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## Questions & Answers -- Copyright Column

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# Questions & Answers — Copyright Column

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**QUESTION:** *A faculty member at the college has videotaped a performance of all of plays performed at the school over the past few years. He uses these videotapes in his classes and has recently offered to donate them to the library.*

**ANSWER:** Surely the college is obtaining rights to perform these plays publicly. The performance rights normally do not include the right to videotape the performance, although the school may be able to obtain a license for this. The copyright holder likely would be concerned about how the videotape was going to be used. For example, if the purpose of the videotape is to permit the drama faculty to critique the performance, then making the tape may be permitted. Using the tapes for showing to classes raises other issues, and copyright holders may be far less likely to grant permission for this.

The *Guidelines on the Educational Uses of Music* contain permission to record student music performances for purposes of critique, but there is nothing similar for dramatic works.

**QUESTION:** *A donor recently gave the library a collection of newspapers from the 1960s, but they are in bad condition. If the library digitizes the newspapers in order to preserve them, what kind of permissions are required?*

**ANSWER:** The first question is whether the newspaper issues are still protected by copyright. If they were published before 1964, they received 28 years of protection and had to be renewed for an additional 28 years. If not so renewed, they are in the public domain. However, those published from 1964 forward would still be under copyright. Under Section 108(c) the library may preserve the copyrighted newspapers digitally, after it first makes a reasonable effort to acquire unused copies of the works. If such copies are not available at a fair price, then the library may take advantage of Section 108(c) to replace the deteriorating copies either with photocopies, microfilm or by digitizing them. The analog copies may be used just as any other work, but the statute restricts the digital copies to in-library use. The digital copy may not be used outside the premises of the library. If the library wanted to make the digitized newspapers available on the Web, it would need to have permission from the newspaper, even though no permission was required to digitize the work, i.e., make the copy.

**QUESTION:** *The university has an extensive distance learning program, and the library is asked to serve the needs of these*

*students. How can the library provide copies of materials to these students?*

**ANSWER:** Library service to distance learners is treated the same as service to on-campus students. Consider two traditional services provided by libraries: (1) access to reserve collections and (2) assisting students with research projects. Services to distance education students can be offered on a similar basis. The difference, of course, is that students are unable to reproduce their own copies of works from the library's print reserves or from the collection. So, the library must act for the student in many instances.

For example, the library will have to send copies of print reserve materials to distance learners. If the works are included in the electronic reserves system, then the student may access the materials directly and whatever permission or royalty arrangements the institution has for those works also covers all enrolled students. For research projects, remote students may access online catalogs and periodical indexes and use those to identify materials he or she needs. When the student forwards a request for these materials, the library should treat the request as a Section 108(d) or (e) transaction and reproduce a copy of the article or book chapter and send it to the student. Another alternative is to check out the bound volume to the student and send it to him or her. If needed materials are licensed to the university, enrolled distance education students should be covered by the license agreement.

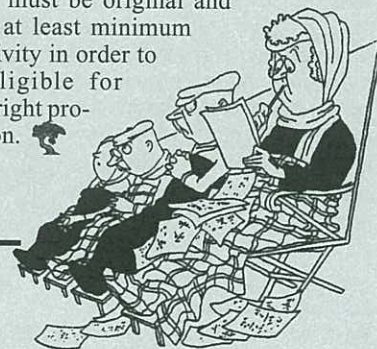
**QUESTION:** *A librarian has been asked to present a paper at a conference. The association that sponsors the conference has*

*asked her to bring 25 copies of the paper to sell. What copyright symbol should be placed on the copies?*

**ANSWER:** Although notice of copyright is no longer required, it is a good idea to include notice on such papers. As the author, the librarian owns the copyright, not the association. A notice alerts anyone who purchases the paper that the librarian holds copyright in the work. The notice is more than the "symbol." It consists of three elements: (1) the "C" in a circle, the word copyright or the abbreviation *copr.*; (2) the name of the copyright holder; and (3) the year of first publication.

**QUESTION:** *Last year a narrative written by a woman slave from the 1840s was discovered and published. Since it has now been published, it is in the category of works that existed as an unpublished work on January 1, 1978, but which was published before the end of 2002. Therefore, it will not enter the public domain until the end of 2047. Who owns the copyright in this newly published work?*

**ANSWER:** The heirs of the author would hold the copyright in the work even though it has just been published. If the author has no heirs or they cannot be identified, then the editor may hold the copyright based on the work he or she contributed to the work. That work must be original and have at least minimum creativity in order to be eligible for copyright protection.



## Cases of Note — Trademark Dilution

### Beanie Babe Battles

by **Bruce Strauch** (The Citadel) <strauchk@earthlink.net>

*Ty Inc. v. Ruth Perryman*, US Court of Appeals for the Seventh Circuit, 2002 U.S. App. Lexis 20870, Oct. 4, 2002.

**Ty Inc.** makes the famous cute & cuddly **Beanies Babies**. **Perryman** is in the Internet second hand stuffed toy business with a major part of it being the said Babes. You can find her infuriating Ty at [bargainbeanies.com](http://bargainbeanies.com).

Ty sued for the "dilution of the distinc-

tive quality of the [ir] mark" under 15 U.S.C. § 1125(c). See *Nabisco, Inc. v. PF Brands, Inc.*, 191 F3d 208, 214-16 (2d Cir. 1999). Ty won summary judgment and an injunction against her using "Beanie" or "Beanies" either alone or in conjunction with any other words and in connection with any other than Ty products.

Perryman appealed arguing that "beanies"

*continued on page 79*