Circuit, 292 Fed. Appx. 500; 2008 U.S. App. LEXIS 18551.

**Michael Chapman** authored a 47-page book, "History of the World and Good or Evil Since the Garden of Edon" [sic] and had it published by a vanity press **Airleaf Publishing and Book Selling** which was a division of an undetermined LLC. **Airleaf** is defunct after numerous accusations of taking money from aspiring authors and failing to print, distribute or remit royalties.

**Chapman** had gotten \$9 in royalties and was convinced a class book such as his had surely earned him much, much more. And yes, finding no lawyers interested in his lucrative case, **Chapman** represented himself in both the suit and the appeal.

**Chapman** said his book was listed for sale on 20 Websites including the noted **Barnes & Noble** where its sales rank is 728,827. Ergo, tens of thousands of copies must have been sold. And **Airleaf** had violated copyright law by not paying him the lavish sums owed.

**Airleaf** — which briefly had an attorney before he withdrew due to not being paid — answered that only two copies had been sold. And **Barnes & Noble** only order after they have made a sale.

The district court astutely noted that this was a breach of contract action and belonged in state court rather than federal. See *Saturday Evening Post Co. v. Rumbleseat Press, Inc.*, 816 F.2d 1191, 1194-95 (7th Cir. 1987). But if you're doing your own lawyering, why not appeal? The Seventh Circuit affirmed. 🐼

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true whether the students are U.S. nationals or not. In future license negotiations, it would be a good idea to clarify that study abroad students enrolled in the U.S. institution's foreign study program are included in the license.

**QUESTION:** *At a public school, the concern is about making the multiple copying of school music performances. These include students singing music selections, graduation ceremonies and orchestra performances. The teachers want copies of the Christmas Music program for each student to keep. Is this permissible? What section of the TEACH Act governs this?*

**ANSWER:** It is not the *TEACH Act*, but section 110(4) of the *Copyright Act* that permits the performance itself (so long as there is no admission charge and no payment of fees or performers, promoters, etc.). The *Guidelines on the Educational Use of Music* governs copying the music performance. These were negotiated guidelines that were published in the *House Report* that accompanied the *Copyright Act* of 1976. The *Guidelines* are found on many Websites such as: <http://www.unc.edu/~unclng/music-guidelines.htm>. The *Guidelines* state at A.4. "A single copy of a student's performance may be made for evaluation and rehearsal purposes. This copy may be retained by the educational institution or the individual teacher." Thus, the *Guidelines* do not permit multiple copying of the performance or copies provided to students.

**QUESTION:** *An academic librarian is trying to find an equivalent English phrase for a commonly used expression on Russian dissertations and also on some older publications, mostly serials, that were published in amateurish fashion (reproduced from typescript, somewhat like samizdat except by Russian émigrés in Paris and other countries). Literally it is something like "published with the rights of a manuscript" and sometimes appears as just "with the rights of a manuscript" and is a sort of copyright statement. Is there some similar phrase used at any time in English along the lines of: "publication retains rights of a manuscript" "published with all of the rights attendant to a manuscript" "holds the rights of a manuscript" "by all rights a manuscript?"*

**ANSWER:** Probably the closest in the United States is "All rights reserved" along with the copyright notice. It was required under the *Universal Copyright Convention* (not really so universal since it was primarily western hemisphere). However, now the *UDC* is pretty much subsumed by the *Berne Convention* which the United States finally joined in 1989. "All rights reserved" is no longer needed. There is nothing specific about manuscript publishing rights in this country because of the right of first publication which automatically belongs to the author. Thus, no specific language is needed on manuscripts. 🐾

## Biz of Acq — RSS for Acq

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**RSS (Really Simple Syndication)** is an XML file format used by a broad range of industries to push news to interested parties. **RSS** readers provide a way for users to pull in and view new content as it's available. Libraries have been using **RSS** for years to provide information to patrons. For example, many libraries now have blogs that can be subscribed to via **RSS** feed. **RSS** is also a great tool for reference staff or subject specialists to alert patrons to new library items in a particular area of interest. We've been using this powerful technology to push information to library patrons; how can we use it for acquisitions work?

### Solutions

One challenge for libraries right now is electronic monographic series. My department has been receiving monographic series in print for years and recently our bibliographers have decided to switch some of them to electronic-only. Unlike journals, each volume of the series has a separate monographic record in our catalog, so how do we continue this practice of providing title-level access after the switch to electronic? There is no print volume arriving in the mail to alert us of each new issue. The practice until recently in my department has been to designate a staff person to check the Website of each series for changes on a daily basis. Enter **RSS**.

Some publishers provide **RSS** feeds meant for patrons who want to be alerted of the latest issue of a series, but Acquisitions can also use these feeds as a trigger to catalog the new volume or otherwise link it to the library Web space. A staff person can add several series feeds to an **RSS** reader and simply open the reader daily to check for new volumes. The reader will display any new volumes that have appeared and the user will not need to check every publisher site.

Another potential use of **RSS** for Acquisitions is to track new additions to aggregators like **Project Muse** and **JSTOR**. As staff are alerted to new titles added to these packages, they can set up access in the library catalog as well as communicate the new titles to collection development. If subject specialists are in communication with patrons and faculty members about certain topics, the information about titles that have been recently added to already purchased packages can be helpful.

Finally, **RSS** can be used in Acquisitions for publisher and vendor updates. Some companies already provide an **RSS** feed, tailored to librarians, for announcements about their services and the latest offerings. **Coutts Library Services**, for example, has a feed that updates library customers on new products as well as system alerts for their online ordering platform.

### But More is Needed

As much as we see vendors and publishers starting to provide **RSS** feeds, there is more that could be done for the benefit of library staff. Too often the **RSS** feeds available are aimed only at library patrons, instead of the library staff that provide access points for those patrons to the online material. The information for librarians is available by listserv or subscription emails. One large publisher recently moved from sending news and updates for librarians by CD-ROM to an online version with an email alert. Could this be provided in an **RSS** form? I'd like to see new title takeovers and changes in format pushed to me via **RSS** as I prepare for the annual renewal with a publisher.

More could also be done by publishers of monographic series. Some publishers provide an alerting service for new volumes by email, but many do not. Even when an alerting service exists, email inboxes have become prime real estate and no one wants to receive hundreds of publisher alerts. For those series that do offer an **RSS** feed, one common problem is that the feed only includes new volumes of the series but not recently digitized volumes from previous years or delayed publications. So though there were two volumes added within a month, an email or **RSS** alert may only mention the 2009 volume, not the just-digitized 1998 volume. Since Acquisitions can provide the access points to these resources, understanding that the users of alerts may include library staff, or creating dedicated **RSS** feeds for those staff, will help a publisher make sure that their work reaches the widest possible audience.

### Creating Content Ourselves

Acquisitions does not have to be only the recipient of an **RSS** feed either. We are the first stop for new purchases, so while bibliog-

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