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Questions and Answers-Copyright Column

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Legally Speaking from page 73

At this time, the dispute between Halvorson and Lexis-Nexis is still going on. Disagreements over domain names such as this occur with some regularity now that the Internet has become popular. The **Domain Name System** does provide a possibility of both abuse and unintentional conflicts. However, ICANN, trademark law, and the Anticybersquatting Consumer Protection Act of 1999 are trying to bring order to the system. The **new.net** challenge to

ICANN is a troubling prospect. Still, sometimes disputes do arise over domain names, even without any bad faith on the part of anyone. The more we know about trademark law, the easier it becomes to avoid trouble.

The Internet is still in the Wild West days of its beginning. However, ICANN and its allies are trying to bring law and order to the system without bringing control. We who work with the Internet still have a hard road to travel, but the Wild West came to order, and even the most infamous territories were tamed. So, too, can the Internet become civilized.

Questions & Answers Copyright Column

by **Laura N. Gasaway** (Director of the Law Library & Professor of Law, University of North Carolina, CB # 3385, Chapel Hill, NC 27599; Phone: 919-9621321, Fax: 919-962-1193)
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QUESTION: *How does one deal with copyright on a photo taken prior to 1900 where the photographer is unknown and not identified in the image?*

ANSWER: In order to deal with this issue, there are several questions that need to be addressed. Has the photo ever been published? If so, the copyright is dated from that date since it was under earlier Copyright Acts rather than the date when the photograph was taken. If it was never published, the photograph it is still under copyright until the end of 2002 or life of the photographer plus 70 years, whichever is greater.

Is the photograph famous? If so, then one of the stock photography companies may hold the rights. If not, and the photographer is unknown, the library may decide that the risk is small and go ahead and use the photograph.

QUESTION: *Recently the "Today Show" featured a man who buys movies on video and then edits out the sex, offensive language and violence. He then rents the edited versions to anyone interested in seeing "clean" movies. Is this copyright infringement?*

ANSWER: Yes. By editing the movies and making them available he is preparing a derivative work that can be done only with permission of the copyright holder. Then he distributes the videos. Television networks pay for this right when they broadcast movies that have been edited. One might assume that he is also making at least one copy of the work to produce the edited version. In other words, in addition to preparing an unauthorized adaptation of the work, but he is reproducing it as well as distributing copies.

QUESTION: *A faculty member has posed an interesting question. She uses photographs of houses as reference for her paintings, although she sets the houses in her paintings in a context of her own creation. Is this copyright infringement. A related question is when one appropriates an image and when its reworking is an infringement of copyright and when it become a new work of art?*

ANSWER: Reproducing a photograph is infringement if the photo is still under copyright. The house itself could be copied directly, just not the photograph. There is a famous saying in copyright law that it is permissible to copy the original but not to copy the copy. This means that the house is the original and the photograph of the house is the copy. The artist certainly can reproduce the original, i.e., the house, but not the copyrighted photograph. If the house in the paintings is just based on the house in the photograph, then it may be a new work of art.

The related question is much more difficult since by tradition many works of art are based on earlier works. Again, reproducing the original painting in any format (such as pen and ink, watercolor, etc.) is infringement. If the work is copyrighted, then reworking it creates a derivative work, and only the owner of the copyright has the right to create adaptations of the original work. When the adaptation is for display in face-to-face teaching in a nonprofit educational institution, it might, however, be fair use.

QUESTION: *One of the library's requests for an interlibrary loan photocopy of a 1999 article got referred on to an association library. That library refused to*

continued on page 75

Legally Speaking Endnotes

1. Shakespeare: *Romeo and Juliet*, Act II, Scene ii, Verse 43.
2. The domain name examples in this section are fictional. They are intended only as examples.
3. "Everything you always wanted to know about the Internet - and then some." <http://www.merinode.com/webdesigntips.htm>.
4. *id.*
5. Internet Corporation for Assigned Names and Numbers (ICANN). "ICANN Fact Sheet." <http://www.icann.org/fact-sheet.htm>.
6. *id.*
7. Internet Corporation for Assigned Names and Numbers (ICANN). "New TLD Program." <http://www.icann.org/TLDS/>.
8. *id.*
9. *id.*
10. P.L. 106-113. <http://www.mama-tech.com/antipiracy.html>.
11. *id.*
12. Uniform Domain-Name Dispute-Resolution Policy. Policy Adopted: August 26, 1999. Implementation Documents Approved: October 24, 1999. <http://www.icann.org/udrp/udrp-policy-24oct99.htm>. See also, Rules for Uniform Domain Name Dispute Resolution Policy. <http://www.icann.org/udrp/udrp-rules-24oct99.htm>.
13. Bryan M. Carson. "Support for .law proposal." Comment letter to ICANN. Fri, November 3, 2000. <http://forum.icann.org/cgi-bin/rpgmessage.cgi?tlapps;3A0346EB0000104F>.
14. *id.*
15. <http://www.new.net/>.
16. Carson, "Support for .law proposal."
17. Michael Geist. "Re: .law domain name approved (long but important)." E-mail to law-lib@ucdavis.edu. Saturday, March 31, 2001.
18. *id.*
19. Bryan M. Carson. "New .law TLD." E-mail to support@new.net. Friday, March 30, 2001.
20. Kelli Hancock. "Re: New .law TLD." E-mail to author. Thursday, April 05, 2001.
21. Federal Trade Commission. "What's Dot and What's Not: Domain Name Registration Scams." *FTC Consumer Alert*, issued December 2000. <http://www.ftc.gov/bcp/online/pubs/alerts/domainalrt.htm>.
22. Pete Townsend, "Won't Get Fooled Again." *Who's Next*. New York: Decca Records, 1971.
23. T. R. Halvorson and Reva Basch. "Law of the super searchers: the online secrets of top legal researchers." Medford, NJ: *CyberAge Books*, 2000.
24. T.R. Halvorson. "LexNotes." <http://www.lexnotes.com/index.shtml>.
25. <http://www.lexnotes.com/index.shtml>.
26. T. R. Halvorson. "LEXIS and LexNotes." E-mail to law-lib@ucdavis.edu. Monday, March 12, 2001.
27. *id.*
28. Karen Mahnk. "RE: LEXIS and LexNotes." E-mail to law-lib@ucdavis.edu. Tuesday, March 13, 2001.
29. T.R. Halvorson. "Lex Domains - Partial Listing." *LexNotes*. <http://www.lexnotes.com/tm/lexdomains.shtml>
30. *Mead Data Cent., Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 875 F.2d 1026. (2nd Cir., 1989).
31. *id.* at 1027.
32. *id.* at 1029, footnote 2.
33. *id.* See Also, Ardena L. Walsh. "Re: Lexis and LexNotes." E-mail to law-lib@ucdavis.edu. Tuesday, March 13, 2001.
34. Black's Law Dictionary. 7th ed. pp. 920-925. See Also, Bryan M. Carson. "Re: Lexis and LexNotes." E-mail to law-lib@ucdavis.edu. Tuesday, March 13, 2001.
35. *id.*

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copy it saying that it would violate copyright law. They explained that they refuse to copy more than one article from the same journal title, if the requesting library has made previous requests from that journal in the past five years. Is this not a misinterpretation of the CONTU Interlibrary Loan Guidelines?

ANSWER: The Association has it wrong; they appear to be confusing Section 108(d) and the ILL guidelines. Section 108(d) deals with the borrowing library in the ILL situation; it states that the local library cannot copy for a user more than one article from a journal issue.

For ILL, a library may borrow five articles

a year from the journal title. It can even be the same article five times, for five separate users. The lender does not need to maintain records, the borrowing library does, however. It is the responsibility of the borrowing library to conform to the guidelines. All the lender need do is require that the borrower certify that it is conforming to the ILL Guidelines.

In fact, the borrowing library may borrow more than the five articles from a journal title within the calendar year as long as it seeks permission or pays royalties, etc. In the situation described, the borrowing library may not even be in this situation since the lending library apparently misunderstands the ILL Guidelines concerning five requests from a title within a calendar year over the most recent five years of the journal.

Bet You Missed It

Press Clippings — In the News — Carefully Selected by Your Crack Staff of News Sleuths

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ERUDITE ENGINEERS

by **Pamela M. Rose** (University at Buffalo)

If you enroll in the first freestanding undergraduate engineering college in the U.S. now under construction outside Boston, be prepared to take **Diana Dabby's** course on **Leonardo da Vinci's** scientific and artistic achievements as well as courses on starting a dot-com, fluid mechanics, and thermodynamics. Student-partners will also combine on-campus seminars with monthlong experiences abroad. Head **Richard Miller** isn't fazed by the challenge of actually educating rather than simply training future engineers. Opening in September 2002, the goal of the new **Olin College of Engineering**, which will have no academic departments or tenured faculty, is to produce 150 graduates a year with the ability to predict, create and manage the technology that will shape the future.

See — **Jeffrey Mervis**, "Olin Puts Up \$500 Million for 'No-Excuses' College" in *Science*, p. 1887, Mar. 9, 2001.

THE MISSING LINK

by **Sandra Beehler** (Old Dominion University)

The "map" is now the size of half the continental U.S. **Anoto**, the Swedish startup company that owns the "map", is working to ensure that their system of transmitting handwritten information will be the standard for the future.

Here's how it works. — A sheet of "digital paper" is covered with microscopic dots that are arranged in such a way that each dot is a unique "location" on the "map". A pen equipped with a tiny optical device, a **Bluetooth** microchip and a ballpoint (so you can read what you're writing) transmits those "locations" through your mobile phone or **PDA** to one of **Anoto's** computers holding the "map" which deciphers them into an image that is then sent to the service provider that owns that portion of the "map". Presto!—instant transmission of handwritten communications in any language (or none: graphics will be possible too). **Anoto** makes its money by selling portions of the "map" to service providers and tracking transactions (taking a cut of each transaction payment). Digital paper and special pens are cheap to manufacture and easily distributed to consumers. Industry observers say **Anoto's** system, if widely adopted, may provide the final missing link between paper and digital.

See — "The Hot New Medium: Paper", *Wired*, p. 185-91, April 2001.

See — "The Hot New Medium: Paper", *Wired*, p. 185-91, April 2001.

Please Note: Additional "Bet You Missed Its" can be found on page 93 in this issue. — **KS**

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