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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: Is there a page limitation for copies from publications acquired through interlibrary loan? Many health sciences libraries impose a 50-page limit.

ANSWER: There is no such limitation found in the **Copyright Act**. In fact, the limitation in section 108(d) says that a library may reproduce one chapter from a book or an article from a periodical issue for a user. There is no mention of page limitations. So, libraries that impose a page limit on ILL or other copying do it as an administrative matter not because the law so requires. I encourage libraries not to impose a page limitation within the article. In law, it would be devastating to do so since our articles are often 100 pages or more in length! A library would do the profession a service if it believed a page limitation for copying was necessary to do it as one article from an issue regardless of length or for multiple articles, not to exceed 50 pages total.

QUESTION: High school seniors create collages with clips of popular music under 30 seconds in length. They want to sell them to other seniors to recover costs. Is this infringement?

ANSWER: Easy answer, yes. Creating a collage with music clips for a class project to demonstrate to the class might be fair use. Selling copies would not so qualify.

QUESTION: What are the copyright requirements concerning per-

sonal research and photocopying or scanning? For example, a patron uses pages from a personal family history to construct her own family tree. Does she need permission if she does not publish the family history she is creating?

ANSWER: Fair use for an individual is often quite different from what a library may do. An individual who is conducting personal research with no commercial purpose has a strong claim of fair use when reproducing either by photocopying or by scanning materials in a library. Moreover, libraries have few responsibilities under the **Copyright Act** for the acts of patrons. The library must follow section 108 and post the required notices, and give the section 108(d) warnings to patrons who request photocopies or ILL copies. Patrons who infringe are individually liable, but the library is not responsible for their behavior. In the corporate environment, however, the company is responsible for infringing behavior of its employees.

QUESTION: Sometimes a publisher's terms and conditions posted online contain contradictory terms even regarding use of their digital materials for interlibrary loan. May a library simply follow the copyright law and the ILL Guidelines and still be legal?

ANSWER: If an authorized representative of a library signs a publisher's license agreement, then ac-

cording to section 108(f)(4), the library is bound by the terms of the license. In negotiating such a license, the library is responsible for getting terms clarified if staff believe them to be contradictory. According to the library section of the **Act**, the license agreement takes precedence over the copyright law and guidelines for libraries.

The question about online licenses is a bit more complicated, but assume that a publisher has a click through license and some of the terms are contradictory. According to 108(f)(4), a library is still bound by the terms of that license even though it was not able to negotiate the terms. Contradictory terms typically are enforced by courts in favor of the party who did not draft the contract since the drafter of the license (the publisher) had every opportunity to correct terms, etc.

If a library goes forward and relies on the law and guidelines in lieu of the license agreement, a court may find that this is adequate due to the conflicting terms. On the other hand, it may not. Thus, a library that is confused about the meaning of license agreement terms or finds them to be contradictory, likely should contact the publisher for clarification.

QUESTION: Many radio stations use less than 30-second sound bytes of recorded music. What is the station's obligation to the copyright owner? Does this apply to education?

ANSWER: Radio stations, both commercial and noncommercial, pay blanket annual license

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Biz of Acq — Collaborative Partnerships: Expanding the Vendor/Librarian Relationship

by **Ann Branton** (Head of Bibliographic Services, The University of Southern Mississippi, 118 College Drive #5053, Hattiesburg, MS 39406; Phone: 601-266-4350; Fax: 601-266-6033) <Ann.Branton@usm.edu>

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Column Editor's Note: *Librarians and vendors interact constantly, and the work of one directly affects the other. Ann Branton recognizes the important contributions vendors make to librarianship, and comments on the extended relationship that exists between librarians and vendors. — AF*

Introduction

From a technical services perspective, specifically in the acquisitions of library materials, one librarian's collaborative partnerships with library book vendors can be applied to all areas of doing business with vendors. These areas include vendor as service provider, vendor as mentor, vendor as collaborator in research and development, and finally vendor as professional supporter.

More often than not, acquisitions librarians are trained by their experiences during the ups and downs of the annual ordering cycle. We learn by our mistakes as much as our successes, rather than in a library science classroom. As a new supervisor over acquisitions during a very hectic book ordering cycle in 2001, I found that the book vendors were often my best teachers. Vendors provide an invaluable service to the library profession when they teach inexperienced librarians responsible for purchasing library materials how the wholesale publishing trade works, and how to master a sharp learning curve in the ordering process.

Vendor as Service Provider

Librarians are more dependent upon professional relationships with vendors than we may realize. The books on our shelves, the spine labels and barcodes we apply on them, and the many services we are able to provide our users are supported in some way by vendors who provide the products and services we in turn provide to our library users. However, for some of the same altruistic rationale that libraries keep their doors open to the communities they serve, vendors too make an ethical commitment in providing direct or indirect access to information resources and services.

Certainly, they have remained steadfast during a period of almost universal economic downturns in our library funding for the past five years. In spite of tight budgets, we enjoy excellent service from our book vendors, and good discounts in spite of a lower volume of orders each fiscal year; I have not seen lower standards in customer services.

Until my professional duties were expanded over three years ago, direct communication with vendor representatives was minimal, and I was not aware of them as collaborators or potential partners in my more academic view of librarianship. Before putting faces to names, before my business and professional interactions with a single sales representative, vendors were just the **Books-a-Millions**, the **Wal-Marts**, the **Office Depots** of the library world. Vendors were large, impersonal warehouses of products I required

to fulfill the mission of my library, to perform my responsibilities in support of that mission and to serve the information needs of my community of library users. Since meeting, talking and working more directly with library vendors, however, I have learned that they have been engaged in meeting the expectations of changing library environments, and in anticipating the information needs of libraries and library users, for more than a lifetime.

Many companies, both large and small, have dealt with libraries for decades: **Baker & Taylor**, **Ingram**, **Blackwell North American**, **Midwest**, **Ambassador Book Services**, and **EBSCO**, to name a few. Libraries and traditional vendor services have, in essence, grown up together and are familiar, indispensable resources in fulfilling our professional responsibilities. Others are relatively new to the modern library scene as advances in technology introduced new products and services to libraries: **OCLC**, **Sirsi**, **Auto-Graphics**, and **Ovid/SilverPlatter** are examples. These companies did not exist until the last quarter of the 20th century, yet we can hardly imagine our professional world without them.

Vendor as Mentor

In 2001, I was appointed head of the bibliographic services department at **The University of Southern Mississippi Libraries** due to my years of experience as head of cataloging, and related administrative duties, managing and supervising people, activities and projects. However, my knowledge of acquisitions was marginal. All I knew about acquisitions was through the ordering workflow in which cataloging staff selected the **MARC** record that was added to the **OPAC**, and, in turn, used by the acquisitions staff to generate an order record. The acquisitions personnel, who were more senior in experience with the ordering-receiving cycle, are to be commended for rising to the occasion and adapting to an environment of organizational change and a relatively inexperienced manager of acquisitions.

That same year, I had the opportunity to attend the **Charleston Conference** in Charleston, SC in the fall of 2001, to learn as much as I could in a few days about the issues and concerns related to collection development, the acquisition of books and serials by libraries, and the impact of the publishing trade on libraries.

Among the attendees was a representative from **Book House, Inc.**, a vendor that we used at **USM Libraries**. **Peter Bence** was just about the only vendor representative I had met at that time and he made me feel comfortable with the fact that I was new to acquisitions librarianship. During the conference, I asked **Peter** to be my mentor, for the short term, to educate me about the many aspects of ordering books. Our arrangement was very informal but it provided a friendly contact for me to ask questions about the business aspects of book ordering from the vendor's perspective. Little did I know that every ordering cycle has its unique challenges!

Peter took time to explain my options in ordering academic or trade publications, and how to evaluate a vendor profile and set up special ser-

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their wry quip about old markets always being roiled by new technology.

And this raises two thoughts. (1) If the T.V. moguls had prevailed on Sony, the cost of a VCR would have become prohibitively expensive. No movie rentals. (2) Given that America's youth has been totally trained to steal music, the next **Grokster** that comes along will not have to foster infringement. Everyone will know exactly what to do without being told. Which will put them outside this ruling. So why are the Supremos wasting our time with this?

Party on, dude.

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fees to the **American Society of Composers, Authors and Publishers (ASCAP)** and **Broadcast Music Inc. (BMI)** to cover the public performance of music. These royalties go to the composer. In recent years Web casting royalties were added to radio broadcasts that are also transmitted over the Web; these royalties are paid to the record companies and performers through Sound Exchange. So, sound bytes played on the radio are covered under these licenses as is the playing of the entire song.

As to whether this applies to education, it depends on what is meant by this part of the question. If by "education" this means college and high school radio stations, the answer is yes. They also pay annual blanket royalties but the amount is considerably less than for commercial radio. If the question is focused on general educational uses of music, the answer is no. There may be exemptions in the Copyright Act that cover those specific uses, but there is no blanket license for education.