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Questions and Answers-Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *The staff in a health sciences library regularly supplies copies of articles from journals in its collection to unaffiliated customers for a fee. These customers include lawyers, researchers, and community health professionals. The library also fills requests from members of the general public for copies of library documents that are listed in a locally produced health bibliographic database. The library is considering charging a fee for copies of these documents that are not online. Do these activities make the library a commercial document delivery service? Does it have to pay royalties anyway? Is there a standard cost recovery formula? If so, does it make any difference that publishers can now provide the same service to users for a fee?*

ANSWER: The real question is whether the fee that the library charges is cost recovery only or whether the library makes a profit by providing these copies. If the fee is cost recovery only for the service, i.e., personnel costs, mailing, copy costs, etc., (but not cost of the collections) then the library is not a commercial service. But, if that fee is greater than the cost to provide the service, it is for profit, then. For those users, the library is a for-profit center and must pay royalties for providing all of these copies. If the library's document delivery is not for profit, and the library is not paying royalties, it may want to stamp copies to indicate that if royalties are due, the recipient of the copies is responsible for them. Often users assume that the service fee covers the royalties, so it is good to be clear that the service fee does not include the royalties.

If there is a standard cost recovery formula, I have never seen it. The library may charge whatever fee it wants for the service. For example, if the library wants to discourage the request for copies, it can charge a fairly high fee. The fact that publishers can provide the same service and copies is irrelevant. Publishers are concerned that commercial document delivery services (ones that make a profit) pay royalties, of course.

QUESTION: *In an academic library's reserve system, there is an article which several different faculty members want on reserve for different courses. Does the library need to get separate copyright permissions for each course or just one for the article?*

ANSWER: Just one permission request is needed, but sometimes the publisher will ask how many classes or how many students are enrolled in the classes who will access the reserve copy and will change accordingly.

QUESTION: *A library has old journals in storage and wants to digitize them. If the journal is still being published today, are the back issues in the public domain? Or is the publication still protected?*

ANSWER: For the journals to now be in the public domain would require that they were first published in the United States before 1923. From 1923-1964, works had to be renewed for copyright, and it is possible that the owner failed to do so. If they were renewed, then they got a total of 95 years of protection. For journals published after 1964, it is no longer necessary to renew the copyright, and those works automatically received 95 years of protection. So, whether a journal volume is in the public domain depends on the publication date. You can pay the **Copyright Office** to search the registration records to see if the title was renewed for copyright, because the records pre-1978 are not in electronic format.

Digitizing back volumes published before 1923 is no problem since they are in the public domain. For volumes published between 1923 and 1964, it depends on whether the copyright was renewed. For those published after 1964, they definitely are not in the public domain.

QUESTION: *The editors of an academic volume that will be published in October 2010 ask why the publisher wants to include in the copyright notice the year 2011 rather than 2010. The publisher says that it is normal practice for volumes published in the second half of the year to have a copyright from the next year. Is this a problem? What happens if someone plagiarizes from the work in the two months before the copyright date?*

ANSWER: Actually, this is common practice, and it does not make much difference as to copyright protection. The copyright notice really has nothing to do with protecting the work. The **Copyright Act of 1976** protects works from the time they are "created" and fixed in a tangible medium of expression. Assuming that the work is a compilation or collective work (such as a journal

issue with separately authored chapters or articles), the work is protected for 95 years after date of first publication or 120 years after creation, whichever comes first. Using the date of 2011 rather than 2010 actually gives one additional year of protection since the copyright does not expire until the last day of the year 95 years after 2011.

Plagiarism is not a copyright issue, but reproduction is. If another author reproduces portions of the work and incorporates it into another work, this is copyright infringement. If the publisher registers the work for copyright within three months after publication, then not only can the publisher sue infringers, but it may recover statutory damages and attorneys' fees. Thus, there is no risk to the authors of the chapters from the publisher's use of a copyright date that is a little later than the actual date. It is common practice.

QUESTION: *Is free clip art considered to be public domain? What is expected of writers when they use clip art from Microsoft programs?*

ANSWER: Free clip art is copyrighted just as other graphic works are, if they meet the originality/creativity and fixation requirements. "Free" means that there is no charge for using the clip art, not that it is free from copyright infringement. By contrast, "public domain" means that there is no copyright at all either because the work itself does not qualify for protection (for example, because it is not original with the artist) or the term of copyright has expired. Clip art is too new to have expired copyrights at this time.

The question about the use of clip art from **Microsoft** is governed by its license agreement. My impression is that the clip art with its software is intended to be used on Webpages, in documents, etc., but any user should review the **Microsoft** license to determine whether a particular use is permitted under the license. 🐼

Rumors from page 44

ference this year! **AMERICAN CHEMICAL SOCIETY, EBSCO, HARRASSOWITZ, SWETS!!!** Hip! Hip! Hooray!

Speaking of **Swets**, am looking very forward to meeting the bilingual **Christine**

Stamison's Greek mother who is coming to **Charleston** on Saturday after the **Conference**! I have been trying to brush up on my Greek (which I learned at the ripe age of three) so I can have a conversation in Greek with **Christine** and Mom. Sorry that so far I have to give myself an "F" but I have two more weeks to give myself a crash course!

And, mentioning Greece, was talking to

the bam-zowie **Dennis Brunning** who had planned to bring his wife to **Charleston** to the **Conference** and to introduce her to the city. But, guess what? They have decided to go to Greece instead. I guess I will forgive **Dennis** after all.

The theme for this year's **Charleston Conference** is **Anything Goes**, inspired by **Cole**

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