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## Questions & Answers -- Copyright Column

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# Questions & Answers — Copyright Column

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**QUESTION:** *Has the Internet changed the definition of “published”?*

**ANSWER:** The statutory definition of publication has not changed. Section 101 defines publication as: “...the distribution of copies or phonorecords of a work to the public by sale or transfer of ownership, or by rental, lease, or lending.” Offering to distribute copies for further distribution, public performance, or public display also constitutes publication. On the other hand, public performance or display of a work is not publication.

The difference with the Internet is that no tangible copies are distributed. One may download a work, but there is no tangible copy exchanged. Although the statutory definition has not changed, there certainly are new methods of distribution, and some courts have so recognized. See *Getaped.com, Inc. v. Cangemi*, 188 F.Supp. 2d (S.D.N.Y. 2002), the first case to hold that posting on the Internet constituted publication. The statute should be amended to recognize the difference in the ways that works may be distributed in the digital environment.

**QUESTION:** *Does “publishing” include mimeographed reports, memos and leaflets that are distributed to group or organization members?*

**ANSWER:** The concept of publication has much less import today than it did under the *1909 Copyright Act*. Today, if a work is published, even widely, without a notice of copyright, the copyright is not lost. Under the *1909 Act*, however, the author could lose his or her rights through failure to place a copyright notice on the work.

Because of the harshness of this law, courts developed the concept of limited publication (not relevant for works published since 1978). For works published in 1977 or earlier, however, limited publication was an important concept. If only a few copies were distributed, and/or those that were distributed had restrictions on use and distribution, then failure to include a copyright notice on these copies did not result in loss of copyright to the author. These restrictions typically were printed on the copies themselves.

Whether the mimeographed reports, memos, leaflets were published under the *1909 Act* depends on the number of copies actually distributed and whether there were restrictions on further use and distribution.

**QUESTION:** *In what works does a college or university own the copyright as opposed to faculty, staff, students, and student, faculty and alumni groups?*

**ANSWER:** Typically, an educational institution owns the copyright in any of its official publications, whether they are printed works or Websites. This includes catalogs, view books,

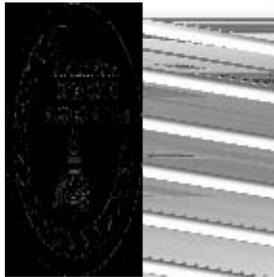
histories of the institution written at the behest of the school, official Webpages, etc. There is a strong argument that institutions may also claim copyright ownership of faculty-generated works since faculty members are employees and thus their works are works-for-hire. Most

academic institutions do not claim copyright in faculty articles and books, however, because there is a strong tradition of faculty-owned copyrights in their scholarly works.

Staff works typically are owned by the

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university or college, however. Under the work-for-hire doctrine, the institution is the author and holds all rights to the work. Thus if a staff member creates a work as a part of his or her job, the institution owns the copyright. Works not created on work time are not owned by the school. Institutions may permit staff ownership of even works-for-hire with a written agreement to that effect. Student works are exactly the opposite; students own the copyrights in the works they create even as assignments in their classes.

Works generated by groups such as student groups, faculty groups and alumni organizations are most likely owned by the group. An academic institution might be able to claim copyright ownership of certain student-group works that are generated at the request of the institution. For example, if the college or university asks the student government association to draft a code of conduct, the college or university might have some claims on the work. The same is true of faculty governance group works but politically, it is unlikely the school would claim ownership of these reports, etc.

Alumni groups are sometimes only loosely governed by the institution; others are totally separate entities. In this situation, the school has no claim of ownership on works generated by alumni associations.

**QUESTION:** *May an academic library place on reserve a copy of a journal that belongs to a faculty member? If so, may it remain on reserve for multiple semesters?*

**ANSWER:** Yes. If the copy is an original volume or issue owned by the faculty member, it may be placed on reserve, and there is no restriction on how many semesters the work may remain on reserve because there is no reproduction. If the faculty-owned copy is a photocopy of an article or book chapter, it still may be placed on reserve. Now, however, the copy is a reproduction and should be on reserve only for one term without permission.

**QUESTION:** *A faculty member at the college wants to compile a number of journal articles on a particular topic and put them on a CD to distribute to other faculty members. Is this permissible?*

**ANSWER:** No, unless the faculty member has permission from copyright owners or the articles are from journals to which the institution holds a license and the license permits reproduction and distribution in electronic form to others in the school.



## Biz of Acq — Credit Card 101: Policies and Practices

by **Joe Badics** (Acquisitions Librarian, Bruce T. Halle Library, Eastern Michigan University, Ypsilanti, MI, 48197-2207; Phone: 734-787-0020, x2053; Fax: 734-487-5399)

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**Column Editor's Note:** *Many libraries are using credit cards to purchase all types of materials. Joe Badics' article describes the benefits of using a credit card for library acquisitions and some of the challenges involved. At Joe's suggestion, I'd like to invite readers to send me their favorite credit card experiences, both good and bad (send to <flinchba@umbc.edu>) which I'll compile into an article for future publication in Biz of Acq. — MF*

The majority of our expenditures are handled in the traditional library manner by our subscription agent, approval book vendor, and standing order dealers. When the offer of getting a credit card for university purchases first came up a decade ago, I thought that it might be occasionally useful. What was at first a convenience has become a necessity. I can't imagine trying to work without one now.

What has changed is continuous growth of the Internet. Virtually everyone has a Website with their wares to sell, and while a select group of major publishers and vendors will still accept the classic library purchase order, many smaller publishers want their money immediately and will gladly accept your Visa, MasterCard, or American Express.

### Reasons for Using a Credit Card

It is expensive for your institution to write checks and it may be difficult to issue payment within the net 30 days that many sources request. In order for our university to issue a check to a publisher or vendor, they must have their W-9 tax identification form on file and be officially registered as a vendor. This all takes time.

If you do not expect to order from a particular publisher on a regular basis, a credit card will save your institution time, money, and paperwork. For instance at **Eastern Michigan University** we are building a collection of books that have been written by our alumni. Some of these are self-published or from extremely small presses. The credit card has been essential in obtaining this material.

The credit card is essential for rush orders. If we need items for reserve we can either pick them up immediately from the local bookstore or we can place an instant Internet order using **Barnes and Noble** or **Amazon.com**.

The **Acquisitions and Interlibrary Loan Department** are combined in our library. The credit card has been crucial here. The book and media requests by our patrons are reviewed

daily and many are immediately ordered for our collection rather than borrowed. We also have purchased articles directly from publishers which are then immediately accessible. In addition to being faster, it may be actually cheaper than paying the borrowing charges from some lending institutions plus the copyright fees later.

The used and out-of-print book market has been opened up by the Internet. No longer do you need a store to sell your wares. In most cases you are dealing through an intermediary Website, such as **Amazon.com**, **Alibris.com**, or **Abebooks.com**, to locate this material. The individual dealers generally want their money at the time of sale, which the credit card allows.

In addition to the formats already mentioned, we have used the credit card to purchase sheet music and scores; entire journal issues; atlases and maps; and all sorts of media: videos, DVDs, and music CDs. We recently purchased a year's access to "Doody's Core Titles," the online replacement to the classic **Brandon-Hill** service. One of my colleagues uses his university credit card to purchase major office supplies, including software, printers, and hardware. The **Kresge Business Administration Library** at the **University of Michigan** has purchased expensive databases using their institutional credit card.

### Procedures

All material requests outside our routine approval plan orders are reviewed for various source and payment possibilities. Increasingly the credit card has become the preferred payment choice.

Every item purchased using the credit card that is to be added to our collection is treated similar to a regular order handled by a vendor. After a record is added to our catalog, a purchase order is created and the cost is deducted from the appropriate subject fund. This allows us to be able to produce accurate reports for each item that was purchased from every fund. The vendor is listed as the credit card company.

We keep copies of the monthly statements and invoices for seven years. Our Purchasing Department does periodic review of all credit cards, and we must provide documentation for every purchase on any given month. I have been "audited" and had to provide documentation for every transaction during a two-month period. Random orders from random months are sometimes requested too.

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