Copyright Questions and Answers - What are statutory damages?

Laura N. Gasaway
Law Library, University of North Carolina, laura_gasaway@unc.edu

Jack G. Montgomery
Western Kentucky University Libraries, jack.montgomery@wkyu.edu

Bruce Strauch
The Citadel, strauchb@earthlink.net

Bryan Carson
Western Kentucky University Libraries, bryan.carson@wku.edu

Follow this and additional works at: http://docs.lib.purdue.edu/atg

Part of the Library and Information Science Commons

Recommended Citation
Gasaway, Laura N.; Montgomery, Jack G.; Strauch, Bruce; and Carson, Bryan (2000) "Copyright Questions and Answers - What are statutory damages?", Against the Grain: Vol. 12: Iss. 5, Article 22.
DOI: https://doi.org/10.7771/2380-176X.3577

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.
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.56

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.57 Not until the days of Charlemagne (786-814) did the concept of written law revive.58

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.”59

2. id.
4. id.
6. id.
7. id.
18. id.
27. id.
30. Harris, p. 67.

---

Questions and Answers — Copyright Column

by Laura N. Gasaway (Director & Professor of Law Library, CB#3385, Univ. of North Carolina, Chapel Hill, NC 27599; ph: 919-962-1321, fax: 919-962-1193) <laura_gasaway@unc.edu> http://www.unc.edu/~uncleg/gasaway.htm

**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.

---

continued on page 76
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) <sbordeia@umn.edu> and Julia Gelfand (UC, Irvine) <jgelfand@orion.oac.uic.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 thundersstorms 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 Gerald 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/princl.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

<http://www.against-the-grain.com>
Questions & Answers
from page 74

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 videocassette 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
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 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.
hhttp://www.unc.edu/~uncleg/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 owner of the copyright in
the musical composition which most of-
ten includes the words.

Legally Speaking
from page 72

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 impor-
tant that law be published. Without legal
publishers, many of our freedoms would
disappear. As Sir William Blackstone wrote
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 Catullus, who
(according to Dio Cassius) wrote his laws
in a very small character, and hung them
upon high pillars, the more effectually
to ensnare the people.”

All original content copyright 2000 Bryan M. Carson

And They Were There
from page 74

sources toward the educational role,
partnering with colleagues in other librar-
ies, promulgating key principles on cam-
pus, thinking of ourselves as educators
who are faculty partners, creating an
assessment mentality, and treating the cur-
rent environment as an opportunity.

With twenty presentations, five dis-
cussion forums, and thirteen poster ses-
sions, it was impossible to attend every
event. It was, however, possible to see
three themes emerge from a close read-
ing of the program, conversations with
fellow attendees, and a presence at vari-
sous sessions: forming partnerships, reach-
ing specific learners, and effective in-
struction.

A key element in successful library in-
struction programs is forging partnerships
with the campus community. Some of the
more fruitful collaborations described by
presenters involved teaming up with
faculty and academic programs, becom-
ing part of campus learning communities,
and working with high schools. At
Millersville University, librarians serve
as academic advisors. Information li-
teracy 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 spe-
cific populations such as athletes, stu-
dents in biology or the health professions,
and distance learners. Reaching these
students often required forging partners-
ships. 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 think-
ing and problem-based learning, use of
handouts, and assessment. Several pre-
senters focused entirely on technology,
specifically the use of Web pages and tu-
torials 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 mes-
sage, it was a plea to make library instruc-
tion interesting and fun.

For the complete program, see the
28th National LOEX Conference Web
page at http://www.emich.edu/public/
loex/CONFERENCE/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 instruc-
tion (2g lots of students); Librarian as
academic advisor; University studies
course; Using a syllabus to guide orienta-
tion; 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); Informa-
tion seeking (for health professionals;
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); Collabora-
tion/strategies for orientation; Assess-
ing 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 <herrimg@winthrop.edu> and Ron Chepesuk
<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 ex-
amines 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-
continued on page 77

<http://www.against-the-grain.com>