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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *A faculty member has requested seven articles from volume 5, number 1 of a journal published in 2000 which constitutes the entire issue. The library has a current subscription to the journal, but the subscription does not begin until volume 5, number 2. The library has tried to purchase a replacement issue, but it is not available. May the library request the issue from another library and reproduce it or is the library restricted to one article from the issue as permitted under the Interlibrary Loan Guidelines? Could the library request all seven articles from different lenders and pay royalties on two articles that would exceed the suggestion of five?*

ANSWER: Since the library never had volume 5, number 1 in its collection, this is not a replacement issue. Therefore, section 108(c) does not apply and give the library permission to copy the entire issue and add it to its collection.

The **ILL Guidelines** permit a library to request five items from the journal title during a calendar year, but section 108(d) still applies to the requests from an individual user. It states that a library may reproduce and distribute to a user one article from a journal issue and it also applies to those reproductions requested through ILL. It does not matter whether all five articles under the **Guidelines** are requested from a single lender or from five separate ones; royalties would be due.

The **ILL Guidelines** state that the library does not count in its suggestion of five any item for which the requesting entity has "in force or shall have entered an order for a subscription to a periodical." There is some debate over whether this covers issues prior to initiation of the subscription, but a strong argument can be made that it does. If the current subscription means that any requests for the title are treated as if the library has always owned it, then all seven articles could be requested through ILL for the user.

QUESTION: *A music professor owns copies of music performances. He wants to take a variety of cuts from these recordings and put them on CD and give three copies to the library for reserves. Is it permissible for the library to put such items on reserve? If so, does the faculty member have to change the music every semester? Does it matter that he, instead of the library, owns the copies of the original recordings?*

ANSWER: The **Guidelines** on the Educational Uses of Music permit music faculty to make such compilations of portions of recorded music for the purpose of aural exercise, but only a single copy. The **Guidelines** do not require that the cuts be changed every semester. Moreover, it does not matter whether the recordings are owned by the faculty member rather than the library. The compilation made by the faculty member may be

retained by him or by the library for subsequent use.

QUESTION: *In citing articles from a database, is it necessary to include the name of the database distributor such as EBSCO?*

ANSWER: Although this is not really a copyright question, it bears some reflection. Different subject disciplines rely on various style manuals for citation formats. Thus, there is no across the board answer to the question. One must consult the appropriate style manual for the relevant discipline in which the citation is to be used.

QUESTION: *If a nurse develops a policy or PowerPoint program for use in the hospital, who owns the copyright, the nurse or the hospital?*

ANSWER: It depends on whether what she produces was done within the course of her employment at the hospital. If it is part of her job to write policies or develop education or training programs, then it is a work-for-hire. Section 201(b) of the Copyright Act states that if the work is a work-for-hire, the employer is the author and therefore the hospital owns the copyright. It is possible, however, for the hospital to agree beforehand for the nurse to own the copyright. Also, if the work is not produced within the scope of her employment or is done on her own time, she owns the copyright.

QUESTION: *What is a public library's affirmative obligation when a patron charges out a movie on videotape or DVD and tells the circulation librarian of his intention to use it for a public performance?*

ANSWER: Actually, the library has no obligation. Section 108 applies to reproduction and distribution of copyrighted works, and there is an obligation found in subsections (d)-(e) not to reproduce articles, chapters, etc., for a patron if the library has notice that the patron is planning to use it for other than fair use purposes. On the other hand, librarians are not required to ask about the use the patron plans to make of the material.

The library may circulate a motion picture on videotape or DVD under the first sale doctrine found in Section 109(a) of the Act. There is no affirmative duty to refrain from checking out the work to the user even if there is notice that he plans to use it for commercial purposes. Many libraries do label their videos to indicate whether the library has the public performance rights for the video or not. If the patron publicly performs the motion picture without a license, he is liable but not the library.

QUESTION: *If a patron asks to scan an entire collection of postcards or photographs for personal use should the library permit her to do so?*

ANSWER: What a patron can do for herself is very different from what a library can do for the user. It may well be fair use for the patron to make personal copies of the works, even in digital format while it would be infringing if the library made the copies. The library may want to alert the patron to the fact that there could be copyright problems should she put the works on a Website or use them in a publication, but it is not required to do so.

Books Are Us

by **Anne K. Robichaux** (Professor Emerita, Medical University of South Carolina) <awkr7721@sc-online.net>

Column Editor's Note: *This column covers fictitious accounts of people in our industry—librarians, publishers, vendors, booksellers, etc.—people like us. All contributions, comments, suggestions are welcomed. —AR*

In the December 10, 2004 edition of *Entertainment Weekly* under the header, "Check 'Em Out! These librarians don't play to type," a half page is devoted to librarians as portrayed in six films and/or TV series. The article notes that **Noah Wyle**, as the heroic librarian/adventurer in the recent TNT film "The Librarian: Quest for the Spear," adds dimension to the

profession in a welcome departure from librarians who are often portrayed as stuffy geeks. Other qualities mentioned: Librarians are Cool! (*Party Girl*, 1995); Librarians are Classy! (*Desk Set*, 1957); Librarians Save! (*The Shawshank Redemption*, 1994); Librarians Kick Ass! (*Buffy the Vampire Slayer*); and Librarians Are Hot! (*Major League*, 1989). But we knew that all along, right? Incidentally, **Jan LaBeaue** mentioned several of these in her excellent presentations at the **2004 Charleston Conference** concerning the librarian's image as depicted by Hollywood.

I don't know how many of you saw the

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