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Copyright Questions and Answers-What are statutory damages?

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Legally Speaking
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The importance of Justinian’s *Corpus Iuris Civilis* is that the people had the law accessible to them in a way that could be understood. Justinian’s “code” was in many ways not like a modern code. Instead, it was a compilation of the laws.39

After the fall of the Roman Empire, chaos reigned in Europe. In the period known as the Dark Ages, libraries were burned, literacy was practically non-existent, and government consisted mostly of small clans and warlords. The only places where libraries survived were in Ireland, the Byzantine Empire, and the Moslem world.37 Not until the days of Charlemagne (786-814) did the concept of written law revive.38

If the beginning of writing was the beginning of our law, the invention of printing was the second most important event in our legal development. The printing press allowed books and documents to be copied easily. It made publication and book ownership inexpensive, and led to mass dissemination of knowledge. Prior to this time, the written law was kept in regional or provincial centers. The small villages did not have access to the written law. With Gutenberg’s invention, law codes could be distributed much more widely.

“The spread of printing...ripped apart the social and structural fabric of...Western Europe and reconnected it in ways that gave shape to modern patterns. The availability of printed materials made possible social, cultural, familial, and industrial changes facilitating the Renaissance, the Reformation, and the scientific revolution.”374

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Questions and Answers — Copyright Column
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**QUESTION:** When students use visual images in their own projects does it infringe copyright if they use them only in projects submitted for class assignments? Or does this fall under student fair use?

**ANSWER:** Even better, it is not only fair use, in my opinion, but such uses likely also fall under section 110(1) when the work is to be presented in class or displayed in the school. Called the classroom exemption, that section permits students and teachers to display or perform any copyrighted work in the classroom when it is part of instruction. If, however, the student then does something else with the project, such as display it in a traditional gallery, etc., he or she may need permission.

**QUESTION:** Articles and books about copyright often refer to statutory damages. What are statutory damages? How do they differ from other types of damages?

**ANSWER:** Statutory damages simply means included in the statute. In copyright there are two types of damages available to the winning party: actual damages and profits or statutory damages. Assume that the plaintiff wins the infringement suit. In order to recover actual damages and profits, she would have to prove the amount of actual damage incurred because of defendant’s infringing activity. Proof of actual damage is difficult and would include such things as actual lost sales, etc. Courts seldom award the defendant’s profits unless the conduct has been particularly egregious (such as a software pirate with a warehouse full of pirated software). Sometimes a plaintiff has no choice but to seek actual damages and profits, however. If the work in question was not registered for copyright with the U.S. Copyright Office prior to the defendant’s infringing activities, statutory damages are unavailable. This restriction actually encourages copyright owners to register their works.

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Endnotes

2. id.
4. id.
6. id.
7. id.
18. id.
21. THE TWELVE TABLES (451-450 B.C.)
27. id.
30. Harris, p. 67.
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Statutory damages, on the other hand, are available without having to prove how much harm the plaintiff suffered. Over the years, the statute has been amended to increase the limits on statutory damages; currently they range from $750 to $30,000 per act of infringement. The range is very broad to permit the judge or jury to determine what is needed to make the plaintiff whole again. They can take into account the potential for future harm should the practice become widespread. If the infringement is innocent infringement, the damages may be lowered to $200 or raised to $150,000 if the infringement is determined by the court to be willful. On the other hand, if the infringer had reasonable grounds to believe that the use made of the copyrighted work was fair use, and if the infringer is an employee of a nonprofit educational institution, library or archives and is acting within the scope of his employment, damages may be remitted entirely.

QUESTION: If someone completely reformat (retypes) a piece, either a portion of the work or all of a work, but does not actually photocopy anything, is there a percentage of the original material that must be changed before this could be called new material (a translation, or interpretation)?

ANSWER: Unfortunately, there is no magic percentage at all. In fact, just reformatting, such as by changing the font, margins, etc., clearly is not enough to make it qualify as new material. Also, most experts agree that simply digitizing a work or putting it into HTML format is not enough to create a new work. Section 102 details the types of works that may be protected by copyright, and format is not one of them.

QUESTION: What is the law regarding movie clip capturing? If someone wanted to use a 10 second segment of the movie Twister during a presentation on tornadoes, is that infringement of the copyright? Does it make a difference that he owns a legitimate copy of the movie and is not charging admission to see the clip?

ANSWER: Movie studios have been very aggressive about pursuing their rights concerning movies. Most likely, if they found out about the practice of using movie clips to highlight presentations, they would want to require a license to do so. This is not necessarily the correct answer, however, and it depends on what kind of presentation and to whom. Is it part of a class in a nonprofit educational institution or a presentation to a professional group? Or is it just presented to the public for general information?

If the presentation is made as a part of instruction in a nonprofit educational insti-

And They Were There — Reports of Meetings

28th National LOEX Conference and Winthrop’s Libraries in Cyber Age Conference

Column Editors: Sever Bordelianu (Head, Serials Cataloging Section) <sbordelia@umn.edu> and Julia Gelfand (UC, Irvine) <jgelfand@orion.oac.uci.edu>

28th National LOEX Conference
First Impressions, Lasting Impact: Introducing the First-Year Student to the Academic Library
Ypsilanti, Michigan (May 19-20, 2000)

Report by Mark Emmons (University of New Mexico) <emmons@umn.edu>

Over 200 participants braved thunderstorms and flight delays to attend the 28th National LOEX Conference in Ypsilanti, Michigan. The theme of this year’s annual library instruction conference focused on the first-year student. The speakers and presenters shared their successes and presented research on the best ways to reach and teach the college freshman.

Elizabeth Dupuis, Head of the Digital Information Literacy Office at the University of Texas at Austin Undergraduate Library, set the tone for the conference with her keynote address. Titled “In Loco Amicus,” her talk centered around three questions: What are freshmen like? What is the purpose of education? How can the library be a wise friend? Dupuis cited the works of Jean Piaget and Jerald G. Bachman to paint a picture of the typical 18-year-old as a person in transition. According to Piaget, 18-year-olds are moving away from an egocentric view of the world. They are seeking emotional independence, making decisions about family and career, and developing their own set of ethics. Teenagers in Bachman’s model are moving away from focusing on contradictions and beginning to use formal reasoning. In answering her first question, Dupuis noted that “teenagers are novice adults.” For her second question, Dupuis believes that the purpose of education is to develop critical thinkers. As it is no longer the role of higher education to act “in loco parentis,” Dupuis stressed the need for the institution and the library to act “in loco amicus” instead — as a wise friend who will help students make wise choices for themselves and society. The library can fill the role of the wise friend by creating challenging learning environments, incorporating the discussion of larger issues into library instruction, forming closer relationships with high schools, rewarding learning over performance, and creating a welcoming environment.

Featured speaker Carla Stoffle, Dean of Libraries at the University of Arizona, opened the second day of the conference with a presentation entitled “Assessing Learning Outcomes: What this Means for the Instructional Librarian; The Instructional Role of the Library; and the Library’s Instructional Spaces.” Stoffle began by highlighting the trend in higher education toward accountability and learning outcomes. She shared the North Central Association of Colleges and Schools new standards for accreditation, which focus on outcomes assessment and require clearly stated goals for all academic programs and explicit objectives for student learning. Stoffle mentioned several guides to outcome assessment, including the American Association of Higher Education’s (AAHE) 9 Principles of Good Practice for Assessing Student Learning (http://www.aace.org/assessment/principles.htm) and the University of Wisconsin Assessment Manual (http://www.wisc.edu/Provost/assess/manual.html). Stoffle shared four initiatives recently underway at the University of Arizona: 1) the redesign of the freshman general education program, 2) integrating learning technology into all classes, 3) building a new library that will integrate the learning center with an information commons, and 4) requiring learning outcomes of every department. The library has also developed RIO (Research Instruction Online), a tutorial designed to introduce students to the library (http://www.library.arizona.edu/rio). For a library to be accountable, Stoffle recommends seeking partnerships, redirecting library re-

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tution, under section 110(1) the teacher cer-
tainly may show the film in its entirety or
just a short portion as long as the copy of
the videotape used is a legitimate copy. Clip
capturing, however, makes a copy of the
work, and that may be problematic even in
the educational institution setting. On the
other hand, outside of education, showing
the short film clip (not capturing it, i.e.,
copying it) still might be fair use. A court
would look at the four fair use factors to make
a determination and these include how much is
used (a very short portion), to whom is the
clip shown and whether a copy was made.

QUESTION: Is it necessary for schol-
ars who are writing historical works about
a region of the country to obtain permis-
sion to quote three stanzas from relevant
old songs?

ANSWER: This question is somewhat
complicated based on how old the song is.
First consult the chart I created concerning
when works pass into the public domain.
http://www.unc.edu/~uncing/public-d.htm
Assuming that the work is still protected
by copyright, then one would do a fair use
analysis. Three stanzas sounds like a fairly
significant portion of the work, and seek-
ing permission likely is required. Contact
the music publisher and not the recording
company. However, sometimes record
companies will direct users to the proper
publisher or other owner of the copyright
in the musical composition which most of-
ten includes the words.

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Our look at legal publishing will con-
tinue up to the present in the next column
of “Legally Speaking.” I will discuss such
milestones as the National Reporter Sys-
tem and the coming of the Internet. We
have seen so many changes just in the last
few years in legal publishing that it makes
sense to look back to where it all began.

Regardless of the format, it is impera-
tive that law be published. Without legal
publishers, many of our freedoms would
disappear. As Sir William Blackstone wrote
over two centuries ago, the law “may lastly
be notified by writing, printing, or the like;
which is the general course taken with all
our acts of Parliament.” Yet, whatever way is
made use of, it is incumbent on the pro-
mulgators to do it in the most public and
perspicuous manner; not like Caligula, who
(according to Dio Cassius) wrote his laws
in a very small character, and hung them
up upon high pillars, the more effectually
to ensnare the people.”

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Winthrop’s Libraries in Cyber Age Conference
Winthrop University Library, Rock Hill, South Carolina

Report by Mark Herring <herringm@winthrop.edu> and Ron Chepesik <110423.2656@compuserve.com> mitilnl <mitilnl@winthrop.edu>

The Winthrop University Library in Rock Hill, South Carolina, and the South Carolina Council for the Humanities are sponsoring a conference this Fall that ex-
amines the momentous impact cyberspace

s is having on libraries and the humanities. Titled “Libraries in the Cyber Age: The Future of the Humanities and the Impact on Society,” the event recognizes that library

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