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Questions & Answers -- Copyright Column

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other print communications. The book contains numerous examples and case studies.

Wood, Elizabeth. *Strategic Marketing For Libraries*. Greenwood, 1988. — Proposes marketing strategies for all types of libraries, including academic, public, and special. The book also provides real-life examples. Although written in 1988, almost all of the techniques listed in this book are still applicable today.

Zick, Laura. *Marketing the Library/Information Service: Readings*. Columbia, MO: Laura Zick. 2000. <http://www.dochzi.com/bibs/market.html>. — Looking for a bibliography with even more readings? Check out this Website, which contains print references as well as some links to online sources.

Endnotes

1. Guy, David J. "Library Advocacy: Legal Limits on Lobbying." *Bookends: Friends and Foundations of California Libraries*. Accessed February 1, 2004. <http://www.friendcalib.org/newsstand/f2guy1.htm>
2. "Lobbying." *Starting a Non-Profit Organization*. Jefferson City, MO: Missouri Business Center/Missouri Department of Economic Development. Accessed January 31, 2004. http://www.ded.mo.gov/business/startabusiness/businesscenter/businesscenter/nonprofit_cd/chart_lobbying.pdf
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Questions & Answers — Copyright Column

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QUESTION: *When a library receives a copy of an article from a document delivery company through ARIEL in response to an interlibrary loan request, how long can the library keep or archive this article? Can it be reused to satisfy another request for the same article by another patron?*

ANSWER: This question mixes language somewhat. If the article is obtained from a document delivery company, it is not an interlibrary loan. Instead, it is document delivery which does not have to satisfy the ILL guidelines. If the copy of the article was obtained from a company, that means that royalties were paid for it. In this instance, because royalties were paid, the library may reuse the copy. After the patron for whom the copy was purchased uses it, he or she can return it to the library where it can be archived. The only restriction on use of that copy is that it can be reproduced only if that reproduction is a fair use. Having determined that it should obtain the copy of the article from a document delivery company as opposed to a library, the requesting library may have made the decision that the use is not a fair use. If additional copies of the article are made, additional royalties are due since the library has paid only for one copy.

If the article is obtained from another library as an interlibrary loan, then royalties may not be due if the request is within the suggestion of five. The ILL guidelines, however, place more restrictions on what may be done with a copy of an article so obtained. For example, the copy must become the property of the user. Thus, the library may not archive the article at all.

QUESTION: *An elementary school is performing *How the Grinch Stole Christmas* as a play tied to a family literacy night with music and other activities at the school. Parents are*

invited, but there is no charge for the performance. Is there a copyright problem?

ANSWER: Under section 110(4) of the Copyright Act, a performance of a nondramatic literary or musical work by a nonprofit organization when there is no payment of fees to promoters, organizers or performers and there is no admission charge, or if there is one, it goes back for charitable purposes, then the performance is exempted. Under all of these conditions, there is no problem.

Somewhat more information is needed concerning whether "performing the work as a play" also means creating a derivative work or whether the literary work is simply read with the characters speaking their lines. If it is a derivative work, permission would be needed.

QUESTION: *If a student completes an assigned term paper and produces a bound copy of that paper as required by the institution, who owns the paper — the professor, the student or the university? Can the institution place it on reserve in the library?*

ANSWER: The student is the author and thus owns the copyright in paper he or she completes. The university certainly may require that the student deliver a copy to the university in order to satisfy curricular requirements. If that work is to be available in the library where it can be reproduced, such as being on reserve, the institution should obtain permission from the student. This can be done up front when the student "signs on" to complete the paper, and

the agreement should be in writing and kept on file by the institution.

Should the faculty member or institution put such papers on a Website, even a password protected one, permission should be sought from the student before doing so.

QUESTION: *If there is no copyright notice on a government document, should a library assume that it is not copyrighted?*

ANSWER: If it is a work published by the Government Printing Office, yes. It is produced by a federal agency. Section 105 of the Copyright Act says that the federal government may not own copyright in works it produces. This was an absolute until about 1978 when the National Science Foundation began to offer grants to researchers that permitted the researcher to publish research results and claim personal copyright in that work. Today, some federal agencies contract out various studies and reports and may permit the contractor to hold copyright. For these, one must hope that they contain a notice of copyright. The problem is that notice of copyright is now optional.

As a rule of thumb, if the author of the work is a federal agency itself or a federal official acting in his or her official capacity, the work is public domain. The terms of the grant or contract determine whether a contractor can hold copyright.

QUESTION: *In a nonprofit research institute, can a researcher send to multiple collaborators on a project a pdf of an article that the institute purchased? It is to support the work on a project.*

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the article was obtained from a document delivery service and that royalties were paid. But, royalties were paid only for one copy. If multiple collaborators share a printed copy of an article by passing it around, there is no problem because the article is not reproduced. If a pdf file is sent to multiple users, the law treats it as if multiple copies were made. A copy in computer RAM is a copy that counts. Thus, a copy is basically sent to each collaborator and royalties should be paid for each of those copies.

ANSWER: This question seems to indicate that the copy of

Cases of Note — Copyright

by **Bruce Strauch** (the Citadel) <strauchb@citadel.edu>

Barbie Bashing Finds a Safe Harbor in Fair Use

Mattel, Inc. v. Walking Mountain Productions, United States Court of Appeals for the Ninth Circuit, 2003 U.S. App. LEXIS 26294 (2003).

Mattel is of course **Mattel**, owner of Barbie dolls.

Tom Forsythe, AKA "Walking Mountain Productions," resides in Kanab, Utah where he produces politically charged photos. And for an earnest type such as he, how can you resist using a naked Barbie attacked by vintage household appliances.

And what an array of possibilities: "Fondue à la Barbie" with Barbie heads floating in a fondue pot; "Malted Barbie" with her perched buck naked on a vintage Hamilton Beach malt machine; and "Barbie Enchiladas" with four (count them—four—no less) Barbies wrapped in salsa soaked tortillas toasting in an oven.

Filled with divine fire, he produced 78 photos in this genre with the series title "Food Chain Barbie." He held back 386 unpublished. As a true devotee of his craft, he considered them substandard.

And what about those have been? "Microwave Barbie?" "Parbroiled Barbie?"

Needless to say, **Mattel** took umbrage at this sully of America's favorite blonde. Alleging copyright, trademark and trade dress infringement, it tried to enjoin publication. Based on fair use, **Tom** won summary judgment at the district court level. Hence the **Mattel** appeal to the Ninth Circuit.

Tom vowed he was attempting to "critique the objectification of women associated with Barbie and lambast the conventional beauty myth and the societal acceptance of women as objects because this is what Barbie embodies." And, of course, the use of Barbie was essential as "the most enduring of those products that feed on the insecurities of our beauty and perfection-obsessed consumer culture."

Whew. Yes, there are folks consumed with such issues. Many can be found in the English departments of our groves of academe.

As you can imagine, there's not a huge market for **Tom's** work. He showed at two art festivals in Utah and maintained a Website. He printed up 2,000 postcards but sent out only 500, many of which he handed out in Kanab, his hometown. A feminist scholar used the cards in her lectures. A Kanab bookstore bought 500 for resale.

Total gross income: \$3,659.

Intrigued, I went and located Kanab on a map. It's way down at the bottom of the state, east of St. George, and due north of the Arizona town of Fredonia. Hmmm.

Discovery

Tom served on **Mattel** an expert witness report from a curator at the **San Francisco Museum of Modern Art (SFMOMA)** as to how **Tom** was right smack in the tradition of twentieth century artists.

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