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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *DVDs in a library collection are not purchased with public performance rights. Does it infringe copyright if patrons view a DVD in the library after they check it out? Does it make a difference if they use their own laptop to view or the library's computers?*

ANSWER: If the patron is using an individual viewing station in the library or viewing the DVD at home, it is not a public performance at all. Who owns the equipment is irrelevant. If the library's DVD viewing equipment is "an individual viewing station" then it is also not a public performance. However, if the patron is in a public area, the sound is turned so that anyone may hear and anyone can join the patron in viewing the DVD, it likely is a public performance.

QUESTION: *A library has a rare 1773 map showing early landowners in the county. Is there a copyright problem if the library has the map scanned so the image could be saved to a Master CD for preservation purposes? Patrons have asked for a copy of the map as it shows where many of their ancestors were living in 1773. The original size of the map is quite large, and the library has never made copies of it before, but now it could copy the image from the CD to another CD for patrons and even sell that to them. In the alternative, the library could take the CD to a printer and have copies printed for sale. Another possibility is to put it on a Website. Would any of these activities constitute copyright infringement?*

ANSWER: Good news! Copy away in any format. The map is in the public domain. Therefore, anyone who has access to it may reproduce and distribute the map and even sell copies. The library may have the only copy of the map, and it

does not have to grant access to others. But, the library does not hold copyright in the scanned version of the map either since scanning does not create a new copyright. Therefore, if the library sells copies of the map and someone then duplicates a purchased copy and then offers those copies for sale or posts them on the Internet, it is not infringement. The map, whether the original, printed or scanned copies, is a public domain work due to its age.

QUESTION: *As VHS tapes and playing equipment are being phased out of a library, some faculty want to convert commercial VHS tapes to DVD format, so they can continue to use them in the classroom. Many of these VHS tapes are not currently available for purchase in DVD format. Would permission from the copyright holder be required to convert to DVD format if the VHS tapes were: (1) "personal" copies, (2) department owned copies or (3) library owned copies?*

ANSWER: The answer to all three is unfortunately no. Under section 108(c) of the Copyright Act, there is no permission just to convert format as long as the equipment for using VHS is either still being manufactured or is still reasonably available in the commercial marketplace. VHS equipment is still available although at some future time, this will not be the case.

This answer applies to library, personal and departmental copies. If, however, the library copies are "lost, damaged, stolen or deteriorating" and the library tries to buy another VHS copy and a DVD copy and neither is available, then the library could convert the VHS to DVD format. There is no permission for departmental or personal copies. However, if someone owns a

personal VHS copy for home viewing only and not for showing at school, there is a stronger argument for permitting the conversion for use at home. This would not apply if the video is to be used at school.


QUESTION: *If a media producer installs copy protection on a film, does that remove someone's fair-use rights? For example, if the library or a faculty member wants to "rip" a two minute segment from a two hour film, is that infringement, even though using the two minutes would likely be a fair use if it were not copy protected?*

ANSWER: Yes it is infringement. The anti-circumvention provision of the Copyright Act pretty much eliminates fair use. This provision was added by the 1998 Digital Millennium Copyright Act that amended the Copyright Act of 1976. If a copyright owner includes technological copy protection on a work, removing that copy protection, even to make a fair use, violates the statute. Oddly, however, the anti-circumvention provision says that it does not affect fair use, but clearly it does so despite this language.

QUESTION: *Should a library be concerned that researchers are using digital cameras to make reproductions of both published and unpublished works from their collections? This would not seem to be substantially different from allowing a photocopy to be made. Could it be interpreted to fall under section 108(b) or (c) of the Act that restricts a library from making a digital copy of such material available to the public outside the premises of the library or archive?*

ANSWER: If a researcher makes his or her own copy of a work or a portion thereof with a digital camera, it is no different than copying the work by hand or making a photocopy. It may well be fair use for the individual user. Because of the volume and scope of copying that libraries do, they are governed by a special section of the Copyright Act that limits library copying. Sections 108(b) and (c) generally govern preservation copying for unpublished works and replacement copies for published material. The "on premises" restriction relates only to what the library may do and not what a user may do for his or her own research.

QUESTION: *A library does not subscribe to a particular journal in either paper or electronic format. It used its "Suggestion of 5" from the CONTU guidelines for calendar year 2005. The serial title is listed in the Copyright Clearance Center (CCC) with a royalty of \$25 per article plus \$2.25 per page. The library has recently discovered that the journal is freely available on the Web back to 2003. Does it need to pay copyright royalties for ILL copies under the CONTU guidelines or may it use the article from the Web to satisfy patron requests?*

ANSWER: No. Use the free Web copy assuming that the publisher has put the issues on the Web. 

In Indian Territory from page 62

curate and comprehensive visual record of the American Indians ever created, and he recorded some of the nations he visited more fully than anyone else. He was a lawyer who taught himself to paint, and he traveled widely throughout the Louisiana Territory, but especially on the Missouri River. His narrative starts slow, but become vivid as he depicts the still intact cultures of the Assiniboin, Blackfoot, Crow, Cree, Ojibwa, Dakota Sioux, and especially the Mandan. He was the only outsider ever to see and record secret ceremonies of the Mandan, and he recorded all aspects of their culture more fully than anyone in both writing and painting, but his skill as a painter was greatly surpassed by **Karl Bodmer**. Shortly after **Catlin** and **Bodmer** visited the Mandan, they were so nearly destroyed by smallpox that they ceased to exist as a culture. **Catlin's** two volumes of text was illustrated by 360 engravings made after his paintings. The customs of the Mandan were among the most unusual for any Indian nation ever recorded, and the chapters he wrote about them can be read separately.

Francis Parkman's "Oregon Trail"

Parkman went west in 1846 specifically to study Indians, and he lived for several weeks among the Dakota Sioux during the last years before their way of life was changed radically by settlers moving west, the Gold Rush, railroads, and the slaughter of buffalo. Through translators, he was able to communicate with numerous members of the Ogillallah branch of the nation and to question them about all aspects of their lives. He kept detailed notes, and as **Herman Melville** noted in a review, what **Parkman** wrote was "obviously truthful." He found much to admire and much to condemn, particularly torture. He lamented the endless cycle of revenge, but after watching small fish devour one another, he reflected that "from minnows to men, life is incessant war." He encountered various other nations of Indians, but what he wrote while living among the Sioux is an essentially separate and coherent whole and is among the best of all writing about Indians.

Publishing Opportunities

The incisive summaries by **Lawson, Adair**, and **Bartram** for the Southeast; by **Mackenzie** for Canada; and by **Lewis** and **Clark, Catlin**, and

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