November 2012

Questions and Answers-Copyright Column

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Recommended Citation

Gasaway, Laura N. (2012) "Questions and Answers-Copyright Column," *Against the Grain*: Vol. 24: Iss. 5, Article 25.
DOI: <https://doi.org/10.7771/2380-176X.6328>

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Questions & Answers — Copyright Column

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QUESTION: (1) *Should an academic library now institute a 10% rule for reproducing material from books because of the Georgia State University decision?* (2) *Is it better to place a copy of the book on reserve if the faculty member has asked to have too much duplicated for reserve?*

ANSWER: (1) The judge issued her opinion in the *Cambridge University Press v. Georgia State University* case in May 2012. One of the surprising holdings was that for books, it is presumably fair use to copy one chapter of a book or 10% of a work for e-reserves for course management software. While a library may want to follow this holding, it is applicable only in the Northern District of Georgia. Further, the plaintiff publishers have appealed the ruling which primarily was decided in favor of the defendant, Georgia State University.

(2) Placing the book itself on reserve is certainly an alternative when the faculty member asks that too large a portion be reproduced for reserve. When books are put on reserve, no copyright issue is raised since the library is not reproducing the work. Other alternative are to seek permission and pay royalties if requested or to take a campus-wide Copyright Clearance Center license.

QUESTION: *A law librarian is working with a group of librarians to develop a Webinar for a regional law library association's meeting. For the Webinar, the group wants to use movie clips. (1) Is it possible to use the clips at all? (2) If yes, how many clips can be used? (3) Is there a limit on the length of each clip?*

ANSWER: If this were a course offered by a nonprofit law school or any other nonprofit educational institution for enrolled students, even students enrolled in a continuing legal education course taught by the school, use of the film clips would present no problem. Section 110(1) of the *Copyright Act*, the face-to-face teaching exception, permits performance of an entire film to a class as a part of instruction. If this were a Webinar for enrolled students in a nonprofit educational institution, then reasonable and limited portions of films can be used. Because a Webinar is transmitted, the amount that can be performed is more limited under section 110(2) than for face-to-face teaching.

The difficulty, of course, is that the regional association is not a nonprofit school. So, the answer is much less clear. (1) A fair use portion can be used, but it is not clear how much this is. (2) There is no limit on how many such clips the Webinar can use. (3) Likely 2-3 minute clips should be safe, but there is no guarantee that a copyright owner will not object. Showing the clips one time when the Webinar is first offered is not as problematic as leaving the Webinar along with the clips on the Web. Should the group wish to leave the Webinar online, then it should seek permission to include the film clips.

QUESTION: *If a small local museum publishes an article on its Website that originally appeared in a state publication but gives proper credit, is the museum infringing copyright?*

ANSWER: In order to answer this question, more information is needed. Does "state publication" mean published by a state government agency? Or does it mean just a publication about the state? Assuming the former, many states do not claim copyright in their publications, but others do. If the particular state does not claim copyright in the publication or if the article is now in the public domain because the copyright has expired, there is absolutely no problem with posting the article on the museum's Website. If the article is still under copyright, then permission from the copyright holder is needed. If the state holds the copyright, it is likely to grant such permission.

Should the museum be unable to identify the copyright holder, and it is willing to assume the risk for posting the article (which is likely to be low in the situation described), it might choose to post the article on the Web with a disclaimer indicating that the museum has been unable to locate the copyright holder and ask for help in finding the owner. Because it is posting the entire article, however, it is less likely to be fair use than if only a portion of the article was posted. Giving credit does not grant permission to reproduce the article but is the proper thing to do in order to avoid plagiarism. Moreover, it helps users to know the source of the article.

QUESTION: *An academic library purchases DVDs for use*

in face-to-face teaching activities as a part of course instruction. (1) Does this fall under the protection of fair educational use so that no additional licenses need to be purchased? Many vendors of academic films offer copies of their films for both home use and institutional use, with institutional use at a significantly higher cost. (2) Should the library purchase films at the institutional rate?

ANSWER: (1) Actually, purchased videos used for face-to-face teaching are covered by section 110(1) of the *Copyright Act*, the classroom exception. While fair use likely permits performing small portions of a film, it is the classroom exception that allows faculty members to perform the entire work for a class in face-to-face teaching in a nonprofit educational institution if the performance is a part of instruction. Some vendors have been known to mislead schools and indicate that a performance license is needed even for face-to-face teaching, which is inaccurate. (2) The higher institutional rate usually permits public performances in the institution outside of the face-to-face classroom. So, if the institution is interested in using the films for student clubs in the evening, community viewings, etc., then the institutional rate includes these rights. Of course, one needs to read each vendor's license agreement to ensure that the higher rate actually provides the rights needed.

QUESTION: *May an archival collection reproduce a photograph of Sammy Davis, Jr., that was taken when he appeared at a civil rights rally on campus? There is no copyright information on the photograph.*

ANSWER: Oddly enough, neither Mr. Davis nor his heirs likely own the rights in the photograph. It is the photographer who owns the copyright typically. It is possible that the educational institution owns the copyright if the photographer was an employee, i.e., staff photographer. With no information on the photograph about the photographer, it is difficult to determine whether the work is still under copyright or even who owns the rights. The question does not specify the purpose of the reproduction or whether a single additional copy is being made for scholarship and research or if reproduction means publishing the photograph in a publication or posting it on the Web. The risks are different for each type of reproduction. 🐼

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director of the company. Send nominations to: **Caitlin Moen**, Harrassowitz Award for Leadership Jury <librariancaitlin@gmail.com>.

Visit the HARRASSOWITZ Award for Leadership in Library Acquisitions page at ALCTS for more information: <http://www.ala.org/ala/mgrps/divs/alcts/awards/profrecognition/leadershipinacq.cfm>.

Got a wonderful message the other day from the dynamo publisher woman, **Lynne**

C. Rienner <lcr@rienner.com>. I mentioned **Lynne** and the fun we had in a café in the Charleston Market in **Rumors** a few issues ago (see *ATG*, v.24#2, p.45). **Lynne** said it took her on a trip down memory lane, and she promises to really visit us at the **33rd Charleston**

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