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## Questions and Answers-Copyright Column

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- Conduct thorough background checks of all employees with access to special collections
- Perform spot checks of special collections
- Establish procedures for documenting and storing reader/researcher requests

### Continuing Thoughts on Book Theft

Uncomfortable as the issue of book theft is, it is important for archivists and librarians of special collections to regularly think about their collections like a thief would:

- (1) What is worth stealing?
- (2) How would you go about stealing the books?
- (3) Where would you go to sell the stolen books?

And finally, ask yourself: How do you know you have not *already* been the victim of a thief?

Thinking through the answers to these questions — and then working with your administrative and security teams to act upon them — will help protect your “children” from going astray and help find them if they do. 🐾

#### Endnotes

1. **Bill Hannay** is a partner at the Chicago-based law firm **Schiff Hardin LLP** and a frequent lecturer on library-related topics at the **Charleston Conference**. He is an Adjunct Professor at **IIT/Chicago-Kent College of Law** and author of numerous books and articles. He may be contacted at <whannay@schiffhardin.com>.
2. Dealers caught in the middle are unlikely to be indemnified by their insurance companies. Insurers take the position that a dealer who must return stolen art to the rightful owner (or reimburse their customer who bought in good faith) has not suffered a direct *physical* loss, so it is not a covered loss. It's a “legal” loss.
3. Available at <http://www.smithsonianmag.com/specialsections/making-a-difference/to-catch-a-thief.html?c=y&page=1>.
4. Or, more optimistically, it may simply mean that there have been fewer thefts, but the arrest and conviction of Barry Landau suggests that the problem of book theft from institutions is a continuing one.

## Questions & Answers — Copyright Column

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[www.unc.edu/~unclng/gasaway.htm](http://www.unc.edu/~unclng/gasaway.htm)

**QUESTION:** *Are three paragraphs from a copyrighted work too much to put on a Website?*

**ANSWER:** To answer this question requires a fair use analysis. (1) What is the purpose of the use? If the text is on a password-protected Website restricted to enrolled students in a particular course in a nonprofit educational institution, the purpose of the use is different than if one is copying three paragraphs and putting them on an open Website. (2) What is the nature of the copyrighted work? Is the work a novel, a poem, a scientific article? How old is the work? Is it still in print? (3) What percent of the copyrighted work do the three paragraphs represent? If the three paragraphs are from a full-length novel, then this is a very small portion. However, if the work is a poem printed on two pages, three paragraphs represents a fairly substantial portion. Even if the copied paragraphs are a small portion of the work, if the copied paragraphs represent the heart of the work, then the amount is too much. (4) What is the impact of the copying of the three paragraphs on the potential market for or value of the work? Does the use interfere with the sales of the work? Does it destroy the value?

If the three paragraphs are from a mystery novel, and they reveal the “who done it,” then not only did it take the heart of the work but it could also destroy the market for the novel. It is always possible to seek permission from the copyright holder to use the three paragraphs on the Website.

**QUESTION:** *Section 108(f)(3) appears to be a very unusual section that allows libraries to record television news programs. What is the reason for this provision?*

**ANSWER:** When television news programs began, their value was not fully appreciated by the networks. In fact, for years **CBS** did not videotape *Walter Cronkite and the Evening News*. **Vanderbilt University Library** started the Television News Archive and recorded network news daily. A library could borrow a copy of a specific news tape from the Archive. At some point, **CBS** began to videotape *Walter Cronkite* and sued **Vanderbilt University** for infringing its reproduction and distribution rights. During the debates on the *Copyright Act of 1976*, **Congress** recognized that there was something unique about the news, and it gave libraries the right to record the TV news. After passage of the *Act*, **CBS** dropped the suit against **Vanderbilt**, which still maintains

the Television News Archive. See <http://tvnews.vanderbilt.edu/>.

**QUESTION:** *How useful has section 108(h) been to libraries and archives?*

**ANSWER:** Designed to ameliorate the effects of term extension, section 108(h) was added to the *Copyright Act* in 1998. It is an interesting provision that allows libraries, archives, and nonprofit educational institutions to reproduce, distribute, perform, or display copyrighted works during the last 20 years of their terms if certain conditions are met. At this point, the author has already been dead for 50 years. In order to take advantage of the exception, a library may not take advantage of this exception if: (1) the work is subject to normal commercial exploitation; (2) if a copy can be obtained at a reasonable price; or (3) the copyright owner provides notice that either of the other two conditions are met.

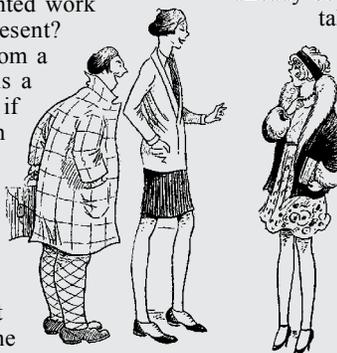
The benefit is that under section 108(h), a library may digitize a work and put it on a publicly accessible Website. In other words, there is no premises restriction, unlike sections 108(b) and (c). The **U.S. Copyright Office** created a process by which publishers could electronically provide the notice in number 3 above. Unfortunately, not one single copyright owner has utilized this process to notify the world that its works are available or that it intends to republish or reprint such a work.

**QUESTION:** *The Copyright Act appears particularly outdated, as it pertains to audiovisual works. Why does Congress not update it?*

**ANSWER:** There are many reasons that **Congress** hesitates to amend the copyright law. Moreover, it is not just the provisions dealing with audiovisual works that sorely need to be modernized. First, technology changes so rapidly that lawmakers have difficulty deciding how to amend laws so that they do not impede technological developments. Second, there have been some changes in the law, but they were pretty minor as applied to audiovisual works, but not since the *Digital Millennium Copyright Act of 1998*. These changes have not worked very well, either. Third, copyright owners and users are copyrighted works are pretty polarized right now, and any changes that one side wants likely will be fought by the other side. The spirit of legislative compromise seems to be dead on many fronts and not just copyright.

**QUESTION:** *What is the difference between the composer's rights and royalties and those of*

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the music publishing company and recording company?

**ANSWER:** Under U.S. copyright law, the copyright in a work initially vests with the author, i.e., the composer. So, the author is the owner of the copyright and is entitled to the exclusive rights provided under the *Copyright Act*: reproduction, distribution, adaptation, performance, and display. If the work in question is a sound recording, the owner also has the right of public performance via digital transmission.

The composer usually transfers to the music publisher only the rights of reproduction and distribution for the composition. The publisher then collects royalties for sales of copies of the sheet music and pays a share of the royalties back to the composer. Generally, the composer retains all of the other rights such as public performance, so he continues to collect royalties for the public performance of his music.

A sound recording of the performance of a musical composition embodies at least two, and sometimes three, separate copyrights: the underlying musical composition, the recording of the performance of the music, and a copyright in the arrangement of the music for the sound recording. The performer, who may or may not be the composer, normally transfers the copyright in the performance of the music to the recording company that collects royalties for the sale of the recordings. The composer is compensated for the sale of recordings through the mechanical license, a compulsory license under the statute. The composer normally continues to own the copyright in the musical composition, however.

When music is played on radio or television, royalties are paid to the composer in the form of a blanket license with the performance royalty organizations such as the **Association of Composers, Authors and Publishers (ASCAP)**, **Broadcast Music Inc. (BMI)**, and **SESAC, Inc.** There are no performance rights in sound recordings except for digital transmission. So, traditionally, the recording company makes its money from the sale of records and not from performance. Both the record company and the performers share the royalties from digital transmission of sound recording (for example, from Webcasting).

**QUESTION:** Both sections 108 (c) and (e) require a library to make a reasonable effort to acquire an unused copy of a work at a "fair price." But section 108(h) specifies a "reasonable price." What is the difference?

**ANSWER:** There appears to be no functional difference. Section 108(h) was a 1998 amendment to the statute, and it uses "reasonable price." Maybe it was sloppy legislative drafting. There is nothing in the legislative history to account for the difference, and there has been no litigation to provide guidance. 🐼

## Little Red Herrings — Has the Internet Made Libraries Obsolete After All? Part 2

by **Mark Y. Herring** (Dean of Library Services, Dacus Library, Winthrop University) <herringm@winthrop.edu>

In part one I looked at the first five reasons of my 10 Reasons Why the Internet Is No Substitute for a Library" (<http://bit.ly/5oYnQb>) in an effort to see where I went wrong. Herewith, the next five in that list.

*eBooks* are the best example of a wrong prediction. I guessed in 2000 that this monumental change would not occur until about ten years from today. The advent of the **iPad**, however, catapulted eBooks a long, a very long, way. I have to admit that I was wrong about how long it would take us to get to a successful eBook reader. Add to the **iPad** the relative inexpensive cost of eBooks, and the floodgates are wide open. **ebrary's** (<http://www.ebrary.com/corp/>) offering of tens of thousands of *academic* titles for literally spare change is also helping to widen the tsunami.

As for the maturation of eBook readers, I have read on multiple ones: **Kindles**, **Sonys**, the **Edge** (a now defunct reader), **iPads**, and smart phones, to name a few. The **iPad** proved the best experience so far. Some will argue that the comparison isn't fair because the **iPad** is more a tablet than an e-reader. Semantics, really. Still, even the **iPad** isn't perfect (<http://bit.ly/psZ3oz>). DRM (digital right management) issues still loom large (or not, <http://bit.ly/vE-ACC8>), as do issues of format. Copyright hasn't been resolved, just ask Google (<http://bit.ly/9FyDn6>). Further, I am troubled about how this translates into *scholarly reading*, various **ebrary** solutions notwithstanding. It cannot be done very well currently, though I believe it will be done well, eventually. Today, however, a medium for scholarly eBooks that provides access and service at the highest of levels remains on the "to do" list.

Furthermore, so far the frequency of eBook usage in academic libraries is at best very limited. I think this will likely change as more and more high school students, coming as they already are from **ebrary** libraries (or facsimiles), push out remaining paper acolytes. What remains an imbroglio is the attitude of most students to e texts. A majority say they want eBooks but this has yet to translate into high usage of same. Then there is the problem of what is going on in that electronic environment. Wired generations are easily distracted (<http://nyti.ms/bGoKmx>). Digital natives are also research challenged (<http://huff.to/c9IPTn>). This is, of course, an argument that could be made about any generation of students, but it does appear to have worsened of late. Finally, there is the question of what the Internet experience is doing to our brains (<http://bbc.in/n1u68r>). We know it is doing *something*, but the jury is out whether this is good, bad, or indifferent.

As for the *paperless library* — well, it hasn't made an appearance yet. Most now think this is a mission impossible. That is not to say that we won't see a dramatic curtailment in traditional print books in the future. I thought that a decade ago and think it is true today. But the dramatic change in which libraries are being built without books at all, or with only a handful, hasn't shown up, at least not to the degree promised. The **University of Texas** at San Antonio's Applied Engineering and Technology Library (<http://bit.ly/IUOoUY>) claims (<http://bit.ly/bhFfpl>) to be a bookless library. I have no reason to believe otherwise. Some, however, believe the idea is a myth in the making (<http://bit.ly/ucN2Tu>). Frankly, if we cannot figure out a way to reduce the carbon footprint of libraries, the profession will be in trouble. The will behind the erection of large, grand libraries has gone, unless we can talk **Bill** and **Melinda Gates**, **Brin** and **Page** into using their foundations to become the modern day **Andrew Carnegie** for libraries.



Although I didn't call it this, the creation of a *national digital library*, my eighth point, is still waiting creation. I correctly argued then it would prove too costly. It still is. Perhaps the best argument for it is **Robert Danton's** (<http://bit.ly/chcoRE>), but even he recognizes that it will take the concerted effort of all of us just to get close. If we spend the dollars needed, what will be left for anything else? Frankly, I still fret over the whole idea of re-mastering digital images, though I see less and less of this in the professional literature. Digitization is not a one-and-done process. If this is true, then whatever the cost of such a facility just increased significantly.

The Internet remains the *proverbial mile wide*, but I will concede that it is now a little more than an inch deep — let's say at least

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