April 2002

Questions & Answers -- Copyright Column

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Recommended Citation

Gasaway, Laura N. (2002) "Questions & Answers -- Copyright Column," *Against the Grain*: Vol. 14: Iss. 2, Article 19.
DOI: <https://doi.org/10.7771/2380-176X.3185>

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Questions & Answers — Copyright Column

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QUESTION: *The library offers email reference service to its patrons. In order to answer the reference question, often it is necessary to send a hyperlink in an email to the user. Is there any problem with sending a deep link or must the link be only to the Website's homepage?*

ANSWER: There is no problem with using a deep link to respond to an email reference question. There is some question about whether a library or any organization may include deep links on Webpages that they create, but so far, it appears that this is not problematic for nonprofit libraries that use links on their Webpages. A recent case, *Kelly v. Arriba Soft*, which was heard in the 9th Circuit, U.S. Court of Appeals, held that commercial deep linking was infringement, and would require permission of the owner of the Website. However, even for this case, there is considerable concern that the court did not understand the nature of linking or the fact that the Website owner has the ability to control access to its site by password protecting the site or other means.

QUESTION: *If a library is the only one in the region that has a license for a full-text journal, what is the library's responsibility to fill interlibrary loan requests from that journal by making copies for requesting libraries?*

ANSWER: Under copyright, a library has no responsibility to fill an ILL request at all. There may be other interlibrary agreements that require libraries to respond to ILL requests generally, but online journals are governed by license agreements that may restrict a library's ability to share copies of articles from that journal with anyone outside of that library's primary clientele, including other libraries. The license agreement controls and supersedes any ILL agreements among libraries. Some vendors will permit ILL from their online journal titles while some exclude it. Other vendors permit limited ILL but may require the lending library to maintain records of how often it lends from the title rather than the borrower as the ILL guidelines dictate. Before assuming that a particular full-text journal can be used to satisfy ILL requests, read the license agreement. If it prohibits use outside of the organization, it may be possible to renegotiate the license to include the desired terms.

QUESTION: *If instructors or students copy the same course materials semester after semester, who is responsible? Whose responsibility is it for setting copyright policies and following copyright guidelines, the administration, library or faculty?*

ANSWER: The institution bears the ultimate responsibility, but the faculty member may also be liable if he or she is violating the institution's policy about reproducing course materials. The question implies that the copying is being done without paying royalties or seeking permission from the copyright owner. Most institutions have policies about paying royalties for coursepacks even though the litigation involved for-profit copy centers that reproduced coursepacks and not colleges or universities themselves. A student making a copy for him or herself most likely is a fair use.

It is the institution's responsibility to develop a copyright policy and to see that it is followed. In drafting a policy, it makes sense to include faculty members, librarians, staff and even students on a committee so that all viewpoints are represented. A member of

the legal counsel staff also should be on the committee. Most policies contain enforcement and dispute resolution mechanisms. While faculty, librarians and even students are bound by the policy, in order to protect itself and its faculty, staff and students, institutions are responsible for seeing that its policies are followed.

QUESTION: *What rights does an individual researcher/employee have to own the copyright in works he or she produces if the research work and resulting report or article are created in-house?*

ANSWER: The phrasing of this question leads one to assume that the copyrighted

work is being created within a corporate environment. The Copyright Act says that copyright belongs to the author, but if the work is a work for hire, the employer is the author according to the Act. A work for hire typically is one produced within the scope of someone's employment. Most corporations have internal employment policies which dictate that any copyrighted work produced by a corporate employee within the scope of his or her job belongs to the company. Even without such a policy, "scope of employment" likely means that any work produced (1) during work hours, (2) using company resources or (3) that is part of the job regardless of where and when it is developed belongs to the company.

If "in-house" in the question refers to a university or nonprofit organization, the copyright in any work created by an em-

ployee may belong to the institution or organization but

not necessarily so. Many nonprofit libraries such as public libraries permit their employees to hold the copyright in works they create even within the scope of employment as long as the library itself has the unfettered right to use the work. In colleges and universities, copyright ownership depends on whether the employee is a faculty member or staff member. By tradition, faculty authors own the copyright in works they create while works that staff members develop within the scope of their employment are owned by the university.

Biz of Acq — A Database By Any Other Name

by **Sue Wiegand** (Periodicals Librarian, 123 Cushwa-Leighton Library, Saint Mary's College, Notre Dame, IN)

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Column Editor's Note: When evaluating and selecting electronic resources, we struggle to understand the differences and similarities between products. This problem is exacerbated because the vocabulary we use, like electronic resources themselves, is in flux. We don't all understand the same terms in the same way. In

this month's column, **Sue Wiegand**, Periodical Librarian at Cushwa-Leighton Library, St. Mary's College, argues persuasively that if we standardize our terminology, we might neatly classify electronic resources and almost instantly understand what a given product is. — **MF**

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