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# Questions and Answers--Copyright Column

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# Questions & Answers — Copyright Column

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**QUESTION:** *A university librarian writes that he receives notifications from Research Gate for his institution's faculty authors when new content becomes available on their Research Gate pages. He has seen publisher pdfs posted which appear to be directly contrary to the publisher's terms and conditions. In such cases, who is the infringing party? Sometimes the papers were added by a co-author but appear the faculty author's page. Does that matter?*

**ANSWER:** It is possible that the terms and conditions of a publisher are not violated at all. Some publishers permit such posting some years after publication, and to determine whether the posting is a violation would require a review of each publisher's terms and conditions. Assume, however, that the posting of an author's content does violate the publisher's terms and conditions; it is the poster who has infringed copyright by reproducing the article without permission of the copyright owner. Posting without permission by one other than the copyright owner typically is infringement unless the owner has given permission for the posting. A co-author who has not transferred the copyright can post the article without permission of the other co-author. But if the poster is not an author who owns the copyright, there likely is infringement if the publisher has not given permission.

**QUESTION:** *An employee at a small Christian publisher asks a question concerning a work of art. Recently, a piece of original art was purchased by church members and donated to the denomination because of its justice work in Nigeria. The organization is exploring the feasibility of making quality prints of this art and wants to include the appropriate copyright information (and/or credit line) on the prints. Who owns the copyright? Should the organization obtain permission before making copies? If so, what copyright information*



*should be placed on the prints? Is the crucial date when the church acquired the work or the date that it was originally created?*

**ANSWER:** When someone purchases a work of art, the copyright remains with the artist unless there is a written transfer of copyright (as opposed to transfer of the artwork itself). A typical sale of a work of art does not include a transfer of copyright. So, to make reproductions permission of the artist is required absent purchase of the copyright itself.

The crucial date is the date that the work was created and not the date of the church's acquisition. The appropriate information is (1) name of the artist; (2) year of creation (or copyright registration, if registered; and (3) the copyright symbol (or the word "copyright" or abbreviation "copr." The church may wish to include some other statement to indicate that the sale of the prints of the work support its justice work in Nigeria.

**QUESTION:** *If a colleague at another institution requests a copy of a journal article or book chapter via a professional listserv, may an academic library provide the requested copy?*

**ANSWER:** Yes, and the library should treat it as an interlibrary loan. The colleague would be the recipient as a part of the borrowing institution, which would be responsible for the recordkeeping.

**QUESTION:** *A public librarian asks whether the library may add music to a PowerPoint presentation to be shown solely to a group of its library assistants.*

**ANSWER:** Section 106 of the *Copyright Act* details the categories of copyrighted works. In the House Report that accompanied the Act, H.R. 94-1476, there is a statement that routine meetings of businesses and government personnel are not public performances, and a PowerPoint presented to employees of a public library is such a meeting for govern-

ment employees. The copying of the recording to play with the slides normally would require permission from the owners of the copyrights in both the underlying musical composition and the recording. It is very likely though that this use is a fair use due to the restricted nature of the performance. The library should guard against posting the PowerPoint with the music on the Web, however.

**QUESTION:** *When someone writes to letter to a member of the House of Representatives does the person hold copyright in the correspondence they initiate? The correspondence is now a part of a research collection at a university library.*

**ANSWER:** Letters written by members of Congress as part of their official duties are in the public domain as works by U.S. Government officials, but letters from constituents are different. Constituents are not public officials, so their letters are not in the public domain unless the copyright has expired. There is an argument, however, that there is an implied license to make the letter available along with the response from the member of Congress. Unless the research collection is to be placed on the Web, just having the letter in the collection presents no problem. Further, there may be no problem in posting the correspondence on the Web, but it would be preferable to obtain permission from the author of the letter.

**QUESTION:** *What constitutes a "signing" for works of visual arts? Does it count if the signature is stamped on the back of the work?*

**ANSWER:** This question relates to the *Visual Artists Rights Act* found at section 106A of the *Copyright Act*. It extends two additional rights to the creators of works of visual arts identified as one-of-a-kind paintings, sculptures, and photographs or fewer than 200 signed and numbered prints or reproductions thereof. The *Act* applies only to works that are publicly displayed, and the additional rights afforded to the artist are attribution and integrity, which endure only for the life of the artist. Attribution is the right to have any publicly displayed work attributed to the artist. The right of integrity is the right to prevent the intentional "distortion, mutilation, or modification" of a publicly displayed work.

"Signed" is not defined in the *Act*, but it likely envisions an actual signature. The *Free Legal Dictionary* defines signed as "a mark or sign made by an individual on an instrument or document to signify knowledge, approval, acceptance, or obligation." It further states that the word "signature" generally means written with one's own hand, but it is not critical that a signature actually be written by hand for it to be legally valid. Therefore, stamping the signature on the work may be sufficient. 🌿

## Cases of Note from page 53

common features in the "overall design" of the two. See *KeyStone Retaining Wall Sys., Inc. v. Westrock, Inc.*, 997 F.2d 1444, 1450 (Fed. Cir. 1993).

Our court holds that you should be getting the overall feel of the thing and not focusing on minute details in configuration. The trial court focused on the micro stuff and not the macro.

The trial court said **Amini's** design had "four hollow metal orb and bed posts" and **Anthony/Chang's** didn't. But they weren't addressing "overall similarity."

So summary judgment is reversed with each side bearing its own costs.

And they get to start all over again. Full employment for lawyers. Perhaps explaining the lack of lion's paw floral on the two company Websites. 🌿