

June 2005

## Questions & Answers -- Copyright Column

Laura N. Gasaway

*University of North Carolina-Chapel Hill School of Law, [laura\\_gasaway@unc.edu](mailto:laura_gasaway@unc.edu)*

Follow this and additional works at: <https://docs.lib.purdue.edu/atg>



Part of the [Library and Information Science Commons](#)

---

### Recommended Citation

Gasaway, Laura N. (2005) "Questions & Answers -- Copyright Column," *Against the Grain*: Vol. 17: Iss. 3, Article 25.

DOI: <https://doi.org/10.7771/2380-176X.4894>

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact [epubs@purdue.edu](mailto:epubs@purdue.edu) for additional information.



[www.reference.routledge.com](http://www.reference.routledge.com)

Rediscover your favorite Routledge reference works, explore new ones—  
and gain knowledge to last a lifetime

Features the best and latest editions of Routledge's acclaimed reference works

- Cross-search over 30,000 pages or browse individual works —with OpenURL bibliographic references
- Contains nearly 60 titles, with new content added every year

NOW AVAILABLE:

- > The Routledge Religion Resource
- > The Routledge Politics and International Relations Resource

NEW MULTIDISCIPLINARY SUBJECT LIBRARIES FOR THIS FALL:

- > The Routledge Medieval Studies Resource
- > The Routledge Literary Studies Resource

Request your free trial today → Contact us at [e-reference@taylorandfrancis.com](mailto:e-reference@taylorandfrancis.com) • Tel: 800-797-3803 ext. 7119

Cases of Note  
from page 80


Copyright § 6.10 at 6-30.

Don't jump to conclusions. This is one of those "unless the parties agree otherwise" deals. But the language must be clear about the otherwise and that was not the case with **Bridgeport**.

Along with the oral license from **DNSM, Dimension** had written June, 2002 "synchronization" licenses retroactive to the oral date. These granted a right to "synchronize, perform or record '100 Miles and Runnin'."

**Bridgeport** claimed **Dimension** could not retroactively validate infringements. But the court found that **Dimension** had an oral license. The writing was memorializing the previously agreed terms and was not a stunt to evade liability. See *Great Southern Homes, Inc. v. Johnson & Thompson Realtors*, 797 F. Supp. 609, 612 (M.D. Tenn. 1992).

**Bridgeport** argued that since the licenses from **DNSM** et al. listed the ownership shares of the licensors, they had no intent to license **Bridgeport's** 25%. But co-owners don't have to all consent as long as each gets his respective share of the money. See Melville B. Nimmer and David Nimmer, Nimmer on Copyright § 6.10, at 6-30.

**Bridgeport** wanted to show industry custom as to whether the licenses applied to all or part of the song. But the court found nothing ambiguous in the writing, so evidence as to industry custom was not needed to clear anything up. 

## Questions & Answers — Copyright Column

Column Editor: **Laura N. Gasaway** (Director of the Law Library & Professor of Law, University of North Carolina, CB #3385, Chapel Hill, NC 27599; Phone: 919-962-1321; Fax: 919-962-1193) <[laura\\_gasaway@unc.edu](mailto:laura_gasaway@unc.edu)> [www.unc.edu/~unclng/gasaway.htm](http://www.unc.edu/~unclng/gasaway.htm)

**QUESTION:** *The library has a book with a particularly nice book jacket; unfortunately, this dust jacket has been damaged. May the library reproduce the book jacket to replace the damaged one?*

**ANSWER:** Under section 108(c) of the **Copyright Act** libraries are permitted to replace lost, damaged, deteriorating, stolen or obsolete items after the library has first made a reasonable effort to purchase an unused replacement at a fair price. Thus, the first step is to contact the publisher to see if it will supply a new book jacket to replace the damaged one. If not, then the library is entitled to reproduce the damaged cover. In order to retain the colors, etc., the library may decide to locate a copy of the book jacket on the Web and download that to use as a replacement rather than photocopying the damaged cover.



**QUESTION:** *High school students put on a show each year for the public that is a parody or satire. Is there any problem with this or is it excused as a fair use?*

**ANSWER:** Traditionally, parody is excused as a fair use because it is a type of criticism or comment, while satire is not. But not all parody qualifies as fair use. A parody is defined as a work that makes fun of a particular copyrighted work by highlighting its pretensions, poor quality or low brow popularity. Even if the parody does this, the amount of the copyrighted work that it may use for the parody is somewhat limited. Case law dictates that a parody is not a remake of an entire work (such as a musical comedy version of "Gone with the Wind"). Instead, it uses only a fair use portion of the copyrighted work and not more than is necessary to accomplish the parodic purpose.

*continued on page 82*

## Q & A — Copyright Column from page 81

By contrast, a satire does not poke fun at a particular copyrighted work. Instead, it may use copyrighted works to criticize society, current events, politicians, political issues, etc. Thus, using copyrighted melodies with new words to make fun of political figures or events is classified as satire and is not excused as a fair use. Permission is thus required to use a work for satire. Courts believe that copyright holders are more likely to grant permission to use their works for satire than for parody since satire is not making fun of the copyrighted work itself.

**QUESTION:** *What liability does an individual librarian or library have when a student or patron needs help using the copy machine?*

**ANSWER:** If the library has posted the requisite notice on unsupervised reproduction equipment and follows the other requirements of section 108 of the **Copyright Act**, it is not liable for the infringing activities of patrons. This question relates to patrons who are unable to operate the copy equipment due to age or disability or because they do not understand how to do so. A librarian is asked to render assistance. Helping a patron use equipment is not the same thing as making the copy for the user under sections 108(d) and (e). The library is not liable should the copies be infringing copies, but the patron still would be if he or she asks the librarian to help operate the equipment and the copies made are infringing copies.

**QUESTION:** *Are facsimile copies of public domain works still under copyright?*

**ANSWER:** No. Facsimile copies are simply reproductions that do not create a new copyright in the work. So, a microform copy of a public domain work is also in the public domain. If, however, the facsimile copy has added new material such as a new preface or an index, that new material may be copyrighted. The facsimile reproduction of the public domain work, however, is in the public domain. Often the producers of these facsimile copies of works produce a collection of several titles and claim copyright in the collection. The individual titles can be reproduced but not the entire collection.

**QUESTION:** *A music teacher takes a piece of music and adapts it for a student by simplifying it so that the student can perform the work in a classroom. Is this copyright infringement?*

**ANSWER:** The Guidelines on the Educational Uses of Music that were published in House Report 94-1476 at "A.3, Copying purchased materials" state that: "Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not (a) distorted, or (b) the lyrics, if any, are not distorted, and (c) no lyrics are added." Thus, simplifying the music so that students are able to perform the work is permitted under these conditions.

**QUESTION:** *A university press publishes a journal. It wants to publish on its Websites some of the papers that were submitted but*

*were not published in the print journal. These articles are described as not quite appropriate for the regular journal, but which should be made available online, with the author's permission. What copyright issues are involved in this kind of online publication?*

**ANSWER:** All the journal needs to do is to obtain a copyright transfer from the author to publish the paper electronically. This is separate from the transfer agreement authors signed to have the article published in the print journal. In the future, the journal may wish to alter

its copyright transfer agreement to include both publication in the printed publication and on the journal's Website. Other issues to consider include: (1) whether the journal will also permit the author to post the article on his or her own Website; (2) if so, how quickly after it is made available on the publisher's Website; (3) will the journal permit the author to submit the article for publication in another journal and (4) may the author reuse the paper as a chapter in a book, etc. 🐱

## Legally Speaking — How to File a Freedom of Information Act Request<sup>1</sup>

by **Bryan M. Carson, J.D., M.I.L.S.** (Coordinator of Reference and Instructional Services, Librarian for Philosophy, Religion, & Russian/Eastern European Studies, Western Kentucky University Libraries, 1 Big Red Way, Bowling Green, Kentucky 42101; Phone: 270-745-5007; Fax: 270-745-2275) <bryan.carson@wku.edu>

Some may question why librarians need to know about the **Freedom of Information Act**. After all, isn't that something for lawyers and journalists? My answer is that, as librarians, our profession is information, and after all the law is called the "**Freedom of Information Act**." When a patron needs to find something out, we dig around until we find it, using whatever tools we need. Typically we use books, Websites, catalogs, databases, indexes, etc. Less often, we use referrals, telephone consultations, and other types of "digging" utensils. The **Freedom of Information Act** is simply one more item in our toolbox for finding information.

The **Freedom of Information Act (FOIA)**,<sup>2</sup> first passed in 1966, is the federal version of what is often called a "Sunshine Law." The theory behind FOIA and sunshine laws in general is the same as that behind the First Amendment guarantees of freedom of the press. According to constitutional scholar **Douglas O. Linder**, the main reasons generally given for the values served by protection of free speech in the **First Amendment** include:

1. The Discovery of Truth — "This value was first suggested by **Milton**, who first suggested that when truth and falsehood are allowed to freely grapple, truth will win out."
2. Facilitating Participation by Citizens in Political Decision-Making — "It has been suggested that citizens will not make wise and informed choices in elections if candidates and proponents of certain policies are restricted in their ability to communicate positions."
3. Creating a More Adaptable and Stable Community (The "Safety Valve" Function) — "It has been sug-



gested that a society in which angry and alienated citizens are allowed to speak their mind — "vent" — will be more stable, as people will be less likely to resort to violence. It has also been pointed out that allowing the alienated and discontented to speak freely enables government to better monitor potentially dangerous groups who would otherwise act more clandestinely."

4. Assuring Individual Self-Fulfillment — "Free speech enables individuals to express themselves, create an identity — and, in the process perhaps, find kindred spirits. Freedom of speech thus becomes an aspect of human dignity."
5. Checking Abuse of Governmental Power — "As Watergate, Irangate, Clintongate (and all the other "gates") demonstrate, freedom of the press enables citizens to learn about abuses of power — and then do something about the abuse at the ballot box, if they feel so moved."
6. Promoting Tolerance — "It has been argued that freedom of speech, especially through our practice of extending protection to speech that we find hateful or personally upsetting, teaches us to become more tolerant in other aspects of life — and that a more tolerant society is a better society."
7. Creating a More Robust and Interesting Community — "A community in which free speech is valued and pro-

*continued on page 83*