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Questions and Answers-Copyright Column-When a library creates a Website, is the HTML code protected by copyright?

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Legally Speaking
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by students enrolled in that course. The Senate
version did not include performances by
non-profit libraries. At one point the House
version did include performances by non-
profit libraries; however, that language was
removed from the bill during committee
mark-up. For-profit institutions, even if ac-
credited, must pay royalties for a license.

The TEACH Act also amends section 106
to allow digital transmissions to be made
to members of the class. Section 106 states
that the author has the exclusive right to control
copies of his or her work. However, every
time you create a digital version of a docu-
ment or performance, you are making a copy.
The TEACH Act allows educators to make a
copy in order to transmit the work to their
distance education students.

In order to claim the protections of the TEACH Act, the
non-profit accredited educational institution
must be distributing the document or perfor-
mance for educational purposes. The trans-
mission must be only to those students who
are enrolled in the class, so Websites should
be password protected. Finally, to the extent
possible, the institutions should attempt to
make sure that the materials are not trans-
mitted any further by the students. This
provision would be satisfied by providing the
students with Web pages which may be
viewed but not printed or downloaded.

If passed, the TEACH Act would allow accredited
non-profit educational institutions
to do in their distance education pro-
grams what they can do in their on-campus
institutions. Rather than being a new type of
education, the Internet will indeed be simply
a new transmission method for traditional
education.

Educators are becoming less bound by
distance, and the TEACH Act helps to ease
the restrictions. Publishers and authors will
know that their work is being distributed only
to students in accredited non-profit educa-
tional institutions for educational purposes.
Educators will be able to transmit some perfor-
mances for their distance education classes,
and students will be able to obtain a
quality education via the Internet. By work-
ing together on the language of the TEACH
Act, everybody wins. And as Ecclesiastes
states, there truly is nothing new under the
sun.

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Bryan M. Carson.

Questions & Answers —
Copyright Column

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QUESTION: A special education
teacher in my school has asked whether she
can audiotype a book being studied in
class for a child with learning disabilities.
The library wants to purchase the tape, but a
thorough search has not revealed any source
from which it is available. Since it is unavail-
able for purchase, may the library and
school make its own audiotape for this child?

ANSWER: Under section 108 (the li-
brary section) of the Copyright Act, the an-
swer is no, but under the Americans with
Disabilities Act, the answer is yes. In the legis-
latively history that accompanied the Act,
specifically in the House Report, in the dis-
cussion on fair use under section 107, there
is a statement about making copies of works
in special forms for blind persons. The House
Report mentions the Library of Congress
program for making such copies but also
states that making a single copy for blind
persons would properly be a fair use under
section 107. By analogy, making an audiotape
for the one child should also be fair use. Such
tapes should not then be added to the library
collection without permission, however.

QUESTION: When a library creates a
Website, is the HTML code protected
by copyright? There appears to be some
disagreement among the experts on this
matter.

ANSWER: No, it is not. The underly-
ing work is what is protected, for example,
the literary work, musical work, audiovisual
work, etc., but not the HTML code. Section 102(a) of the
Copyright Act details the eight categories of works
that may be protected by copyright; while it is possi-
ble that other types of works might also be protected, a judgment would be made
based on the originality/creativity require-
mant of the Act. Although HTML code is
very useful, the code underlying a Webpage
is not copyrighted although the page itself
is as an audiovisual work if it meets the re-
quivalences of originality/creativity, etc.

QUESTION: As an academic medical
library, we are often asked to provide ac-
cess to full-text journals to other libraries
located in federal buildings on our cam-
pus. The full-text journals are free to the
library with print subscriptions. Would
this be a copyright violation?

ANSWER: Not a copyright violation, but
whether there is some type of liability for the
library depends on the license. License agree-
ments are contracts governed by state con-
tract law instead of federal copyright. If a
license for the online journals says restricted
to the school's students, faculty and staff, then
it violates the contract to allow the federal
employees to use the materials. If not, then
it is permissible, but each license agreement
would have to be consulted for that title or
group of titles.

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Endnotes
2. In a previous article (December 2000), I
stated that the advent of the Internet has created
as big a change in society as the invention of
the printing press. However, it is not the Internet
itself that has created this change, it is the social
changes that accompany the use of the Internet.
3. For example, Touro International
University, the distance education section of Touro College
in New York, provides Ph.D. degrees in Business
Administration and Health Sciences which do
not require any residency. This program is
fully accredited by The Commission on Higher
Education of the Middle States Association
of Colleges and Schools. See Touro's Website
at http://www.tourowu.edu/
7. David L. Lange. "Theory and Practice in
Copyright." Presentation at Intellectual
Property in the Digital Age, Madison, Wisconsin, May
10. id.
11. Mary Beth Peters. Keynote address at In-
tellectual Property in the Digital Age, Madison,
12. "Technology, Education and Copyright Har-
13. 147 Cong Rec D 868.
14. I attended the conference Intellectual Prop-
erty in the Digital Age in Madison, Wisconsin,
on May 6-9, 2001. The conference began two
days after the joint agreement was negotiated.
Many of the negotiators were participants at this
conference, and the agreement was reported at
that time.
15. "Technology, Education and Copyright Har-
16. According to the TEACH Act, accreditation
for post-secondary institutions "shall be as de-
termined by a regional or national accrediting
agency recognized by the Council on Higher
Education Accreditation or the United States
Department of Education; and with respect to
an institution providing elementary or second-
ary education, shall be as recognized by the
applicable state certification or licensing pro-
dures." 107 Markup S. 487.
And They Were There —
Reports of Meetings

XI. Transborder Library Forum, 2001 and IUG Meets in Santa Clara

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XI. Transborder Library Forum, 2001
"World Information: knowledge without boundaries"
Hermosillo, Sonora, Mexico, March 15-17.

Report by Elizabeth N. Steinhagen
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Titled "World Information: knowledge without boundaries," this year's Transborder Library Forum was held in Hermosillo, Sonora, Mexico, March 15-17. Hosted jointly by the Universidad de Sonora (UNISON), and the Food and Development Research Center (CIAD), the event again attracted approximately 300 professionals, as in previous years, from mostly border states, with a number of representatives of libraries from other areas of Mexico, the U.S., and Canada. The theme was globalization, a concept that is here to stay and which has had a profound impact on how things are done today. The outcome of newer and better technologies in the realm of information exchange has revolutionized our way of seeking knowledge that may be generated thousands of miles away, anywhere in the world.

For the above reasons, the organizers of this XI. FORO envisioned an event that would present more than a physical space where librarians from our two sister countries, the United States and Mexico, could exchange experiences and share ideas about common problems not just relevant to border areas, but where they could also begin to brainstorm on ways to improve on daily tasks for the ultimate benefit of local users as well as those from remote areas.

From its simple beginnings in the late 1980s, when librarians from Arizona and Sonora realized the need to improve communication between libraries in the border states, attendance and scope have increased considerably. Simultaneous interpretation at all FOROs has eliminated language barriers by providing each attendant with the opportunity to participate actively, while at the same time the number of bilingual librarians able to take part in the discussions regardless of language appears also to have increased. Each FORO has been organized by an extraordinary and dedicated team of volunteers from the host site, and so far, the event has remained the sole responsibility — and sometimes headache — of the local hosts. However, while the informality of the group, the lack of structure, of dues, and of membership obligations, remain one of the major attractions, questions arose at the close of the XI. FORO in 2000, about the continuity of these gatherings. Indeed, after lengthy discussions at the end of the recent XI. FORO, those present decided to look into the feasibility of coming up with some sort of structure that would provide the group with at least a semi-formal identity and standing. While all participants continue to cherish the informality and the social interactions, it is hoped that the group they elected to study and proposed new status will arrive at a solution that ensures the ongoing existence of these meetings.

These transborder conferences have been growing in importance and relevance as libraries and their users access information beyond their physical and geographical borders. There was ample evidence for it throughout the 3-day program that brought together practitioners from all areas of librarianship. It was preceded by a number of workshops presented by librarians from Mexico and the United States, which included a session on searching MEDLINE and MEDLINEplus for biomedical and consumer health information; a workshop on basic serials cataloging, based on the CONSER Serials Cataloging Cooperative Training Program (SCCTP); a session on developing a library accessible to the community through design, attitude and technology; and another on modern and general archives.

At the close of the opening ceremonies, the two keynote speakers offered interesting views of the present situation. Estela Morales C. of the Universidad Nacional Autónoma de México spoke about globalization and the importance of making more local information available to all users. continued on page 72

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