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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *A corporate library is developing a Web-based repository for its departmental documents and supporting literature. This may include current articles stored as PDF files, available to a limited audience with access controlled by passwords. Are there copyright concerns in this situation? If the company needs permission from the copyright holder, is there a particular process that should be used?*

ANSWER: Whether permission is required from rights holders depends on the articles themselves, whether they are copyrighted, if they are from journals licensed to the company, etc. If the departments are duplicating licensed articles to put into this system, the license agreement may well permit the duplication, but the license agreement will control. If the documents are covered by the company CCC license, then the CCC license determines whether permission is needed. For articles from unlicensed journals and not covered by the CCC license, permission is needed. The limited access and controls really do not matter much unless the company has a license from the publisher. The only way to get permission is to contact the copyright owner, typically the publisher.



QUESTION: *If a library has old public domain documents (published in the United States before 1923) is a new copyright created by microfilming or turning the documents into an electronic medium?*

ANSWER: No. Several years ago it was presumed that the image, i.e., the microfilm produced a new edition that was separately copyrightable. Today, it is pretty clear that only new material added is copyrightable since the underlying work is unchanged. Courts have now made it clear that a reproduction such as a microfilm is a simple reproduction. So, the microfilm or electronic copy of public domain work does not create a new copyright. If the microfilm version has additional material added such as editorial comments, indexes, annotations, etc., then the new material is eligible for copyright protection provided the new material is original and satisfies the originality requirement.

QUESTION: *May a library make a copy of an item it owns that is in an obsolete medium (for example converting VHS tapes to DVD)? If so, may the reproduced copies be used outside of the library?*

ANSWER: Section 108(c) of the Copyright

Act permits libraries to replace copies of copyrighted media in two instances: (1) to replace a lost, damaged, stolen or deteriorating item and (2) to replace an obsolete work. In order to reproduce the work, the library must first try to find an unused copy at a fair price. If one is not available, then the work may be reproduced. For obsolete media there is a statutory definition of the term "obsolete." Section 108(c) defines obsolete as meaning that the equipment necessary to render the work perceptible is no longer manufactured or is not available in the commercial marketplace. One does not have to purchase used equipment, however. So, VHS is not an obsolete format since VHS equipment is still available for purchase.

Section 108(c) was amended in 1998 to allow libraries to make digital copies of analog works under the circumstances described above. These digital copies cannot be used outside the library, however. It is highly likely that Congress meant networked digital copies and not tangible digital copies such as DVDs. Thus, libraries do not make online replacement copies available outside the premises, but in replacing a damaged DVD, when the original could be loaned outside the library, it makes little sense to restrict to the library's premises

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