2015

Questions and Answers--Copyright Column

Laura N. Gassaway

University of North Carolina--Chapel Hill School of Law, laura_gasaway@unc.edu

Follow this and additional works at: <https://docs.lib.purdue.edu/atg>

Part of the [Library and Information Science Commons](#)

Recommended Citation

Gassaway, Laura N. (2015) "Questions and Answers--Copyright Column," *Against the Grain*: Vol. 27: Iss. 3, Article 29.

DOI: <https://doi.org/10.7771/2380-176X.7100>

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.

Questions & Answers — Copyright Column

Column Editor: **Laura N. Gasaway** (Associate Dean for Academic Affairs, University of North Carolina-Chapel Hill School of Law, Chapel Hill, NC 27599; Phone: 919-962-2295; Fax: 919-962-1193) <laura_gasaway@unc.edu>
www.unc.edu/~uncldg/gasaway.htm

QUESTION: *A university faculty member inquires about an old photograph which is owned by his university but another college has the same photograph and theirs contains a copyright notice. To use that photograph in a book or article, is it necessary to credit that university?*

ANSWER: This question raises some important issues: (1) is the photograph still under copyright; (2) if so, who owns the copyright; (3) is one of the photographs a copy of the other, and (4) credit versus copyright permission. From the question, none of these issues are clarified. (1) It is possible that the age of the photograph dictates that it is in the public domain, but one can be certain only for photographs first published in the United States before 1923. Assume that they copyrighted in 1933. The copyright would have had to be renewed in 1961, and the chances are huge that the copyright was never renewed. There is also a possibility that the owners have just disappeared and would never complain. One may search the records at the U.S. Copyright Office, some are electronic but ones from 1933 are unlikely to be online. In the alternative, there are search firms that will do this or one may hire the Copyright Office to do the search.

The copyright notice on the photograph owned by the other institution, is a definite starting point to determine the copyright status of the work by then using my chart "When Works Pass into the Public Domain" at <http://www.unc.edu/~uncldg/public-d.htm>.

(2) Who owns the copyright? The photographer would have owned the copyright originally, but she may have transferred that copyright to one of the institutions. One must consult the registration records at the Copyright Office. (3) Is one photograph a copy of the other? It is possible that one photo is a copy of the other, but it is also possible that each is an original. In other words, the photographer produced two identical photos. (4) Credit versus permission. If the work is still protected by copyright, then the faculty member needs permission to use the photograph; in fact, the editor of the publication is likely to require that the faculty member obtain permission. If the photograph is in the public domain, then crediting where the faculty member found the photograph is simply a help to the reader. Crediting either university or both is just fine.

QUESTION: *An editor described the following project and then asked a question. As reported in a national news story, a couple*

recently completed a project to visit every county in the lower 48 states. The editor wants to describe the project as a lead-in to an advertisement for the publisher's American County Histories database. If they are referred to as a "couple from Michigan" are there any legal problems? What about using their actual names? There would be no indication in the advertisement that they endorse the database.

ANSWER: There is no problem with referring to these individuals as a couple from Michigan. If the advertisement quotes the newspaper article and uses their names as reported, there also should not be any difficulty. Because the ad is for commercial purposes, however, it may be polite to seek their permission.

QUESTION: *A public librarian asks whether libraries may make copies of locally published books, place the original in a protected collection and then circulate the copies?*

ANSWER: The fact that the books are locally published makes no difference for copyright purposes. While it may benefit the library to duplicate the books and protect the originals, it directly harms the publisher. Publishers are delighted to sell multiple copies of the books. Either the author or the publisher owns the copyright and permission should be sought for reproducing the work. It may be easier to get permission to duplicate the work from local publishers, however.

QUESTION: *A public librarian queries whether libraries should function as scanning agents for patrons?*

ANSWER: Libraries should treat all reproducing equipment as it treats the photocopier. While it is certainly permissible to assist patrons to use the equipment, librarians should not perform the scanning for users (except for disabled users who need such assistance). The library does have the responsibility of placing the copyright warning required under section 108(d) of the Act for photocopiers and all types of reproduction equipment.

QUESTION: *To what extent must an image be transformed so that it qualifies as a fair use?*

ANSWER: Courts are struggling to answer this question, and there is no definitive quantity of change that must occur to make a use a transformative use of a copyrighted work. It is very fact specific, and courts focus not only on the work, but also on the use. In other words, courts apply the four fair use factors (use, nature, amount and market effect). The

best way to describe the amount of transformation that must occur for use to be sufficiently transformative that it qualifies as a fair use is to say that it requires a great deal of changing — almost so much that it no longer resembles the original image. So, cropping the photo is not enough or using only a portion such as the central figure or central building, etc., is insufficient. A recent case that deals with this issue is *Carion v. Prince*, 714 F. 3d 694 (2d Cir. 2013), in which an appropriation artist had used photographs to create his art. He enlarged the photographs, sometimes blurring or sharpening the images and adding something new such as color to the photographs. The court found that this was transformative use.

QUESTION: *A publisher wishes to re-print a poem in a magazine and has tried for months to either find the copyright holder or get a response from the copyright holder. Is it okay to publish the poem with a line that says something like "Every effort has been made to contact the copyright holder" and also add that should the copyright holder come forward at some point the journal will publish the proper credit line as a correction?*

ANSWER: It is unclear what is meant by "okay." The copyright owner may come forward and demand royalties after the fact, and if the journal has published the poem without permission, it must pay. While it may be possible to negotiate for a lower royalty, the journal is bound to pay.

The fact that the journal has tried repeatedly to get permission does not excuse the use without permission. On the other hand, perhaps publication of the poem with the disclaimer would be accepted by the copyright owner without any royalties, but it is definitely the copyright owner's choice. What the journal must do when it cannot find the owner is determine how important publication of the poem is to the journal. In other words, is the journal willing to assume the risk? The risk may be small or even nonexistent, but it is still a bit of a risk.

QUESTION: *A high school teacher inquires about textbooks that include urls for students. What can students do at these sites? For example, print, copy, or rewrite?*

ANSWER: These urls serve as a cross reference to material published on the Web. Students may do with the material found at these urls just as they can with any other materials they found on the Web. It likely is fair use for them to print and copy the material for work in their classes and would be considered a research use. Reposting the material to the Web, on the other hand, is likely to be problematic since it is no longer for their own personal use. 🐼