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Questions & Answers -- Copyright Column

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Section III — that's the Master level — teaches how to dissolve unwanted thought forms. Although that seems like what Secs. I and II were doing. But here you do it by "merging with the thought and feeling how it feels."

Ooo-kay. And so it goes through all the rubbish. You don't really have to send me \$500. You can just read the case. Or write to Eldon, tell him you're broke, and get it free. Anyhow, there were a whole passel of similarities both literal and nonliteral and they were sure enough substantial.

Copyright Infringement

But is it an infringement? In the nonliteral area, both courses were in three parts. Section I was intro to consciousness. Section II was the exercises, and Section III a meditation technique. The exercises, being virtually identical, would permit that famous layman to avow that Eldon had copied Harry.

But are the exercises idea or expression?

As to literal, Eldon copied fifteen sentences from Harry. While that doesn't seem like a lot, they are used as part of an exercise identical to Harry's. Without these sentences, no one gets to meditation which is penultimate to enlightenment. And everyone is just clamoring to get there.

Remember, Eldon said they were so simple that the merger doctrine covers them. And they were simple. Yes, I'll give you another one. "My past doesn't exist" versus "The past doesn't exist."

And of course you've got objections. I mean, where did all those ghastly summer vacation photos come from? But they were such dumb, hideous, unflattering, pointless-waste-of-money photos that they really couldn't possibly exist. Because only a complete idiot would have taken them. Or thought he was having fun at the time. And no one that stupid could exist. Gad. I've gotten through Section II. I could be, like, a Wizard.

A not bad note further elucidates this

merger thing. "Two fish" would be merged. Likewise "red fish." But old Dr. Seuss' "one fish, two fish, red fish, blue fish" would not.

And then just as you think the 11th Circuit is going to slam the District judge with a reversal, it trails off into muttering that the line between idea and expression is not easily drawn. And all this must be resolved based on the totality of the facts and blah blah.

But the District Court didn't abuse its discretion by denying a preliminary injunction.

Which has got to be one of the most masterful exercises in wandering around to get nowhere in particular that I've seen in recent memory. And if you meditate real hard, this appellate decision doesn't even need to exist.

However this has given me a wizard idea for a self-help course. I'm calling it "Master Wizards Are the Source." It's protected by the idea-expression merger because there's really no other way to express it. Anyone can see that. Except the really, really stupid who don't deserve to exist in my serene, all-powerful reality. 🧙

Questions & Answers — Copyright Column

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QUESTION: *Are there any guides, fact sheets or other resources to help librarians determine whether to sign (or not sign) an electronic copyright agreement that is an add-on to a company's photocopy license from the Copyright Clearance Center? Since the library subscribes to so few electronic journals compared to the number of print journals, the electronic license price seems out of line. Are there any rules of thumb that dictate what a library should reasonably be charged?*

ANSWER: I am not aware of any guides or fact sheets to help make the decision about the digital repertory amendment to the CCC license agreement that your company has. Many corporate libraries have decided that the ability to make digital copies rather than photocopies is extremely important to them and have signed the amendment to the license.

The amendment does not relate to subscriptions to e-journals that would be covered by a license agreement from the publisher. Instead, this amendment permits making electronic copies of articles from printed journals received by a library. You might ask a CCC representative to explain the pricing and to put you in touch with other similar libraries that have signed the amendment. The online description of the amendment is found on the CCC's webpage at <http://www.copyright.com/PDFs/DRA.pdf>.

QUESTION: *Faculty members often*

receive free preview textbooks from publishers and then donate them to the college library. May the library catalog the textbooks and include them in the collection? What about selling these donated textbooks in the library's annual book sale?

ANSWER: Absolutely! The first sale doctrine of the Copyright Act, section 109(a) permits libraries that acquire books by purchase or gift to lend them to users; obviously a library may also catalog these textbooks so that they are represented in the bibliographic record of the collection. Moreover, under copyright law, a library may sell the copies of these works if it so chooses.

QUESTION: *The library recently acquired some additional volumes of a journal to which it no longer subscribes. These volumes cover years missing from the library's holdings of this title. These volumes were obtained from a library which has merged with another library, meaning that at the time that they were acquired, a valid subscription was maintained. May the acquiring library use the donated volumes for interlibrary loan?*

ANSWER: Yes. The first sale doctrine

permits libraries to use gift volumes that were originally acquired by a library at the institutional subscription rate (if that rate is different than the subscription rate for an individual) and to add those volumes to its collection and use them as if they were purchased volumes. This would include using them to fill interlibrary loan requests.

QUESTION: *A medical library plans to post on its Intranet site an article from a journal to which it subscribes. The library has obtained written permission from the publisher to do this. What is the proper verbiage to post with the article to indicate that permission has been received. Is "reprinted with permission from the publisher" sufficient?*

ANSWER: The suggested language is just fine. If the publisher does not specify that any special wording must be used, you are free to indicate that permission was received in any way you choose. Often the wording is just "reprinted by permission." It probably is a good idea to make sure that the publisher's name appears somewhere either with the permission statement or on the article itself.

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QUESTION: *The library wants to send out some long, long overdue reminders, let borrowers know that the maximum fine is only \$2.00 per item, and encourage them to return the books. In order to catch their attention and set the tone, the library would like to use Shel Silverstein's "OVERDUES" poem (with its cartoon illustration) from A LIGHT IN THE ATTIC. Shel Silverstein is deceased, so the 1981 copyright must have transferred to someone else. Does the library write the publisher? Can it give permission? Or will the publisher just provide the name and address of the copyright holder?*

ANSWER: The estate of Silverstein will own the copyright if he still owned it at the

time of his death; thus, the copyright may be owned by his spouse, children, other heirs or someone else entirely to whom he bequeathed the copyright.

Or, prior to his death and even at the time of publication, he may have transferred the copyright to the publisher. In either event, it is much easier to contact the publisher for permission than to try to locate heirs. Publishers know if they hold the rights while heirs often do not know. And if the publisher does not own the copyright, it may be able to help locate the heirs.

QUESTION: *Why is it okay for people to use quotes from others in their signature lines in email? Is it because it is brief, and not a full representation of someone's work?*

ANSWER: Whether it is "okay" to use a quote in a signature line may depend on

more than copyright law. For example, there may be institutional or company policies that prohibit attaching quotations to an email signature. Additionally, the user of a quotation should cite the source so there is no plagiarism problem.

For copyright purposes, short phrases, etc., are not copyrightable. Usually, however, a quotation comes from a longer work. If the work is in the public domain, using the quotation is no problem, of course. If it comes from a copyrighted work, one would apply the four fair use factors to determine whether using the quotation is permissible; the third factor, amount and substantiality used, is the most critical. So, a one sentence quotation from a longer work likely is fair use. A one sentence quotation from a four line haiku may not be fair use. 🐼

Legally Speaking — I got you babe!

The Sonny Bono Copyright Term Extension Act & Eldred v. Ashcroft

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"Babe! I got you babe! I got you babe! I got you babe!"

What was **Sonny Bono's** greatest legacy? Was it his songwriting for **Phil Spector** and **Lester Sils**, his hit "The Beat Goes On," his dynamic work with **Cher**, or his solo acting career? The answer is "None of the Above." **Sonny Bono's** greatest legacy is the way in which his name is forever linked with copyright law.

On October 7, 1998, the "Sonny Bono Copyright Term Extension Act" (also known as the **Copyright Term Extension Act**, or **CTEA**) was passed by the House and Senate, and subsequently signed into law by **President Clinton**.¹ This statute extends the term of copyright protection for all materials by 20 years. This statute is currently the subject of a Constitutional challenge in the U.S. Supreme Court.

Background of the Statute

Copyright law in the United States is based on Article I, Section 8, Clause 8, of the Constitution, also known as the "Copyright Clause." This portion of the Constitution states: "The Congress shall have Power. . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."² The first copyright act allowed works to be protected for 14 years, with the option of extending for another 14 years.³ The 1909 Act made the term 28 years. Since 1960, the copyright term has been extended 11 times.⁴ When the 1976 Copyright Act was passed,

new copyrights were granted for the life of the author plus 50 years, while works that were registered before 1978 (when the 1976 Copyright Act became effective) would be protected for 75 years.⁵

By 1993, however, the music and entertainment industry began to press for longer terms and more protection for the content owners. The intense lobbying resulted in the 1998 passage of the **Digital Millennium Copyright Act** and the **CTEA**, as well as the ratification of the **World Intellectual Property Organization** treaty (**WIPO**).⁶ **WIPO** is a specialized agency of the United Nations which deals with intellectual property.⁷ The creation of **WIPO** had been one of the basic goals of the Clinton administration, and on October 21, 1998, the United States became the first nation to ratify the treaty. The passage of the **Sonny Bono Copyright Extension Act** and the **Digital Millennium Copyright Act** made possible the complete implementation of the **WIPO** treaties.⁸

The **Copyright Term Extension Act** added an additional 20 years to the life of all copyrights, including those that were created before the Act was passed.⁹ After the new law was passed, copyrights created before 1978 are given a life of 95 years. Works created after 1978 are protected for the life of the author plus 70 years. Works for hire are also covered by copyright for 95 years.¹⁰

The Eldred Challenge

The new law was challenged in the courts almost immediately after passage. **Eric Eldred**, the publisher of **Eldritch Press**, filed

a lawsuit in the U.S. District Court for the District of Columbia.¹¹

Eldritch Press is a non-profit publisher of Internet books and relies mostly on materials that are in the public domain. **Eldred** was assisted by students at the Berkman Center for Internet and Society at **Harvard Law School**.

Eldred claimed that "the new law is unconstitutional because. . . the U.S. Constitution. . . clearly states that the term for copyright be of 'limited times'. . . [T]he practice of continually extending copyright retroactively means that Congress, in effect, is granting copyright holders more than a 'limited term'. . . [This extension] limits access and therefore harms the public good. . . [The copyright term is] beyond any reasonable expectation of the life expectancy of an author, since few authors begin creating works until they are at least adolescents and since there are few, if any, authors who have lived to an age of 110 years."¹²

The District Court case gave no hint of the controversy that was to follow. The Justice Department opposed the lawsuit and asked for summary judgement on the grounds that the statute was based on a valid body of law. Some of the reasons that the Justice Department gave in support of

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