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Questions and Answers-Copyright Column-Some fascinating answers about photocopying out-of-print books and recipes

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Questions & Answers — Copyright Column

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QUESTION: When a university faculty member creates material while employed by the university, who owns the copyright? Does the university own the copyright for materials produced by the faculty member while employed by the university, in accordance with the terms of the employment contract?

ANSWER: Generally, faculty own the works they create with a few exceptions. (1) Works directed by the institution (e.g., the head of the biology department says produce a lab manual for freshman biology) are generally owned by the university. (2) Works that made exceptional use of university resources may be owned by the institution or the faculty member may have to reimburse the school. (3) Works produced by faculty under an external grant or contract are usually owned by the institution, but the external funding authority controls who owns the copyright. If the faculty member has an employment contract that specifies that copyrighted works produced by him or her are works for hire, then, for copyright ownership purposes, the university is the author. Such a contract

would be unusual, however, and against the tradition in higher education.

For staff, the answer is just the opposite. The university normally owns all works produced by a staff member within the scope of his or her employment. So, if a computer programmer develops a program for the university, the institution will own it. Web pages produced by a librarian as a part of her job are owned by the school. Some universities occasionally permit staff ownership of the copyright by prior agreement only.

Why are faculty works treated differently? By tradition, faculty have owned the copyrighted works they produce. Perhaps this was viewed as a reward or to make up for low salaries. Moreover, few faculty-produced works generated enough income for the university to have much of an interest. Often what the university really wants is a "shop right" to use the work within the institution.

QUESTION: A book is out-of-print, unavailable from used book sellers and unobtainable from the book's author. Further, the book was previously owned by the library but it has been withdrawn from the collection. Under these circumstances, is the library allowed to photocopy the book after borrowing it from another library?

ANSWER: Yes. In fact, there was no requirement even to look for a used book. Under section 108(c), a library may reproduce a lost, damaged, stolen, deteriorating or obsolete copy of a work after it makes a reasonable effort to obtain an unused copy at a fair price.

QUESTION: If someone who is teaching a cooking class wants to make 15 copies of a recipe from a published cookbook for her students, is this infringement? What if someone wants to write a cookbook, and thought the work strictly used original recipes/ideas but later found a previously published similar recipe?

ANSWER: Individual recipes are not copyrighted. Copyright does not extend to ideas or facts, and recipes generally have standard lists of ingredients, directions, etc., so they have been viewed as lacking sufficient originality to qualify for copyright under section 102(a). Cookbooks, on the other hand, are copyrighted as compilations. What is protected is the selec-

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Devil's Advocate — Libraries in Science Fiction

by **Robert Molyneux** (Assistant Professor, University of South Carolina, School of Library & Information Science) <drdata@molyneux.com>

Science Fiction (scifi) is sometimes called "speculative fiction" because the genre involves manipulating possible futures or pasts. A subset of the stories are "space operas," a term that indicates these stories are like the "horse operas" many of us grew up watching on TV in the 50s; that is, strictly escapist adventure. Historically, scifi was largely the province of young men—the kind of young men who now play with computers. However, not all of the works of scifi were merely space operas; many involved what the world (or worlds) would be like in the future and how people would function in these futures. Occasionally these works became part of the language and literature of our society, such as **George Orwell's** *1984* (1949).

Here I consider what Science Fiction works have to say about libraries and the library function in the various futures they treat.

Libraries and the library function are touched on tangentially in a number of works. **Jerry Pournelle's** *Janissaries* (1979) involves a colony of humans on a distant planet who were hijacked there by intergalactic drug traders. This planet has been colonized from different times in Earth's history with the result that there are books lost on Earth but are extant there.

Clifford Simak's *Way Station* involves Enoch Wallace, who runs a way station through which galactic travelers pass on their trips here and there. We get only the barest glimpses of the civilization that maintains this network, but we learn that Wallace sends the science journals he subscribes to somewhere in the galaxy. Presumably, then, there are libraries in space with our publications. That is a thought to ponder. (Let's hope the *National Enquirer* never makes it off planet or we are doomed.)

The most important scifi library may be the

university library on Trantor, the decaying home world of the former galactic empire in **Isaac Asimov's** *Foundation and Empire* (1952), the second book in the Foundation trilogy. A conqueror needs vital information and the story takes us to this great library to find it. The library has a bit part to play, but we are led through the "deceptively small building" to do that research. We see little of the technology: the proceedings of an important convention are on "twenty-five fat films." Books are on films, then, and we later learn of someone reading a "book film." These films are read on projectors. We also know of a "catalog room," where, we can presume, catalogers still have problems cataloging proceedings. There is a kind of feel like **Vannevar Bush's** 1945 *Memex*.¹ A nice touch are the citations throughout the trilogy to the *Encyclopedia Galactica*, 116th Edition (**Encyclopedia Galactica Publishing Company**, Terminus: 1020 F.E.).

Another interesting library would have been that in **Asimov's** *The End of Eternity* (1955). In this book, Eternals travel through time straightening out things. There is a place in the story where people stranded in the past communicate with later times by placing an ad in a 1932 magazine with an atomic mushroom cloud. The anachronism allowed the lost party to be located. The magazine was in a "volume," presumably a hard copy. Given that every time the Eternals monkey around with the past, they change the future, the library's shelves would have to have copies of alternative versions of each work protected from the changing external world. Imagine having to catalog 1,000 different works with the same author, title, place, publisher, and date resulting from 1,000 changes in the past. That would present a cataloging problem of no small difficulty.

H. Beam Piper tells us about the *Space Vikings* (1963) who loot planets of the decaying Federation while building a new civilization with the pieces they take. The protagonist steals from libraries that have books in them. In **Piper's** *Little Fuzzy* (1962), we see information technology that is primitive by today's standards: sound files are compressed and sent, but the compression protocols are not standardized because one must tell the person receiving the file how much compression was used. *Orphans in the Sky* (1951) is not one of **Robert Heinlein's** better works, but in it we see another odd juxtaposition of technologies where a large spaceship is taking people to establish a colony. In it, there are scribes copying books and these scribes marvel at the exactness of the transcriptions they are copying. Of course, we know about the printing press and they do not. When scifi does not go into detail on technology perhaps it is because what was futuristic at one time will seem quaint in a short time. Of course, **William Gibson's** *Neuromancer* (1984) gave us the term "cyberspace" and a view of a world where technology is a part of the story and still advanced in many ways beyond what we have today.

Gordon R. Dickson's *Final Encyclopedia* (1984) is an interactive library where all knowledge is collected. The Encyclopedia's objective is to help "see the back of our heads." That is, is there knowledge we cannot see but which is there? By assembling everything, we will be able to discover what we cannot see. This is an interesting notion about what a library can do. I think we could argue that today we attempt to do this function through scholarship.

Ray Bradbury's *Fahrenheit 451* (1953) tells of a future society where firemen burn books because books are bad. Books apparently burn at 451 degrees. At the distant fringes of this society a group of people memorize books and, in effect, become the books. Children learn books from old people and thus culture passes on to the future. In light of recent developments in our world with copyright, this future seems more possible, doesn't it? (I get dibs on "Richard II," "Henry IV," "Hamlet," and "Romeo and Juliet.")

Lost knowledge is a theme in scifi. **Isaac Asimov's** *Nightfall* (1941) is arguably his best known short story. An alien race on a planet of multiple suns does not know about night because there are always suns in their sky. A university researcher figures out that every 2,500 years, the various suns are in such a position that the sky grows dark. He bases this conclusion on research and calculation and makes a prediction. He is treated with disdain... and is called a "cultist." The world, of course, goes dark and the aliens go mad trying to light the sky—which they do by burning their libraries,

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tion, arrangement and indexing of the recipes along with any material such as a preface, descriptive instructions, photographs, etc. So, all recipes in a cookbook do not even have to be original.

QUESTION: May a library circulate CDs just as it does books? What about making a backup copy of the CD to loan?

ANSWER: Libraries may circulate CDs and other materials just as if they were books, unless the library signed a license agreement when it acquired the CD that restricts its right to circulate them. Absent such an agreement, the first sale doctrine permits libraries to circulate materials in their collections. If the CD contains computer software, then the CD package must contain a copyright warning.

Backup copies of CDs are not permit-

ted except for CDs that contain only computer programs. Section 117, governing computer programs, gives owners of the program the right to make a backup copy. For other CDs the library can always request the right to make a backup from the publisher.

QUESTION: Is it true that if someone has proof of requesting copyright permission from the copyright holder, but the owner does not respond, it can be assumed that permission is granted?

ANSWER: No, all it means is that the copyright holder did not respond. There is no affirmative duty in the Copyright Act for an owner to grant permission to use a work or for that owner to respond to requests for permission. What it may mean, is that if a library has sent several letters, tried to call, fax, etc., and still gets no response, it may be willing to assume the risk of reproducing the work.