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Questions & Answers -- Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *A member of the music faculty is interested in publishing a corrected music score. The original score is dated 1885; it was found, rewritten, and published in 1915. The 1915 score was then republished again in 1982. The professor has discovered a significant number of mistakes in the 1982 version. If he makes all of the necessary corrections to the 1982 version so that it goes back to its original 1915 score, may he publish the corrected score? Are there any limitations of which he should be aware?*

ANSWER: The 1915 published score is in the public domain now due to its age. The 1885 score was unpublished and thus not protected by federal copyright until its publication in 1915, but now it is public domain. Assuming that the 1982 publication did not contain any new material, the copyright in the underlying work did not change. The faculty member is free to correct the score and republish it. What he produces, however, is likewise ineligible for copyright protection unless he adds new material to the score.

QUESTION: *May a student use the project she created for a specific high school course which contains excerpts of copyrighted works and enter it into the National History Day contest? The contest is judged and will have a time set aside for public viewing much like the National Science Fair. The Fair Use Guidelines for Educational Multimedia state that students may incorporate portions of lawfully-acquired copyrighted works into their projects for a specific course. Under the Guidelines students are permitted to perform and display their project created for educational uses in the course for which they were created and to use them in their own portfolios, but there are time limits for this. Is there an interpretation of the phrase “educational uses in the course for which they were created”?*

ANSWER: The guidelines you mention were not generally adopted and, in fact, were specifically rejected by most educational institutions as being too narrow. Even if the student’s school did adopt the guidelines, they really do not apply except for a project for a specific course. In fact, projects created for courses are likely covered by fair use. Addi-

tionally, such projects are covered by Section 110(1) of the *Copyright Act of 1976*, which permits performance and display of copyrighted works in a face-to-face classroom, and by Section 110(2) for portions of courses that are transmitted. It is the national contest that raises the problems.

On the other hand, it may well be fair use for students to use copyrighted images, video clips, etc., for an entry in the National History Day contest. The chance that any copyright owner would object is likely fairly remote. If the student wants to be absolutely sure, then she should contact the copyright owners and seek permission to use the work to be incorporated into her project for the contest.

QUESTION: *A professional editor has become Managing Editor of a peer-reviewed medical journal. The journal is considering a manuscript for acceptance that might also be published in another journal. Is it possible for the journals to share copyright, or can it be assigned to one journal only?*

ANSWER: While the two journals could be co-owners of the copyright in the article, it presents some difficulties. In order to be co-owners of the copyright, the two journals would first have to agree to the arrangement, then have the author transfer the copyright to both journals as co-owners and, finally, agree between themselves that each of journal has the right to publish the article in their respective journals. There are also other issues such as reuse rights which also would need to be shared. It might make more sense for the author to retain the copyright and for him to grant each journal a non-exclusive license to publish and distribute the article in an issue of that journal.

QUESTION: *May an academic library photocopy more than one chapter or 10% of a book that it owns and send it electronically to one of its students? Does microfiche follow the same rules? There is an Eric microfiche that contained 140 images which the library was asked to reproduce and send to a student. These 140 images comprise all of the chapters on the fiche. What is the limitation on microfiche when copying?*

ANSWER: The 10% limitation on photocopying is not in the statute but is in the *Guidelines on Multiple Copying for*

Classroom Use which many nonprofit educational institutions and libraries unfortunately adopted as a maximum. It is not a maximum even in those guidelines, however. Further, Section 108(d) of the *Copyright Act* states that a library may copy a chapter from a book for a user or an article from a periodical issue, etc., for a user if the other requirements are met. There is no percentage or length restriction in the statute other than the one chapter or article limitation.

The fact that something is in fiche format is not important and does not change the underlying copyright issues. It is what is on that fiche that determines the copyright status. Was the Eric document protected by copyright? Assume that the answer is yes. Does the content images or a combination of images and text? If the document consists solely of images, then no copying is permitted under the library section. Section 108(i) excludes photographs from what a library may copy. If the Eric document consisted of both text and photos, then the photographs in that chapter are treated as text, and the library may reproduce one copy of the chapter and send it to the user either in print or electronically. The library should be sure to include the notice of copyright and the warning as required under Section 108(d)(2).

QUESTION: *A librarian is writing a digitization grant for city directories that were published before 1978 and asks whether these publications are in the public domain.*

ANSWER: The term “city directory” is a little unclear. The question could refer to the equivalent of a telephone book for a city or town, but it can also refer to the official directory for a city government. Typically, the city directories are not public domain but neither are they protected by copyright if they are the equivalent of the white pages of a telephone book. Yellow pages may be under copyright, but prior to 1978 they had to be renewed for copyright and most likely they were not. So 28 years after the date of publication they would be in the public domain. And that assumes that they were registered for copyright in the first place. The reason that telephone directories are not protected is that they lack sufficient originality.

If by “city directory” the question refers to the official directories of a municipal government, they may have sufficient originality to qualify for copyright. The librarian could approach the publisher to seek permission to reproduce these directories and make them available digitally. 🐾

