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Copyright Questions and Answers-What are statutory damages?

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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.[28]

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.[29] Not until the days of Charlemagne (786-814) did the concept of written law revive.[30]

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."[31]

Endnotes

1. Shakespeare, Henry VI, Part II, Act IV, Scene ii.

2. id.

3. Harris, Michael H. History of Libraries in the Western World. 4th ed. Metuchen, N.J. and London: Scarecrow Press, 1995. p. 17.

4. id.

5. Duhaime, Lloyd. The Timetable of World Legal History. Victoria, B.C., Canada: World Wide Legal Information Association, 2000. http://www.wwlia.org/hist.htm#2350bc

6. id.

7. id.

8. "The Laws of Eshnunna." Translated by Albrecht Goetz. Anet 161-163, paragraph 5. In The Ancient Near East: An Anthology of Texts and Pictures. Ed. James B. Pritchard. Princeton: Princeton University Press, 1958. p. 133.

9. Code of Hammurabi, Prologue. Translated by L. W. King. Ed. Richard Hooker. In World Civilizations. Pullman, W.A., Washington State University, 2000. http://www.wsu.edu:8080/~dee/MESO/CODE.HTM

10. Duhaime, http://www.wwlia.org/hist.htm#2350bc.

11. Woolley, Leonard, Sir. The Sumerians. New York: Norton, 1965. pp. 91-92.

12. Code of Hammurabi, §5.

13. "The Code of the Nesilim." In Ancient History Sourcebook. Bronx, N.Y.: Fordham University, 2000. http://www.fordham.edu/halsall/ancient/1650nesilim.html.

14. Duhaime, http://www.wwlia.org/hist.htm#2350bc

15. Deuteronomy 16:20.

16. For an explanation of Church Law, see the entry on "Law" in The New Catholic Encyclopedia. V. 8. New York: McGraw-Hill, 1967. pp. 543-565.

17. Grote, G. "History of Greece." Pt. 2 ch. 10 (v. 3). Excerpted in "Athens, B.C. 624." Larned, J. N. History for Ready Reference from the Best Historians, Biographers, and Specialists: Their own words in a Complete System of History for all uses. V. 1. Springfield, M.A.: C. A. Nichols, 1892. p. 146.

18. id.

19. "Draconian laws." Black's Law Dictionary. 5th ed. St. Paul, M.N.: West, 1979. p. 443.

20. Larousse Encyclopedia of Ancient and Medieval History. Hamlyn House, The Centre, Feltham, Middlesex, U.K.: The Hamlyn Publishing Group, Ltd., 1972. p. 109.

21. THE TWELVE TABLES (451-450 B.C.).

22. The Institutes of Gaius. Translated with an introduction by W.M. Gordon and O.F. Robinson. Ithaca, N.Y.: Cornell University Press, 1988. Commentaries, Book 1, §1.

23. Gaius, introduction, p. 8.

24. Justinian's Institutes. Translated with an introduction by Peter Birks and Grant McLeod. Ithaca, N.Y.: Cornell University Press, 1987. Introduction, p.7.

25. Robinson, O. F. The Sources of Roman Law: Problems and Methods for Ancient Historians. London and New York: Routledge, 1997. p. 21.

26. Justinian, introduction, p.11.

27. id.

28. Barton, J. L. "Gentilis and the *interpretatio duplex*." In The Roman Law Tradition, edited by A. D. E. Lewis and D. J. Ibbetson, p.104. Cambridge, England: Cambridge University Press, 1994.

29. Blum, Jerome, Rondo Cameron, and Thomas G. Barnes. The European World: A History. Boston: Little, Brown, 1966. p. 15.

30. Harris, p. 67.

31. Emery, M., E. Emery, and N.L. Robert. "The Press and America: An Interpretive history of mass media." 8th ed. pp. 3-4. Quoted in Lipschultz, Jeremy Harris. Free Expression in the Age of the Internet: Social and Legal Boundaries. Boulder, CO: Westview, 2000. p. 41.

32. Blackstone, William, Sir. "Of the Nature of Laws in General." In Commentaries on the Laws of England. pp. 1765-69, Vol. 1, Introduction, Section II. http://www.exlaw.com/library/bla-102.shtml.

Questions and Answers — Copyright Column

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QUESTION: *When students uses 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.

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 reformats (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 pursing 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

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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@unm.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.aahe.org/assessment/principl.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-

tution, under section 110(1) the teacher certainly 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 made.

QUESTION: Is it necessary for scholars who are writing historical works about a region of the country to obtain permission to quote three stanzas from relevant old songs?

<u>ANSWER:</u> 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/~unclng/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 seeking 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 often includes the words. 🌳

Our look at legal publishing will continue up to the present in the next column of "Legally Speaking." I will discuss such milestones as the National Reporter System 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 imperative 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 promulgators to do it in the most public and perspicuous manner; not like Caligula, who (according to DioCassius) wrote his laws in a very small character, and hung them up upon high pillars, the more effectually to ensnare the people."[32] 🌳

sources toward the educational role, partnering with colleagues in other libraries, promulgating key principles on campus, thinking of ourselves as educators who are faculty partners, creating an assessment mentality, and treating the current environment as an opportunity.

With twenty presentations, five discussion forums, and thirteen poster sessions, it was impossible to attend every event. It was, however, possible to see three themes emerge from a close reading of the program, conversations with fellow attendees, and a presence at various sessions: forming partnerships, reaching specific learners, and effective instruction.

A key element in successful library instruction programs is forging partnerships with the campus community. Some of the more fruitful collaborations described by presenters involve teaming up with faculty and academic programs, becoming part of campus learning communities, and working with high schools. At **Millersville University**, librarians serve as academic advisors. Information literacy initiatives require that librarians work in partnership with everyone on campus who is involved in the design of the curriculum.

A related theme was the effort to reach specific learners. Various presenters spoke of their experiences of working with diverse students, including the at-risk and transitional students, the high achieving and honors students, and specific populations such as athletes, students in biology or the health professions, and distance learners. Reaching these students often required forging partnerships. Presenters also described marketing programs that were designed to reach students in general.

Librarians shared effective strategies for library instruction. Some of the high impact strategies included critical thinking and problem-based learning, use of handouts, and assessment. Several presenters focused entirely on technology, specifically the use of Web pages and tutorials for orientation and first year in-

struction. One study found that tutorials and face-to-face instruction were equally effective. If there was an underlying message, it was a plea to make library instruction interesting and fun.

For the complete program, see the **28th National LOEX Conference** Web page at http://www.emich.edu/public/loex/CONFEREN/home.htm. The Web page includes a list of presenters with abstracts of their presentations written before the conference.

Themes from other presentation and poster sessions

#1 — Information literacy, evaluation and critical thinking; Student athletes; Outreach (distance education at National University); At-risk; Collaboration (with Honors).

Poster Sessions

Staff doing orientation; T.A.'s designing and teaching library instruction; Urban diverse community; Large scale instruction (eg lots of students); Librarian as academic advisor; University studies course; Using a syllabus to guide orientation; Library modules; Face-to-face interaction to reduce library anxiety; Transitional students; Tailored Web pages (to individual classes); Handouts as a teaching tool.

#2 — Making BI interesting, dramatic, and important; Cyber assignments (Web-based to reach 10,000 freshmen); Information seeking (for health profession students); Elite students (Swarthmore, Haverford, Bryn Mawr).

#3 — Training faculty; Problem-based learning; Talking story (story telling, Gen X and Gen Y, technology); Infotainment; Required course.

Discussion

Library instruction role in information literacy; Marketing to 1st year (who are they, how do you reach them); Collaboration/strategies for orientation; Assessing library's role in student learning; Keeping BI stress free and stimulating.

#4 — History of a BI program (to share experience); Efficacy of tutorials vs. face-to-face instruction; First Year Experience librarian!; Marketing; Learning communities.

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

Report by **Mark Herring** <herringm@winthrop.edu> and **Ron Chepesiuk** <110423.2656@compuserve.com>, mitlinl <mitlinl@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 examines the momentous impact cyberspace 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 librar-