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Copyright Questions and Answers

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Questions and Answers — Copyright Column

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QUESTION: *My former director wrote a "bibliographic/research guide, in "binder" form with another business reference librarian from another university. The guide is used on both campuses. The information needs to be updated for new addresses, URLs and the like. Additionally, in some places the text is a bit confusing. The librarian at the other university has given me permission to do this updating, but I have not been able to get an answer from my former director who emigrated from another country several years ago and may no longer be in this country. I have written three letters seeking permission and have had no answer. The last letter said that if I did not hear from her, I would assume the answer was yes. What are the risks if I go ahead and do the update?*

ANSWER: Your question raises several issues, three of which I will discuss. The short answer is that you may go ahead whenever you and your institution are willing to assume the risk. In my estimation, however, the risk of copyright infringement problems is very slight in this situation. Although assuming the guide was produced after 1-1-78, the effective date of the Copyright Act, it was copyrighted and there is no requirement that it be registered with the U.S. Copyright Office. The important question is who owned the copyright? If the guide was produced by the director within the scope of her employment, then the university owns the copyright. As the copyright owner, the university can have the work updated, etc.

If the director was the copyright owner, she would jointly own the copyright with the

librarian from the other university. If they are true joint owners, then either party may give you permission to update the work. If they are not joint owners, then there would have to be a written agreement between them specifying who owned what.

To deal with the other issue, let's assume that the director was the sole owner of the copyright. You have written her three times to seek permission to update the work. There is not requirement that she answer you at all. Your third letter that indicated that you would proceed with the update if you did not hear from her really has no legal effect. You cannot unilaterally bind her to an agreement. On the other hand, the risk to your institution is slight. She has shown little interest in the project and the university may actually be the copyright owner.

QUESTION: *My library would like to distribute the public domain chart from your Website to users on our campus. May we have your permission to do so? However, we would like to change the "published before 1923" to "published more than 75 years ago. This will obviate the need to change the chart every year.*

ANSWER: I always grant permission to use my public domain chart if you will do two things: (1) Use my name with it and (2) include the Website address so that the user would have a source for any changes.

Apparently, now I need to add a third requirement. No, you may not change the chart. The "published more than 75 years ago" was correct until October 27, 1998 when the Sonny Bono Term Extension Act was signed into law. Now, it will be 2019 before anything

else goes into the public domain. So, the "published before 1923" will remain in effect for the next 20 years (until 2019) when we can then begin to say "published more than 95 years ago."

QUESTION: *Can someone re-draw a painting from the library collection and use their drawing for a brochure advertising the library's special collections without infringing copyright? The drawing would not be an exact replica, just similar. The original painting is still under copyright.*

ANSWER: A reproduction in any medium is still a reproduction. While librarians understand that a photocopy or a digital copy is a reproduction, sometimes we forget that a drawing of a painting is also a reproduction. If, when the library obtained the copyrighted painting it also obtained the copyright in the work, then no permission would be needed except from the library. However, the library would have had to receive a document specifically transferring the copyright since physical ownership of the painting does not presume ownership of the copyright. If the painting was produced before 1978 and was not protected by federal copyright, some courts held that transfer of the physical object also included transfer of the copyright.

Since the question stated that the painting was still under copyright, we should assume that it was a registered work under the 1909 Act or that it was produced after 1-1-78. Therefore, in order to use a drawing of a copyrighted painting on a brochure, unless the library owns the copyright, the library should seek permission to use the drawing of the copyrighted painting. 🖍

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nothing for almost thirty years.

HOWEVER No. 2. The **Foundation** claimed copyright in *Blood of My Blood* and copyright violation by Seajay for making two photocopies of the manuscript and allowing Blythe to quote from it in her paper.

Confused? Baskin was suing on behalf of the estate. He had no personal right to the manuscript because it had been left under the will to the **Library**. The estate (and of course the **Library**) has now lost its claim to the physical manuscript. Physical ownership of documents and copyright — the literary rights can be separately transferred. 17 U.S.C.A. § 202 (West 1996). Rawlings had apparently left all copyright

in her works to the **Foundation** — although the case does not say this with any clarity.

So if true, Seajay could take out *Blood of My Blood* and have a good read on any evening. Or maybe put it on display as Southern culture. But without copyright, it could not publish and market it.

Baskin had nothing to gain from the publication of the manuscript which is probably why he ignored it for thirty years. But once he realized he'd goofed, he had to try to recover the manuscript because the Library will be suing him for being a lousy fiduciary to the estate. They have lost the dollar value of the rare manuscript as a physical object. So we're back to the Foundation and copyright.

Fair Use Analysis: Character and Purpose of the Use

Blythe's paper was a scholarly appraisal of Rawlings' development as a writer. As such, she added something new to Rawlings' work, created a work of a different character, was transformative. This fits it into the criticism, comment, scholarship, and literary research of fair use. Seajay had no exploitative motive in giving copies to Blythe and the Univ of Fla Press. It was merely trying to preserve the seventy-year-old original. Seajay's objective was to authenticate *Blood of My Blood* as a Rawlings work and to assess its worthiness for publication. Seajay always understood that publication could not be done without permission of the copyright holder.

The Court *incredibly* (!!) stated Blythe might have had a potential commercial moti-

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