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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *If a scholar translates an ancient Greek or Roman work or one from the Renaissance, are there any copyright issues?*

ANSWER: A translation is a derivative work, and authors of copyrighted works own the right to prepare derivative works. These works, however, are in the public domain, so creating the translation does not infringe. In fact, the translator may claim copyright in her translation of the work. The copyright in the translation makes copying of that translation actionable as infringement, but since the original work is public domain, it does not prevent others from also translating the same work and publishing their translation.

QUESTION: *What constitutes a good faith effort in trying to contact copyright owners? Does it differ if the work is an orphan work?*

ANSWER: There may be a difference in what constitutes good faith when the owner of the copyright is known as opposed to when the owner is unknown. In the case of known owners, the problems usually arise when a library has contacted the owner to seek permission for a particular use but the owner fails to respond. The lack of a response may not be treated as an affirmative response, so the library must try various ways to contact the owner such as by email, snail mail, fax and/or telephone calls. The library should document all of the steps it has taken to contact the owner. It is possible that the use the library seeks to make of the copyrighted work is so important, that the library is willing to assume the risk after it has tried to contact the author by various methods and still received no response. In this instance, the library staff should recognize that there is still some risk, and if it proceeds to use the work without permission and the owner later sues for infringement, attempting repeatedly to contact the copyright holder is not a defense to infringement. Copyright infringement re-

quires no element of intent; it is a strict liability cause of action. The documented efforts to obtain permission may help to mitigate the damages at trial, however.

In the case of an orphan work, the copyright owner is unknown. The element of good faith here is not in repeatedly contacting an owner, but is in trying to identify the owner so that he or she may be contacted to seek permission. The 2006 U.S. Copyright Office Orphan Works study recommends that after the library uses best practices to locate and identify the copyright holder but fails, should the library proceed with the use of the work without permission, it would not be liable for damages should the owner later come forward and sue for infringement. What would constitute “best efforts” likely would include a thorough search of the registration records at the **Copyright Office**, searching the Web for information and perhaps other steps to be specified by the **Copyright Office**.

QUESTION: *The library often needs to explain copyright law to patrons including students and faculty. How do you suggest this be done?*

ANSWER: Educational institutions should have a copyright policy that the library can distribute on its Website but also have available in printed copies to share with users. There are a number of books and pamphlets that have been developed to explain the law to various user groups. One of the latest is *Campus Copyright Rights and Responsibilities: A Basic Guide to Policy Considerations*, published in December 2005 by the **Association of American Universities**, the **Association of American Publish-**

ers, the **Association of American University Presses** and the **Association of Research Libraries**. It is available for purchase in multiple copies but also for free download at: http://www.aau.edu/reports/Rights_Responsibilities_2005.pdf. (In the interest of full disclosure, I was one of the authors of this booklet.)

QUESTION: *How should a library deal with copying correspondence from its manuscript collection at the request of patrons?*

ANSWER: Correspondence should be treated as any other unpublished work. There is no reason for a library to refrain from making a single copy of correspondence at the request of a user who intends to make a fair use of the letter unless the deed of gift requires confidentiality or contains some other restriction. Some archival collections require users to certify that they want to use the unpublished work for

scholarship and research. Further, the library may want to indicate that the library does not hold the copyright and if the user intends to publish the work, he or she must seek permission from the author of the letter.

QUESTION: *May a children's library show videos in its leisure section to pacify children while the parent looks for a book? What if the library instead permits an individual child to come in, select a video and then the librarian inserts and runs it just for that one child?*

ANSWER: While it would very useful to find a way to occupy children to permit their parents to search for books in peace, the situation described is a public performance of that video. The library can legitimately show videos for groups of children or in a public space only if it has the public performance right, which often requires paying a fee for performance. The latter situation of permitting the child to select the video to play may or may not be infringement. If the video viewing equipment is in a public area where other children may join in, then the performance is still a public one even if only one child is present. The **Copyright Act** defines a public performance as one outside the normal circle of family and friends, or one that occurs in a public place, such as a public library.

If the library has individual viewing stations, a child could watch a video at such a station without it becoming a public performance. An individual viewing station envisions a single user and earphones and is a private performance for which no permission is needed. 



Rumors from page 16

Most recently he was Head of Publishing at the **Royal Society**; before that he was Assistant Director of Journals at **Institute of Physics Publishing**. **ALPSP** is the international trade association for not-for-profit publishers, with some 340 members in 36 countries, publishing nearly 10,000 journals, i.e., at least 40% of world output. www.alp.org

Blackwell Publishing, Inc., **Elsevier, Inc.** and **Wiley-Liss, Inc.** (a subsidiary of **John Wiley & Sons, Inc.**), have filed a copyright infringement suit against document deliverer **Research Associates**, Bethesda, MD. The publishers allege that **Research Associates** routinely copies and distributes copy-

righted articles without obtaining permission or paying royalties. The publishers' complaint was filed in the U.S. District Court for the District of Massachusetts. **Research Associates** is a document delivery service used by corporations and academic institutions. Its customers order copies of published materials, usually journal articles, which the company produces and delivers by mail, fax or email. Companies that do this for commercial gain, as **Research Associates** does, are generally required to obtain permission from copyright holders and, usually, to pay royalty fees. The plaintiffs allege **Research Associates** has failed to obtain the rights to make and sell copies of high-value scientific, technical and medical articles belonging to the plaintiffs. They also allege **Research Associates** engages

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