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Questions & Answers -- Copyright Column

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ing work. And the sole objective Congress is allowed to have is stimulating new works. The Court answered that Congress in creating a copyright "system" is promoting science.

Then they argued there was a quid pro quo imbedded in copyright law. Congress could grant exclusive rights but only in exchange for art. There must be an exchange. So Congress can't give more time without something in return from the artist.

Had I been sitting on the bench that day, I would have cutely queried okay, how about if Congress legislated that the artist give a peppercorn? But the Court did not treat it quite so dismissively as Justice Strauch would have.

The Court said okay there was a "this for that" element in copyright law. But given the history of past extensions, any artist reasonably assumes that creation of a work will receive in exchange a term of protection plus any addition to the term that Congress chooses to grant.

In n21 the Court observes that when artists assign all rights to big music companies the standard contract reads "including without limitation, copyrights and renewals and/or extensions thereof." 5 M. Nimmer & D. Nimmer, *Copyright* § 21.11[B], p. 21-305 (2002).

Then they said CTEA needs strict scrutiny review as a First Amendment issue. The Court said copyright and free speech were adopted real close together time-wise. The Framers must have figured limited monopolies wouldn't bother free speech too much.

"The Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas." *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 558.

Further, free speech is protected under copyright law by the idea/expression dichotomy that keeps facts in the public domain and by the fair use defense. 17 U.S.C. §§ 102 (b) and 107.

Title II of CTEA, Fairness in Music Licensing Act of 1998, added to this by allowing restaurants and small businesses to play radio music without paying performance royalties. 17 U.S.C. § 110(5)(B).

Restaurants and bars lobbied heavily, of course. And kicked in campaign contributions.

CTEA also allows libraries and archives to reproduce copies of published books "during the last 20 years of any term of copyright ... for purposes of preservation, scholarship, or research" provided someone isn't at that time exploiting the thing commercially and the library can't get copies at a "reasonable price." 17 U.S.C. § 108(h).

Which sounds like a big mess. But it was a crumb from the table that libraries got. And proof that the library lobby is utterly useless.

A Final Stab at Logic

Perhaps Petitioners too easily gave up the notion of 70 versus 50 being "meet" for the Court.

With an unlimited collection, no matter how far you go, a mathematician would always find one more member. So it is not limited. This is the basic notion of infinity. Counting numbers — integers — are typical examples of an infinite set. You can get to a zillion and still go one more.

The Induction Principle says if you have some starting value and then have a mechanism by which from any one value you can produce the next value, then the process goes to infinity.

By misusing the Induction Principle you can do a lot of illogical reasoning such as showing all men are bald.

Questions & Answers — Copyright Column

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QUESTION: *When shareware or freeware has been downloaded from the Internet, is it copyright infringement to "beam it" to a colleague's Palm Pilot?*

ANSWER: There is a difference between shareware and freeware which is pretty important in this instance. Freeware generally means that it is free of charge and free of restrictions on the use of the software. Therefore, duplicating it by sending a copy to someone's Palm Pilot would not be infringement. There is a possibility, however, that there are restrictions included in some click-on license agreement that accompanied the software on the Web. Further, the terms "freeware" and "software" are often used interchangeably even though there is a difference.

Traditionally, shareware means that the software is protected by copyright but that the copyright owner makes it available for you to examine. If you decide to use the software, then you are supposed to pay for the copy. Sending a copy of this software to someone violates the copyright holder's reproduction right. The most important thing, however, is to pay attention to any online license when you download the software.

QUESTION: *When filling an interlibrary loan request, what information regarding copyright does the lending library need to include?*

Well, that's not true, Strauch, you're saying. Okay, if a man has zero hairs on his head would he be bald? Of course. Then if he had one hair would he be bald? Yes. How about three?

The fallacy is in applying the technical mathematical principle of well defined sets to something not well defined like baldness.

Now let's go to copyright. The purpose is to encourage creativity. The exact criterion of what encourages an artist is not defined. It's just accepted as a good thing.

Would one year's protection encourage him? Yes, it would. How about two years? Yes, that too.

By adding each additional year, he is equally encouraged, so it could go on infinitely. At least until his death when he can no longer be encouraged.

No, I didn't really write this bit. It was dictated by Steve Comer, Ph.D., member of the Citadel's Math Brain Trust. And I probably garbled it. I have no left brain. 🐻

ANSWER: Under section 108 of the Copyright Act, every copy reproduced, under any of the subsections, must include the notice of copyright contained on the work as detailed in section 108(a)(3). This provision was amended by the Digital Millennium Copyright Act to add language about what a library does when the work being reproduced does not contain the notice of copyright.

QUESTION: *What are the pros and cons of a blanket license from the Copyright Clearance Center for a non-educational but non-profit organization?*

ANSWER: The benefits of a CCC blanket license is that all in-house copying from library materials covered under the license is protected. It eliminates the necessity of keeping records for per-transaction copying on which royalties are due. Another benefit is that tables of contents services, where the library reproduces copies of the tables of contents from publications and distributes them within the organization, are exempted. The organization no longer has to seek permission from individual copyright holders. The only negative is that the library may not then rely on fair use for copying since a percentage of fair use copying is already included in the license.

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QUESTION: *A library owns several off-the-air videotapes which it believes do not conform to the Videotaping Guidelines. It wants to purchase legitimate copies to replace the off-the-air reproductions, but it is difficult to locate the copyright holders. How much effort must the library make before it can keep the off-the-air recordings permanently?*

ANSWER: The easy answer is the effort to locate the copyright owner to request permission must be made to the point that the library is willing to assume the risk. If the producer of the program that was copied is no longer in business, it may well be impossible to locate the owner. The library then must make the decision about whether to assume the risk of adding the copy of an infringing copy to its collection or disposing of the copy. Unfortunately, there

is no absolute point at which the library should make the determination. The library's decision should be based on how important the videotape is to the library as well as what risk might be involved.

QUESTION: *For electronic reserves, is it permissible for the library to link to an article in an online database?*

ANSWER: Usually yes, but not always. It is the license agreement for the online database that controls whether linking from an e-reserves system is covered under the terms of the license agreement. The link should go to a dialog box where the user has to be authenticated to ensure that his or her access is covered under the license. If the license does not permit such linking, the library may want to renegotiate the license to ensure its ability to link to online sources for which it has paid for access.

QUESTION: *Foreign language faculty often bring in European format videos (PAL*

and Secam) and ask that the library make an American-format copy so the faculty member may show the videos on American equipment in their classes. Is this allowed under section 108?

ANSWER: Under section 108(c) a library is permitted to convert the format of so-called "obsolete" works. What this means, however, is not that the work is obsolete but that the equipment to use the work is obsolete. The term "obsolete" is defined by the statute: "a format shall be considered obsolete if the machine or device necessary to render a work perceptible stored in that format is no longer manufactured or is not longer reasonably available in the commercial marketplace." Thus, only if the equipment to use the work meets this definition would the work qualify as obsolete. The problem, of course, is that PAL equipment is available and is relatively inexpensive.

Inside Pandora's Box — "Change" Through Adversity: An Organizational Triumph Over Tragedy

by **Mary Tinker Massey** (University of South Carolina Libraries and Richland County Public Library, Columbia, South Carolina)

Column Editor: by **Jack G. Montgomery** (Western Kentucky University)

Column Editor's Note: *When I first heard Ms. Massey's story, I reflected on the incidents described in the recent survey Eleanor Cook and I conducted for our upcoming ALA editions book on conflict management in library organizations. In fact, the idea for the book came from hearing of another such incident in a large urban library. Although many tragic incidents occur in libraries, they are often never reported and never reported to the greater library community. Ms. Massey's story is important in that it demonstrates the type of leadership required to survive and grow in the face of such an incident. It also serves to remind us of the critical need to develop our organizations so that we can avert such situations. — JM*

Shots fired! With the director critically wounded, a Reference Department meeting was disrupted by gunfire, while a student assistant tried to talk the gunman out of his weapon. Was this merely a staged production at your community theater? No, it was a real modern workplace tragedy at a large southeastern library!

Our organization at that time was over three hundred strong. We labored under an oppressive autocratic management system, and there was a history of mental and emotional abuse through this system. Many people were on the brink of depression and rebellion. One librar-

ian, who had been psychologically and emotionally pushed into a corner and fired, returned to the library to try to get the management to listen. However, it didn't work out for anyone that day and the results were tragic. The University responded bureaucratically and brought no trauma or counseling intervention. The staff was left to figure things out for themselves. Many people soon left, leaving the ones that stayed to cope the best possible way: through their work.

Two years later a new Director was hired and she began an organizational restructuring project that could be judged today as a triumph of management. I volunteered to be an intermediary between her and the staff, to communicate and mediate new info and policy issues that arose. To begin, I offered a written proposal to set up a representative committee that would receive anonymous or authored complaints/ideas, trying to make library improvements based on those complaints/ideas, and reporting back to the staff at monthly intervals on the progress of those offerings.

We tackled the small issues that regularly occurred and were generally successful. In mediating and resolving these trying issues, the staff became so encouraged by our results that they chose to wait out the more difficult solutions that would take longer to resolve. We began to see a change in the staff's attitudes toward the administration, the University and their work as well.

Recognizing that organizational change is constant, we adopted procedures that nurtured change, including: providing more information, establishing a personnel oriented communication system (print and electronic), increasing the speed of communications (to manage rumors), improving the internal technological systems (like the intranet) to provide access to everyone, providing avenues for discussing problems, and providing adequate feedback to management on situations.

Sadly, autocratic management provides total management control and directs the staff at all times. This type of management, which is incapable of sharing authority, is focused on task maintenance, defines tasks rigidly, enforces overly formalized rules with programmed decisions, and sloughs off communication to retain control. The communication flow is always downward and usually written to create trails of "proof." It places management and staff in an adversarial posture leading to distrust and paranoia on both sides.

On the other hand, the concept of team management requires the staff to share responsibilities and influence decisions. Balanced task focus and social maintenance is sought, as this management system is flexible and seeks consensus allowing for smoother assimilation of new policies and procedures. Creative forms of decision making are ideal, and the communication dynamics become lateral and vertical, al-

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