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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *A hospital parent company has acquired electronic access to full-text medical journals from Ovid, MD Consult, etc., for employees and physicians on the medical staff of the hospitals. The library has purchased print copies of many of the same journals from the publishers. It often receives a request from a physician for copies of articles, sometimes two to three per issue from these journal titles. (1) Does the license agreement for electronic access to the journal trump the statute that restricts the library to providing only one article per journal issue to that physician? (2) If the physician (or a member of his/her staff) infringes copyright, who is liable?*

ANSWER: (1) Yes. An employee covered by the license agreement prints the articles from the electronic version, is bound by the terms of the license agreement, and most such licenses do not contain a restriction about the number of articles per issue. The section 108(d) exception has the “one article per issue to a user” restriction on a library for reproduction and distribution because it covers instances when there is neither permission nor a license from the publisher.

(2) The hospital is liable because of agency law since the physician is an employee. However, if the license does not restrict the number of articles per issue that can be printed, then there is no problem. If it does, then the licensee institution is liable and not the individual doctor. The institution could then take disciplinary action against the individual infringer, of course.

QUESTION: *Are student works submitted for courses considered to be owned by the institution that is awarding course credit? If*

not would a blanket policy on reproduction of student works by the college published in the college catalog substitute for individual language to that effect in each course syllabus?

ANSWER: The student is the author and the student owns the copyright in works they create for courses. The fact that the institution is awarding credit is immaterial. If the institution wants to own the copyrights, it would have to get written transfers from each of the students. A policy that permits the institution to reproduce student works does not affect copyright ownership but is instead in the nature of a license. Publishing a policy in the catalog likely would suffice to give the institution permission to reproduce the work but may not cover making the work available electronically since the U.S. Supreme Court in *New York Times v. Tasini*, 533 U.S. 483 (2001), held that electronic rights must be specifically transferred.

QUESTION: *In developing a copyright checklist for faculty at a state university, the library has questions about the TEACH Act. What do the following mean? (1) “The following are not an infringement of copyright except with respect to a work produced or marketed for performance or display as a part of mediated instructional activities transmitted via digital networks.” The sole market for these works is online distance education. (2) “Does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination.”*

ANSWER: (1) This refers to modules developed for digital distance education that were created specifically for such courses. It is

a very small category of materials to date but may increase in numbers and importance over time. (2) This means that the institution is not permitted to decrypt DVDs or circumvent any technological protections that the copyright owner places on the work.

QUESTION: *If a library is connected by CAT5 to classrooms in other buildings on campus and sends audiovisual content purchased by the library to the classrooms, is that a violation of law? This is the same content that the library currently offers to faculty members to check out in order to show to classes as a part of instruction using audiovisual equipment in the classroom.*

ANSWER: This is a place where the technology quickly got ahead of the copyright law. In 1976 when the *Copyright Act* was passed, it was thought that if a nonprofit educational institution transmitted a film within the same building, it still qualified for the section 110(1) exception that permits showing films face-to-face in the course of instruction. Then schools quickly moved to systems for transmitting films from a central location within a school to other buildings in the school. In the early 1980s, this was thought to be infringement. However, so many schools have adopted this technology today that has almost become a standard.

There seems to be little complaint from the *Motion Picture Association of America* about use of this technology as opposed to placing films on a Website or transmitting them without a license in an online course. Perhaps this is because there is no way to download or upload the film from sending the content to another building as opposed to other technologies.

QUESTION: *A faculty member wants to use one graph from an article available in electronic format in the New England Journal of Medicine in a PowerPoint presentation at a national conference. Does he need to get permission, especially since there is the possibility that the PowerPoint presentation might be put on the national organization conference Website or that a CD might be made of all presentations? Do the Fair Use Guidelines for Educational Multimedia help?*

ANSWER: These guidelines did not enjoy wide adoption and certainly do not have the same stamp of *Congress* as do some of the other guidelines. One certainly could argue displaying live to an audience at a national conference of educators is fair use, but it certainly would be prudent to seek permission if the chart is likely to be reproduced on the conference Website or in multiple copies on CDs distributed to participants. Another alternative would be for the faculty member to display the chart in the live presentation but simply to include a link to the chart on the slide that is reproduced on the Website and on the CDs. 🌿

Cases of Note from page 65

The conditions are necessary for *Jacobsen* to retain the ability to benefit from future modifications by others. By requiring the reference to the original source, future users know of the collaborative effort.

Which seems to be saying that anyone who encountered Defender Commander without knowing part of it was open source would not modify and improve the DefenderPro part of the program. And DefenderPro would not benefit from their added efforts.

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The *Artistic License* required anyone modifying and distributing the copyrighted materials to attach a copyright notice and tracking of modifications. Any downloader who disagreed with the condition was instructed to “make other arrangements with the Copyright Holder.” *Katzer* did not make “other arrangements.”

The conditions governed the right to modify and distribute the program and were intended to drive downstream traffic to the open source origin. *Jacobsen* thus gains creative collaboration, learns of new uses of his software, and gains ideas for future software. This is an economic benefit which the law of copyright protects. 🌿