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Copyright Questions and Answers

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Questions and Answers — Copyright Column

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QUESTION: *A faculty member says "I don't want the students to have to pay" and wants to put a copy of the required textbook for his course on reserve. If one cannot make copies of "consumable items" how does a library deal with the textbook on reserve?*

ANSWER: According to the legislative history that accompanied the Copyright Act of 1976, a textbook is not defined as a consumable item. Consumables are those works that are "used up" when one person uses them. Congress gave as examples standardized tests, workbooks, answer keys, and the like. The school is supposed to purchase copies for everyone taking the test. Textbooks, on the other hand, are not used up by a single student. In fact, there is a thriving second-hand market for used textbooks, and according to the first sale doctrine, one can resell a textbook.

That same first sale doctrine also permits libraries to loan materials including textbooks. There are some practical reasons that an assigned textbook on reserve is unlikely to be problematic. First, there is a legitimate reason to put a copy of an assigned textbook on reserve: a student may have failed to bring her copy that day and needs to read the assignment after she arrives at the school. Second, as opposed to a standardized test, the user is unlikely to photocopy the entire textbook. It is just too time intensive, the final copy is messy and most people would prefer to own the book.

Perhaps the faculty member might be reminded that library reserves are not intended to substitute for a student's purchase of a textbook. However, the library can put

one copy on reserve as a backup copy.

QUESTION: *The Classroom Guidelines state that they are minimum standards. If no maximum standards exist, how do libraries know where to draw the line? The campus attorneys have advised the strictest possible interpretation, e.g., no more than nine instances of multiple copying for the students in a class per term without permission from the copyright holder.*

ANSWER: University counsel are basically doing what content providers hoped would happen. They are converting minimum guidelines into maximums. The few courts that have cited and discussed the guidelines have tended to do the same. Yet, the guidelines clearly were intended to state the bare minimum of what constitutes fair use. Many other institutions refer faculty members to the four fair use factors to assist the individual faculty member with making the decision about the maximum use and recognize that the numerical limits and portion limitations are indeed minimum guidelines.

QUESTION: *If the library gets full-text articles through OVID or Dialog on the Web, are copyright royalties included in the price? Or, must articles be tracked like interlibrary loan copies and the library pay royalties through the CCC or directly to the publisher when the suggestion of five is reached?*

ANSWER: When a library subscribes to an online service, the royalty payments are included in the license fee. Whether you can provide copies of articles obtained through OVID or Dialog to outside users




will depend on the terms of the license agreement executed by the library. Many licenses restrict use to within the institution, so check it carefully. Should providing articles to outside users not be permitted, and delivery of those articles be important to the library, contact the copyright holder and see if the contract can be renegotiated to include the desired activity.

QUESTION: *May a library make backup copies of audiovisual works and CD-ROMs in order to preserve them? They are quickly out of print, and replacing them often is impossible.*

ANSWER: While the practice of making backup copies makes absolute sense to a librarian, the Copyright Act does not permit it except in very narrow circumstances. For CD-ROMs one must look at the underlying work that is on the CD. If the CD-ROM contains a computer program, section 117 allows the owner of a copy of a computer program to make a backup copy. Unfortunately, this permission does not exist for audiovisual works, music, etc.

The only other time a library may make a copy of a work is under section 108(c) to replace a lost, damaged, deteriorating, stolen or obsolete copy. This is after the work has become damaged or lost, not before. Even then, the library must first try to purchase an unused replacement copy at a fair price before it can duplicate the work.

QUESTION: *Is it legally permissible for an instructor to include one chapter from a book on her Web page for her students to read as a class assignment?*

ANSWER: If an instructor wants to include something on a Web page for students to read, he should follow the classroom guidelines and treat it as if he were photocopying the chapter for every student in the class. This means that the faculty member's Website should be restricted to members in the class (or at least the part that contains the book chapter). Additionally, the guidelines contain word limitations, a one-term limitation without permission from the copyright holder and the reproduction must contain the notice of copyright. 

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may be nothing more than "Picture it — *Waterworld meets Heaven's Gate meets Ishtar!*" can make millions. And any wannabe who goes knocking on the studio doors simply has his idea filched by a smiling "nice-you-to-death" producer who never returns his calls.

Trade secret:

So what's an idea guy to do? You could go the trade secret route.

California Civil Code section 3426.1(d) defines trade secrets as:

"... information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Canter had already told a number of people about his invention including professors at a university who more than had the ability to make use of his ideas. He never made any agreement with West as to secrecy.

And that won't help you in Hollywood when you pitch *American Pie* meets *Godzilla*. Yes, just as you've long suspected, the rich always win. 