December 2005

Adventures in Librarianship -- Self Improvement

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Recommended Citation

Kraft, Ned (2005) "Adventures in Librarianship -- Self Improvement," *Against the Grain*: Vol. 17: Iss. 6, Article 44.

DOI: <https://doi.org/10.7771/2380-176X.4626>

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ing CDs is not the sole interest of the authors. They also make money from radio when no one buys the music on CD. See *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979).

Statutory Damages

Statutory Damages under 17 U.S.C. § 504(c)(1) per infringed work is "a sum of not less than \$750 or more than \$30,000 as the court considers just." But if the infringer can convince the court she was unaware of her sins, damages can be reduced to "not less than \$200." 17 U.S.C. § 504(c)(2). **Gonzales** asked for the \$200 amount.

But that takes us to § 402(d) which says: "If a notice of copyright ... appears on the

published phonorecord ... to which a defendant ... had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement ..."

Gonzales downloaded data without copyright notices, but she had access to CDs bearing the notice. She may not slip the noose because prior infringers in the chain failed to put copyright notices on the works.

But what about the right to a jury trial?

BMG cleverly asked only for \$750, eliminating any question of fact for a jury. See *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998). *Feltner* holds that a suit for statutory damages is one at law permitting the defendant to demand a jury trial. But by going with the bottom "not less than" amount, **BMG** eliminated a jury's role and allowed for summary judgement.

Gonzales focused on: "The right to a jury

trial includes the right to have a jury determine the amount of statutory damages." *Id.* at 353. She seemed to feel a jury of her file-pilfering peers should be able to nullify the statute and send the author home empty-handed.

Defendants in copyright cases do not have some absolute right to ask jurors to "return verdicts in the teeth of the law."

Okay, I'm sorry. Are you satisfied now?

Gonzales said she had "learned her lesson" and dropped her broadband access to the internet. She didn't need the injunction.

Her laying off pirating for a while does not make the issue moot. The injunction is appropriate to make sure she doesn't jump back into the free-booting once things die down. See *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953). 🐼

Adventures in Librarianship — Self Improvement

by **Ned Kraft** (Ralph J. Bunche Library, U.S. Department of State) <kraftno@state.gov>

"Good evening, class. Welcome to 'Self Improvement for Librarians.' I'm your instructor, **Mary Marshall**. Our first lesson is probably our most exciting, and I suspect it's the reason most of you signed up for the class. Who hasn't fanaticized about being able to impress our bosses, our colleagues, and our friends by using insightful quotes from **Melvil Dewey**? Certainly we can do no better than to cite a man so prescient as to accurately predict that the turn of the last century would be known to historians as the 'Library Age.'"

"I've distributed several essays by **Mr. Dewey** and I'd like to start by going around the room and asking each of you to say how you might use a quote in a social or business situation. Please make sure your nametags are visible. **Miss Sartre**?"

"Yes, I think I know exactly what you mean. For instance, if I was a hostess at a small party and I forgot to get any food or drinks, I could tell people as they walked in the door 'If any such omission occurs, it is unintentional.'"

"Well, that's perhaps not quite the best use of a Dewey phrase. **Mr.... Ranjaksiminee**, can you think of something?"

"Well, ah. Okay, if... if you were maybe talking to your boss about a raise or something

you might say "We live now not in the age of the reservoir but in the age of the fountain."

"Alright. And by that you would mean..."

"Well, like, maybe, give me more money."

"Okay. Okay. That might work, but let's try someone else. **Miss Billingsworthy**?"

"Sure! Let's say I'm with my boyfriend and we are once again for the zillionth time *discussing* our so-called engagement while sitting in his car outside my apartment building. I might turn to him with a real 'don't-mess-with-me' look and say, 'The solution of our difficulties lies in recognition by the State that public libraries are not only good things, but that they are an absolutely necessary part of our educational system.' See what I mean? I am the public library and *he* is the State. It's metaphorical!"

"You're right about that, **Miss Billingsworthy**. That would be metaphorical. Moving on... **Mr. Franklin**, care to contribute?"

"Me?"

"Yes, **Mr. Franklin**. Don't be shy."

"Alright, well, if I... let's say that maybe I didn't pick up her dry cleaning on the way home from work and my mother... let's say my

mother was angry about that and wouldn't stop talking about it and maybe I could say to her 'Let us dwell on what has been well done, not on what has been omitted,' or, or something like that."

"Excellent, **Mr. Franklin**! Yes, **Miss Sartre**?"

"I think I get it now. If I was at a party and I met an astrological scientist or something and I wanted to make a good impression, I might say 'Space is the only requisite and if the shelf room is exhausted, the floor space is equally good, except for the inconvenience of stooping.'"

"Well, that's not quite..."

"Or if I met someone who talked a different language, I could say 'Translations are classed with their originals.'"

"Class, why don't we take a short break and gather our thoughts." 🐼

Rumors from page 58

formation on books, conferences, and journals. www.cognizantcommunications.com/filecabinet

Also received another gem in the mail, this time a small booklet called **On Literary Biography: Twenty-one Statements** (DLB, 2005), published by **Bruccoli Clark Layman**. A charming little compilation. My favorite so far is: "Literary biography requires no justifi-

cation. It stems from basic interests and basic needs. Literature is about people, and it appeals to readers who wish to know about people, their values, their motivations, their backgrounds and their interactions ..." **Richard Layman** (p.11)

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