2015

Questions and Answers: Copyright Column

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Recommended Citation

Gassaway, Laura N. (2015) "Questions and Answers: Copyright Column," *Against the Grain*: Vol. 27: Iss. 1, Article 28.

DOI: <https://doi.org/10.7771/2380-176X.7010>

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Questions & Answers — Copyright Column

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QUESTION: *A college teacher asks if it is copyright infringement to reproduce music from YouTube for use in class.*

ANSWER: The difficulty with YouTube is that individuals post performances of copyrighted music all the time. If that person is the composer, there is no problem with the posting, but often that person is performing someone else's music or has copied a copyrighted recording of that music and put it on YouTube without permission. While these are often removed from YouTube at the request of the copyright holder, there may be a time gap before the removal occurs.

Playing the music from YouTube in class, assuming it is posted there with permission, is allowable if the performance meets the requirements of section 110(2). There is no reason to reproduce the music, however. Instead, using a link and playing it directly from YouTube is preferable since there is no reproduction. Section 110(2), known as the **TEACH Act**, permits the performance of nondramatic music in a nonprofit education institution as a part of instruction, so the performance is permitted. Reproducing the music is not, however.

QUESTION: *Have there been any developments in the Georgia State litigation?*

ANSWER: Yes. The last column discussed the 11th Circuit decision that vacated and remanded the decision of the district court. See *Cambridge University Press v. Patton*, 769 F.3d 1232 (11th Cir. 2014). Both sides then requested a rehearing *en banc* from the 11th Circuit which was denied without opinion on January 2, 2015. The next stage will be either an appeal to the U. S. Supreme Court, dropping the case or a settlement agreement. To date, there is no indication which will occur.

QUESTION: *A journal publisher asks about transfer of copyright from the author to the journal when the article contains a "tool" that is much sought after for use in medicine for the treatment of patients. The copyright transfer for the article was an assignment of all of the rights to the publisher. The question is whether the publisher has rights to any updates of the "tool."*

ANSWER: Because the author transferred the complete copyright to the publisher, the publisher owns the right to prepare derivative works such as new editions or updates. The publisher owns the rights to any update published by the author. Practically speaking, however, the publisher itself is unlikely to be able to update the tool, but it could engage someone other than the original author to do so.

Another issue for the publisher is whether it wants to retain good relations with the author. If so, then alerting the author to the fact that the publisher owns the rights should be done carefully along with an offer to publish the updated

tool. It may be economically advantageous to have the author update the tool and then share in any proceeds.

QUESTION: *A hospital library has a Copyright Clearance Center (CCC) license, and the librarian asks about reposting and republishing material covered by the license. A physician is writing an article in another journal and wants to use a graph from a licensed copyrighted journal. The librarian asks whether such use is covered under the hospital's CCC license.*

ANSWER: Unfortunately, it is not. The CCC license does permit reposting and republishing of material for in-house use, such as posting on an internal Website. The publication of an article in another journal is not covered by the license, but the CCC may be able to grant permission for the doctor to use the graph as desired. It is likely, however, that there will be a royalty charge for the use.

QUESTION: *A corporate librarian asks a general question about blogs and company Websites. If a company has a blog page on its Website, does the company own the copyright in guest bloggers' posts, or is an agreement between guest bloggers and the hosting site required? In other words, the company owns the content on its site, but do guest blogs become the property of the company Website, or does the guest blogger hold all rights to what they wrote?*

ANSWER: The company owns the copyright in any blog postings on the company Website that are produced by its employees in the course of their employment. But this question asks about a guest blogger who is not an employee. The author of that blog post owns the copyright in his or her original posting.

If the company wants to own the copyright in the blog content created by the guest blogger, then a written transfer of copyright from the blogger to the company is required. Many guest bloggers probably would not agree to this, but the company still may want to ask. If the blogger refuses, the company then has the choice to permit the blogger to post with the blogger owning the copyright or refrain from posting the blog.

QUESTION: *A museum employee asks about an author who has taken a picture of an ancient object and wishes to publish it. Must the author also get permission from the institution that owns it? Put another way, does a group that owns an object have intellectual property rights over images of that object, no matter who takes the photograph?*

ANSWER: The institution that owns the object certainly can control access to that

object in order to protect it, or just because it wants to do so. But access is not intellectual property ownership. By the term "ancient object," the assumption is that it is an artifact such as a stone statute, piece of jewelry, or some other artifact and not a painting. In the past, museums often refused to allow the photographing of paintings due to the potential for damage because of flashbulbs. The issues really do not exist today with digital photography, however.

With an ancient object, a photograph is very unlikely to damage the work, so that is not the issue. Again, in the past, institutions such as museums sold photographs of objects in their collections and counted on that income. Today, however, more museums are recognizing that photographs of objects they own may be taken by anyone with a cellphone. Only someone who wants a very high-quality photograph of the object is going to purchase the ones sold by the museum. Otherwise, they are likely to take their own photograph, and the photographer would own the copyright in the image.

So, the author owns the copyright in the photograph that he or she took and can publish it. It is good idea to credit the museum with ownership of the artifact, however.

QUESTION: *A college faculty member asks about posting publisher-produced PowerPoint slides for students on its course management system. Is there a difference in posting slides from the textbook adopted for the class and in uploading ones from other textbooks? Access would be limited to members of the class.*

ANSWER: There is a difference in posting slides accompanying an assigned textbook and in posting ones from a non-adopted text. The publisher of textbooks produces the slides for

the use of faculty members who adopt their text for their classes, so there is problem in posting those slides for students via the course management system. It may be permissible to use ones from non-adopted texts also, but the faculty member should carefully review any license agreement that accompanies that text to determine if posting is permissible when the textbook has not been adopted. The publisher could restrict the posting

of the slides to textbook adopters. Faculty members can always contact the publisher and seek permission to post the slides, however.

Posting a small number of the slides from those provided by a publisher of a non-adopted textbook may be fair use where posting the entire slide set likely is too much. 🍷