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Copyright Questions and Answers-If a library scans bookcovers, using its purchased copies, can it forgo asking permission from the publishers?

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Questions and Answers — Copyright Column

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QUESTION: *The library is having a bookstore-like "staff picks" competition. It has been suggested that the library reproduce the cover art from the book (or CD or video case) to highlight the staff picks in a special section of the library's Webpage. Is there any problem with using the Amazon.com images of the covers to promote the items without asking permission from either Amazon or the individual publishers? If the library scans the covers, using its purchased copies of the items, can it forgo asking permission from the publishers?*

ANSWER: The bad news is that it is infringement to scan the covers and use them on your Webpage without permission. Section 109(c) permits a library to display a book or even an image of the cover art but not to project the image beyond the place where the copy is located. Putting the book jackets on a Webpage constitutes a reproduction of the graphic work (the book cover art), and the copy is transmitted beyond the place where the copy is located. Further, often the publisher does not even own the copyright in the cover art, so it cannot give permission to use it.

Online bookstores either get permission from the copyright holder since they are promoting sales of their works or it is viewed as increasing the publishers' income, so they are not sued over this activity. It should not be difficult for your library to obtain permission to include cover art on a Webpage. Start by contacting the publisher of each work.

QUESTION: *Is it true that nothing will go into the public domain until the year 2019? Why? Who initiated and pushed for such change in the copyright law?*

ANSWER: It is unfortunately true. The **Sonny Bono Copyright Term Extension Act** was signed into law on October 27, 1998. It basically extended the term of copyright for works published in the United States from life of the author plus 50 years to life plus 70 years, and it was retroactive. Because of the retroactivity provision, this means that only



works published before 1923 are clearly in the public domain; works from 1923-1963 may be in the public domain if they were not renewed for copyright at the expiration of the first 28-year term. If they were renewed, these works now get an additional 67 years after the initial 28 years of protection. Therefore, it will be 2019 before anything else goes into the public domain.

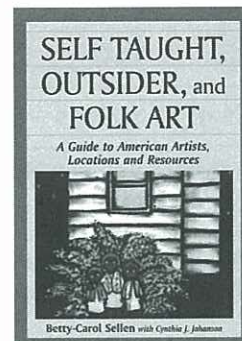
It was predominantly the movie studios that pushed for term extension in this country. The **European Union** had gone to life plus 70 a couple of years earlier, and the argument was made that U.S. law should be harmonized with that of the EU. Publishers were also in favor of the extension, but it was the big movie studios that did most of the lobbying and funding of the effort to enact term extension.

QUESTION: *Our library is building quite a collection of scores and anthologies of music, mostly Broadway music, movie tunes and popular music. Librarians from other libraries and patrons use the library because it has copies of these works. In the past it was viewed as good customer service to fax copies of the music when someone needed a copy in a hurry. Is there a problem with reproducing sheet music? Why is it any different than if the library loans the sheet music or the published anthology that contains the particular musical work?*

ANSWER: Yes, reproducing copyrighted sheet music is a problem. All of the exemptions provided for libraries under the library provision, Section 108, do not apply to musical works, according to Section 108(l). The only exception applies to Sections 108(b)-(c) which deal with preservation. So, libraries may not photocopy or fax sheet music for patrons.

This is different than loaning the sheet music or the anthology that contains the work. Under Section 109(a), the first sale doctrine, libraries are permitted to loan materials from their collection. Reproducing the work either by photocopying or by scanning infringes the reproduction right of the copyright holder. On the other hand, it might be fair use for the

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And They Were There

Reports of Meetings — ALCTS/AS Preconference

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ALCTS/AS Preconference — Advancing Acquisitions: Services, Standards and Skills (June 24 and 25, 1999)

Report by **Joyce L. Ogburn** (Associate Director of Libraries, Resources and Collection Management Services, University of Washington, Box 352900, Seattle WA 98195-2900 phone: 206-685-2889; fax: 206-685-8727) <jlogburn@u.washington.edu>

This institute was the most recent one sponsored by **ALCTS** on the business of acquisitions. It was structured to offer a choice of concurrent sessions to attendees, ranging from licensing, consortium work with vendors, being an acquisitions ambassador, outsourcing, and tracking staff costs. Additionally, there were three keynote speakers, on whose speeches I will report.

The business of acquisitions opened with **Martha Whittaker** of **Blackwell's Book Services**. She opened with comments on the nonsustainability of the current business models of vendors and posited that they need

to reinvent themselves. Economies of scale and stretching margins are being achieved with a large vendor and a larger market share. Vendors are consolidating just like consortia are forming. Both limit choices, but clearly larger resources stretch farther.

Big changes are needed still. Vendors sell books but give away value-added services (automation, reports, etc.) What are librarians willing to pay for? Blackwell spends \$500,000 a year for paper on notification slips while seeing a low rate of return. If this is a valuable service, librarians need to put money into it. She asked, which services should be

fast tracked and how should they be paid for? Should vendors supply e-books? Vendors will need to team up with these suppliers and take advantage of their infrastructure for approvals, publisher relations, library relations. Book vendors have to stay relevant, which may include fulltext indexing and profiling with e-books. Also, they make preview easier and there are no returns. **Blackwell's** is talking with **Powell's** about some kind of service.

Mike Powell of **Powell's** books followed on the program. He noted that core values still exist in the book business, but customer behavior and expectations are changing. The pace of change is the hardest thing to cope with. Bookselling is the last of the cottage industries. Competition has been ferocious with **Barnes and Noble**, **Borders**, and **Amazon.com**—the casualty rate is high for the small bookstore and their share of the market is dwindling. 52% of books are now

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So what does the **Microsoft** decision mean for the worlds of publishing and librarianship? For many years **Windows** has been the *de facto* standard, with many strong adherents among the **Macintosh** world. Librarians more than anyone else realized the power of the Internet early on, and have invested heavily in Web technology. It is to our benefit to have more operating systems available that will run programs and databases. Although **Microsoft** claims that there are advantages to standardization, what this case really represents is an attempt to foster technology that will run on any platform. Once that happens, the price will come down.

As heavy technology users, it is to the benefit of publishers and librarians to be freed from dependence on a single operating system. The time investment necessary to make **Windows** databases run on the **Macintosh** is prohibitive, which keeps **Macs** from being competitive. Computer technology has become the single biggest expenditure in libraries, in some cases overshadowing book budgets. As serial and book prices continue to rise, a decline in the price of computer technology will provide more money for the hard-pressed libraries.

Of course the **Microsoft** decision is still subject to appeal, but the world of publishing and librarianship should celebrate this decision. Antitrust law is complicated, but ben-

efits consumers. The question is whether **Microsoft's** actions constitute competition, or suppression of competition. As a computer-savvy librarian, I hope that competition will spur price cuts in technology. Goodness knows librarians could use some good news for a change. 🐾

Endnotes

¹ United States of America v. Microsoft Corporation, C.A. 98-1232 and State of New York, ex rel. Eliot Spitzer, et al., v. Microsoft Corporation, C.A. 98-1233 at 9 (D. D.C. filed April 3, 2000) <http://usvms.gpo.gov/ms-conclusions.html> (Hereafter "Case").

² Case at 9.

³ Case at 10.

⁴ 15 USCS § 1

⁵ 15 USCS § 1

⁶ Case at 22.

⁷ Case at 22.

⁸ Case at 11.

⁹ 15 USCS § 2

¹⁰ Case at 13.

¹¹ Case at 13.

¹² Case at 15.

¹³ Case at 15.

¹⁴ Case at 17.

¹⁵ See Case at 15.

¹⁶ 54 Am. Jur. 2d §147 *Monopolies and Restraints of Trade* (1996).

¹⁷ U.S. V. National Society of Professional Engineers, 404 F.Supp. 457, 463 (D.C.D.C. 1975). See, 37A *Worlds and Phrases* 239 *Rule of Reason* (Supp. 1992.).

¹⁸ Case at 18.

¹⁹ Case at 25.

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patron to make her own copy, but the library should not make the copy for the user.

QUESTION: *There is a consortium of health facilities that pools its money to purchase videos selected by members of the consortium. Each member contributes a fee depending on bed size. The videos are actually purchased by the library and added to its collection. These videos are then loaned to the members for viewing at their facility at no charge. Is there a copyright problem with this consortial activity?*

ANSWER: There are several issues here. First, when the library purchases the videos are they licensed only to one institution? If so, then the videos can be used only within that one facility. If not, then loaning the videos is no problem. Of course, the videos cannot be duplicated either.

There are also performance rights issues involved, however. If the videos are just used for individual patient viewing in their rooms, there is no problem. If, however, the videos are shown to groups or in public areas, it is a public performance, and the library must obtain the public performance rights for the consortium. When negotiating for the consortium, indicate that the video may be shown within any or all of the facilities of consortium members. 🐾