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Questions & Answers -- Copyright Column

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of expression, censorship, filtering, electronic privacy, surveillance, and monitoring. While our professional organizations have their own basic codes of professional ethical conduct, these codes are often too general to answer such complicated questions. (Besides, not only are the codes often inconsistent with one another, principles *within* the same codes often conflict.) As a result, it is important for information professionals to learn not just a list of “thou shalt do” and “thou shalt not do.” Rather, we should use ethical reasoning as a tool in much the same way that we use books, computers, software, and databases as tools to get to our intended results. Ethics is a tool that helps us perform in our daily lives. An understanding of ethical conduct should underlie the making of decisions with which we can live in comfort.

Please note that we use a number of specialized philosophical terms in this essay, including some specialized forms of ethical reasoning. For more information on these terms, please refer to one of the following works:

Carson, A. L., & Carson, H. L. (1986). *Mindsearch: A Perilous Journey Through the Annals of Philosophy* [ed. by B. Carson, 2009]. Big Rapids, MI: Ferris State University.

The Stanford Encyclopedia of Philosophy. <http://plato.stanford.edu>.

Tavani, H. (2010). *Ethics and Technology: Controversies, Questions and Strategies for Ethical Computing* (3rd ed.). Hoboken, NJ: Wiley.

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Carson, A. L., & Carson, H. L. (1986). “Law.” *Mindsearch: A Perilous Journey Through the Annals of Philosophy* [ed. by B. Carson, 2009]. Big Rapids, MI: Ferris State University.

Carson, B. M. (2007). *The Law of Libraries and Archives*. Lanham, MD: Scarecrow Press, 1-2.

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Gert, B. (1988). *Morality: A New Justification of the Moral Rules*. New York: Oxford University Press. Quoted in Tavani, H. (2010).

Hardin, J. “John Brown: One African American perspective,” presentation at “His Truth Goes Marching On’: John Brown 150 Years Later, Bowling Green, KY: Western Kentucky University, October 16, 2009.” <http://www.glennlafantasie.com/2009/10/john-brown-one-african-american.html>.

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Stanford University. *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/>.

Tavani, H. (2010). *Ethics and Technology: Controversies, Questions and Strategies for Ethical Computing* (3rd ed.). Hoboken, NJ: Wiley.

Wolcott, S. K. (2005, October 28). Developing students’ ethical reasoning skills. *Colloquium on Change in Accounting Education*. http://www.wolcottlynch.com/Downloadable_Files/Colloq_Handout_051026.pdf.

Wolff, R. P. (1970). *In Defense of Anarchism* by Robert Paul Wolff. Berkeley: University of California Press, 1998. Quoted in Raz, J. (2003). 🌿

Endnotes

1. Dr. Herbert L. Carson (Bryan’s father) is a retired professor of humanities and classics. He taught classical civilization, humanities, philosophy, and ethics at Ferris State University from 1960 to 1994. Dr. Carson earned his B.A. from the University of Pittsburgh, M.A. from Columbia Teachers College, and his Ph.D. from the University of Minnesota.

2. FERPA is found at 20 U.S.C. § 1232g. Regulations related to FERPA are also found at 34 CFR Part 99.

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QUESTION: A number of public library patrons ask for a copy of that day’s *New York Times* crossword puzzle. Is it permissible to photocopy the number of copies projected to be needed and make them available at the circulation desk for the patrons?

ANSWER: While it likely is fair use for patrons to make a photocopy of the puzzle for personal use, and even for the library to reproduce a copy of the puzzle for a patron upon request, there are restrictions on what a library can do. Section 108(d) allows libraries to make a single copy of an article, book chapter, etc., for a user upon request, but the library must provide notice of copyright, the copy must become the property of the user and the library must have no notice that the copy will be used for other than fair-use purposes. This subsection is further restricted by section 108(g), which says, among other



things, that the copying under section 108(d) cannot be systematic. Making multiple copies of the crossword puzzle each day is certainly systematic. The library could seek permission from the *New York Times* to make these copies in advance each day or continue to make single copies for users after the request of that user.

QUESTION: A librarian in a public high school is often asked for help by students who are completing class research papers and projects. When a student uses an image from the Internet in a research paper, how can he or she seek permission if it cannot be determined who produced the image? Would use of an image from the Internet most likely be permitted under fair use if the use was only for a research paper for one course? To cite to the origin of the image, is the url sufficient?

ANSWER: Actually, to include the photograph in a research paper that will be submitted

only to the teacher likely is a fair use, and the student would not be required to seek permission. If the paper were to be posted on a website or widely distributed, permission would be necessary. Attribution is not a copyright issue, but crediting the photographer or copyright owner is a good thing to do. Including the url tells someone where to find the photograph online, which is helpful to readers, but the attribution should be to the “author.”

QUESTION: A community college regularly films the lectures of speakers invited to speak on campus. In order to place a video copy of the talk online, must the institution seek permission? Is a Webinar the same thing?

ANSWER: In order to record the lecture of the guest speaker, the institution should obtain prior permission from the speaker. The release should also specify what the institution intends to do with the recording, such as podcast it. A Webinar also needs to have permission of the speakers and specify how the Webinar will be used, whether it will be repeated, etc.

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QUESTION: *What are the copyright rules for downloadable books?*

ANSWER: It is more likely that the downloading of eBooks is governed by a license agreement (contract) than just by copyright law. Copyright certainly applies, but a license agreement most likely covers issues such as access, reproduction, distribution, display, etc.

QUESTION: *When a for-profit company files for approval from the Federal Drug Administration, either for a new drug or medical device, the company must provide copies of all articles and other literature, along with the filing. Now, in Europe, there is a Medical Device directive, MEDDEV.2.7.1 Rev.3 – Guidelines on Medical Devices, that requires all manufacturers who want to sell product in European Union countries to provide a clinical evaluation of their product. Part of the evaluation is a literature search, along with copies of the articles and other materials that support their evaluation. Must copyright royalties be paid for these copies provided in response to a government directive?*

ANSWER: If the company has a Copyright Clearance Center annual copyright license (often called a blanket license), the librarian can provide copies of these articles to accompany federal and international filings without concern. If the company does not have a CCC license, then it should look at its various license agreements for full-text journals to see if this activity is covered by the license agreement. Otherwise, royalties should be paid.

QUESTION: *A librarian with curatorial responsibilities for a university library music collection is making an educational/promotional film about one of the collection's donors, a classical musician of note. As a member a performance group, the donor made many classical music recordings on the Philips label, and the librarian wants to obtain permission from Philips Records to use part of one track from one of these recordings in the film. The film is part of the fund-raising efforts to support the collection.*

ANSWER: Assuming that the music on the recording is under copyright, the right the librarian is seeking is called the synchronization or "synch" right which involves the use of a recording of a musical work in audiovisual form such as in a film. It is called the synchronization right because the music is "synchronized," or recorded in timed relation with the visual images. The music publisher synch rights are licensed by the music publisher (the publisher of the sheet music) and not the recording company. Sound recordings do not have public performance rights, and the synch right is a part of the right of public performance. 🌿

Biz of Acq — Video Streaming Services at Indiana University Bloomington

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Background

Ten years ago, Media Librarians speculated that the DVD would last over the next 100 years. Now it is predicted that the DVD might see the way of the dinosaur within the next ten years. This news is of concern for many librarians since it has only been within the past ten years that many librarians began to convert their VHS collection into a DVD collection. Blogs, RSS feeds, and video listservs discuss trends for the future of video streaming services in libraries. At the same time, free or low-cost video-on-demand services — local cable and satellite companies, **Amazon, Hulu, Internet Archive, Netflix, YouTube, Vimeo** — provide easy and affordable online access to popular television programs, and feature films. In spite of these open options librarians will continue to purchase individual titles as well as subscriptions to collections.

Our **Video Streaming Service** is a suite of applications and utilities that facilitate the digitization, metadata entry, and online delivery of videos. What began as a pilot in 2006 spearheaded by the Media Librarian has since grown into a full production service serving 40,000 students and faculty. A lifetime of experience teaches librarians that new initiatives traditionally require long-term planning and collaboration between key library staff and faculty. Without full cooperation between key personnel, a successful project cannot be fully realized. Our video streaming service is a partnership of four units in the library: Media Services, Acquisitions, Digital Library Program (DLP), and Cataloging.

Standards and policies, archives and preservation, preferred file formats, tiered pricing, and the availability of titles used to support teaching and research are issues we have had to address. The final product of any video streaming service should be user-friendly, easily accessible, and functional in order to ensure the project's success. A team might be formed to assign responsibilities, to problem-solve the acquisition process, equipment needs, and logistics/workflow, and to develop policies and procedures. Technical Services staff should be knowledgeable, capable, and willing to tackle the many issues associated with the acquisition and cataloging of digital files. We hope our experience will be helpful to those colleges and universities that are considering implementing a video streaming service.

From Pilot to Production

In 2006 the Media Librarian collaborated with 15 faculty members from the Departments of Communication and Culture, Fine Arts, Gender Studies, and History who were experienced users of media and routinely incorporated media into the curriculum each semester. The Media Librarian then met personally with each faculty member to discuss copyright issues, logistical procedures, and criteria needed to ensure a successful pilot. The criteria which were developed by the Media Librarian and Digital Library Program staff included:

- Students were enrolled in a credit course
- Class enrollment exceeded 50 or more students (large lecture-hall classrooms provided the libraries with a large pool in which to gather feedback about the streaming project)
- Films were required viewing directly related to a class project
- Films had the potential to serve faculty in other disciplines
- Students had to download digital files either via **QuickTime, Real Media, or Windows Media**
- Students could reside either on or off campus, and
- Faculty and students were required to participate in a survey

The next step was to identify those distributors who could provide digital content to meet the needs of faculty members based on subject area specialization. Working with several distributors, such as **California Newsreel, Films Media Group, Media Education Foundation, and PBS**, the pilot provided access to 50 streaming titles to nearly 800 students via electronic reserves. After two years of testing, it was determined that the libraries had enough support and feedback from faculty and students to fully implement digital streaming broadly.

Since 2006, the number of streaming titles has increased from 50 licensed titles to over 1,160 licensed titles (<http://www.libraries.iub.edu/index.php?pageId=7092>). Of these 1,160 titles, approximately 90 titles are now available for use via the electronic reserve system only. Statistics from 2008 through June 2009 indicate that the majority of students access digital streaming files via electronic reserves:

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