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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *May an academic library place a personal copy of the professor's textbook on reserve? Does this impact the market value factor in a fair use analysis, or is it okay?*

ANSWER: It is certainly okay. The old ALA Model Policy on Library Reserves says that, in general, the library should own a copy of the work in its collection that it places on reserve. But, occasionally putting a professor's personal copy on reserve complies with that policy. This assumes that the library is putting a printed copy of the textbook on reserve and not a photocopy of it.

If the textbook is not the assigned text for the class, then putting a copy on reserve has no market effect. If it is the assigned textbook for the class, then the copy should be available on reserve only as a backup copy for students. Further, the faculty member should tell students that they may photocopy the textbook on reserve as an alternative to purchasing the text. This avoids any market effect.

QUESTION: *Do publishers have the right to grant or deny permission to libraries to circulate CD products? Publishers in the*

legal arena seem to assume that they do have the right to specify how the products are used after library purchase. Has the law addressed this issue?

ANSWER: Publishers generally do not have the right to specify how libraries use CD products that they purchase. With a purchased CD, then the first sale doctrine permits the library to lend the items in its collection. However, if the CD is licensed to the library rather than sold, then the publisher can control the use.

The law does address this issue. Section 108(f)(4) states that libraries are bound by the license agreements they sign when they obtain a copy of a work for its collection. So, license agreements trump copyright for libraries by statute. The use of licensed products may be restricted in a variety of ways by publishers, such as no use for interlibrary lending, no circulation of the work, etc.

QUESTION: *A university professor has purchased five CDs from the iTunes store, and the originals are hosted on her personal computer. Two of these purchased from iTunes*

are available commercially as CDs, but the other three are apparently not. The professor has burned CD copies of all five, and wants to place them on reserve for her class. If the burned CDs do not meet fair use guidelines, is there an alternative way to provide access to the students and meet copyright fair use guidelines?

ANSWER: This is not a fair use matter but instead is a licensing issue. The faculty member's purchase through iTunes was accompanied with a personal license agreement. That license does not permit putting items on reserve copies of works burned from her personal computer downloaded under a personal license from iTunes. The only way for the library to place the CDs on reserve without infringing is for the school to purchase the CDs from iTunes, Amazon or another source and put the originals on reserve. For the three CDs that are not available for purchase, contact iTunes to seek permission to make the copy for the library.

QUESTION: *The school has acquired the Kurzweil system which can scan text and read it*
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back to a student who has visual learning problems. The license agreement for the Kurzweil product appears to put the burden for compliance with the law back on the consumer.

This is a quote from its "Notice of Copyright Responsibilities and Exceptions":

Some commentators believe that creating a computer-readable version of a copyrighted work for a visually or reading-impaired individual who owns a print copy, especially where the publisher does not itself make such versions available, is a fair use of that work. These guidelines are provided to help users understand that there are important legal issues involved when scanning print material ... It is the responsibility of the user to be sure that his or her use complies with the law.

ANSWER: Copyright compliance is always the burden of the user and not of the producer of equipment which has non-infringing uses. Kurzweil could not realistically do otherwise than to put the burden on the user, because the company could not possibly know all of the uses to which the system might be put by a consumer.

On the other hand, scanning the text using the Kurzweil software for learning disabled users is definitely fair use, in my opinion. While a digital copy is made in order for the work to be read aloud, a court likely would find that this is fair use. If the copy is retained, it should be retained by the individual student. Moreover, section 121 of the Copyright Act permits authorized entities (those with the primary mission of providing services to the blind or other people with disabilities) to reproduce and distribute copies of works in specialized formats exclusively for use by blind or other persons with disabilities.

QUESTION: A college library has a large number of student theses in its print collection. (1) In order to digitize the collection, must the library obtain permission from the former students? (2) Is there a difference in terms of what the library can do if it makes the electronic files viewable by the college authorized user group only or by the entire world? (3) If the theses are older than 1923 are they considered in the public domain so they could be digitized in any case? (4) Do the same answers apply to bachelor's essays or papers?

ANSWER: (1) Most colleges have graduate students sign a form when they begin a graduate degree agreeing to make their theses available to the library which

may use the theses for interlibrary loan. The first step is to check whether any such agreement for graduate students is required and then determine when the agreement form began to be used. The student is the author, of course, and owns the copyright in the thesis. If there is no agreement, then digitizing these theses requires their permission if the library plans to post the papers on the Web. For all new theses, the library should get this written agreement in place for all graduate students so that future papers can be digitized with no problem.

(2) Restricting access to digitized theses to the campus community certainly reduces the likelihood that former students will complain, but it does not change the copyright status of the work. The college may be willing to assume the risk that no student will complain. If someone did complain, the library could then disable access to that work. (3) For theses published before 1923, no problem. Go ahead and digitize those. If the thesis was never published, however, then the copyright expired at the end of 2002 or life of the author plus 70 years, whichever is greater. So, the death date of the student author is critical. (4) Whether the work is an undergraduate essay or a graduate thesis is irrelevant for copyright purposes. 🐾

Biz of Acq — Serials Departments Aren't What They Used to Be: Providing Public Service to Users from Behind the Scenes

by **Denise M. Branch** (Assistant Head Acquisitions & Serials Librarian, VCU Libraries, 901 Park Ave. / PO Box 842033, Richmond, VA 23284-2033; Phone: 804-828-6436; Fax: 804-828-5672) <dmbbranch@vcu.edu>

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When we think about serials departments in libraries, we imagine staff sitting at computers all day long checking in journal issues, binding materials, claiming missing items, and verifying access to electronic serials. It's time to erase this image from your mind. Serials Departments aren't what they used to be just a few years ago. Yes, we still do these things, but other more dynamic responsibilities have been added to our daily life in this Web age. E-resources have added a new dimension to serials work and brought both opportunities and challenges for serials staff. The mission remains the same — providing users with the information they want.

The Serials Unit at Virginia Commonwealth University doesn't just sit behind closed doors checking in, binding, claiming, and verifying access. The staff have been tasked with answering users' problem reports regarding access to electronic serials and have acquired knowledge and skills necessary to

be successful in their positions and provide users with the information they desire. The Serials Unit is located within the Acquisitions Department of the VCU Libraries. The Unit consists of 8 staff and 1 librarian who is the Assistant Department Head for Acquisitions. The Libraries at Virginia Commonwealth University, which includes the James Branch Cabell Library on the Monroe Park Campus and the Tompkins McCaw Library for the Health Sciences on the MCV Campus, employs 47 professionals and 82 support staff. The annual budget exceeds \$15 million. The Libraries have over 61,000 serials, including 27,305 e-journals.

A major shift from print to electronic was made by the VCU Libraries in 2005. By this time, the Libraries had already implemented the Open URL link resolver, SFX, which came a year earlier in 2004. The e-journal collection started off at a modest pace and then grew explosively. The Libraries recognized a need

for users to report e-journal access problems and it was determined that the best way to address problems was through an electronic journal problem report (EJPR). This electronic journal problem report was based on the ILL parser within SFX and a PHP application was created to uncover problems by users when they use the "Get it @ VCU" button in SFX. This system allows capture of the problem and the user's comments. An email is sent to staff members responsible for answering the problem reports. The EJPR generates approximately 2-3 reports per day. There are days when no reports are received and days when five or more are received. Staff can spend approximately 5-10 minutes resolving an easy problem report and days resolving a more complex problem report. Problems can range from simply having to update holdings statements to contacting a publisher or vendor to get access restored.

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