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## Questions & Answers -- Copyright Column

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# Questions & Answers — Copyright Column

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**QUESTION:** *A widely-used mental/behavioral screening tool that was “widely distributed” in the past has become proprietary and only available for purchase from a company which does not offer a site license. Faculty members say that everyone in the specialty learned the instrument, used it and knows it inside out. So, the question is whether it is a violation if they administer this test from memory and record the subjects’ responses only on their charts. The librarian indicates that this does not seem right to her but asks for help in explaining it to the faculty members.*

**ANSWER:** The librarian has good instincts! The easy answer is that copying in any form is still reproduction and the reproduction right belongs to the copyright owner. There certainly are some exceptions to the exclusive right of reproduction, such as fair use, but this situation does not appear to meet the requirements of fair use or for any other exception. Copying even from memory is infringement just as is photocopying or even unconscious copying.

**QUESTION:** *A teacher has asked the librarian to record a television program from CNN about the future of USA education to be shown only within the school. The question is to what extent is CNN covered under fair use for educators. With the change to digital reception of all programs, has the law changed to reflect the change in television reception?*

**ANSWER:** The law has not changed to reflect digital TV reception since the underlying copyright issues remain the same. In fact, throughout the *Copyright Act*, the language concerning technology is “now known or later developed.” Recording the program to show it within a class with only students and teachers present is likely fair use. The performance of the video in the class is permitted under section 110(1) for face-to-face teaching. The recording should not be posted on the Web, however.

Another alternative is to contact the network and seek permission. Should the librarian select this alternative, then the performance rights can be requested at the same time to permit in-school, including online instruction, rather than just face-to-face classroom use. If the video of the program is to be shown outside of a class, then a public performance license is advisable.

**QUESTION:** *A faculty member is writing a book about the history of a corporation that was founded in the 1930s. He retained the Writers Research Group to negotiate permission for the use of photographs, copies of newspaper articles, and excerpts from books, magazine articles, and monographs. In at least two instances Writers Research Group has identified and sent permission requests to the presumptive copyright owners of things that were published prior to 1941 — a book that was published by a leading New York publishing company and photographs that*

*were published in a magazine that still exists but which has changed ownership twice during the interim. The Writers Research Group has received no response from either despite repeated follow-ups. What should the faculty member do?*

**ANSWER:** Unfortunately, no answer from the publisher is an all too frequent occurrence and it creates negative feelings about copyright holders. The faculty member has some choices at this point. (1) He could find other excerpts, photographs, etc., for which he can clear copyright. (2) He could decide to go ahead and publish the materials without permission and assume the risk, which likely is pretty low. The magazine photos may be a bit more problematic, but in all likelihood, the copyright was not renewed on these items. The publisher of the book may or may not agree to this assumption of the risk, of course. The degree of risk one is willing to assume is dependent on how important that particular item is to include in the author’s book.

Copyright owners are under no obligation even to respond to requests to use works which is quite frustrating, of course, but that is just the way it is.

**QUESTION:** *A librarian is starting a small business and is developing medical dictionary software and wonders whether companies can claim copyright in words or lists of words. If she develops the software from scratch, can she use the same list of words that another proprietary medical dictionary created and used?*

**ANSWER:** The good news is that one cannot get a copyright in individual words and their definitions. An author or publisher may claim copyright in the dictionary which is a compilation, however. Dictionaries have what is called “thin copyright,” since only the selection of terms, arrangement, etc., are pro-

tected and not the individual words and definitions. So, the librarian may compile the dictionary from a number of other works and can add her own definitions and words too.

**QUESTION:** *If an author abandons a copyright or makes an item available under a Creative Commons (CC) license, can his heirs try to enforce the copyright after the author’s death?*

**ANSWER:** Abandonment of copyright is difficult to prove; it almost takes some written, affirmative statement by the copyright holder that he is abandoning the copyright in that particular work. If the work truly is abandoned though, then that author and his heirs have no more rights to it.

If the author has made the work available with a CC license, that license can be revoked. So, the heirs can revoke the license and enforce the copyright from that point forward. They cannot enforce the copyright against anyone who used the work as permitted under the CC license prior to its revocation.

**QUESTION:** *Is a college dormitory common area considered to be “public places” and therefore need public performance licenses to perform videos?*

**ANSWER:** Yes, lounges, living rooms, etc., in a dorm are public areas, since members of the public may come into the facility to watch the video. Thus, public performance rights are needed. It is possible that the college has such a license that also covers dormitories. Dormitory rooms are not public areas, however, and are considered more like a private home, so no public performance rights are needed for private performances in a dorm room. 🌿



## Correction

**Editor’s Note:** *We’d like to thank Judy Warren (Eastern Kentucky University) for bringing to our attention an error in last month’s Q & A column. We apologize for not catching this. Please find the corrected question and answer printed below. Thank you. — KS*

**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 NOT photocopy the textbook on reserve as an alternative to purchasing the text. This avoids any market effect. 🌿