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The Scholarly Publishing Scene--Multi-Client Studies

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the recommendations that would make them more palatable and workable for libraries.

QUESTION: A librarian in a for-profit educational institution asks: (1) whether she may take advantage of the section 108 library exceptions; (2) whether the faculty may make copies and show movies for their classes, or does the school have to purchase the license; and (3) whether anyone in the institution may use the Fair Use Guidelines.

ANSWER: (1) Section 108 of the *Copyright Act* does not use the term "nonprofit," but instead, subsection (a) sets out three requirements for a library to qualify for the exceptions contained in the remainder of 108. First, the reproduction or distribution must be done without "direct or indirect commercial advantage" to the library. (This is the closest requirement to anything like "nonprofit," but it is different.) Second, the collection must be open to the public or at least allow persons doing research in the same or a similar field. Third, the reproduction or distribution or the work must contain the notice of copyright.

A court has never answered the question of whether a library in a for-profit school can qualify for the library exceptions since there may be some indirect commercial advantage. Most library copyright experts say that such libraries can qualify, however.

(2) For faculty members making copies of copyrighted articles, poems, etc., for their classes, it is certainly safest to take a license. To some extent it depends on how willing the school is to take the risk. One can get licens-es from individual publishers or through the **Copyright Center** including a campus-wide license which typically costs about $5 per student per year.

For showing videos in classes, however, the school definitely needs a license. Classroom performances and displays are covered under section 110(1) of the *Act* which permits non-profit educational institutions to perform video works in the course of instruction. But, this exception is not available to for-profit schools.

(3) It is unclear what is meant by the Fair Use Guidelines. Certainly, individual students and faculty members conducting research may take advantage of section 107 fair use. The first fair use factor "purpose and character of the use" is harder for someone in a for-profit entity to claim, however, but it is not impossible. No single fair use factor answers the question alone, and one must apply and balance the other three factors to determine whether a use is a fair use or not: nature of the copyrighted work, amount and substantiality used, and market effect.

QUESTION: A library assistant in a health science library asks if she can provide a copy of a journal article to a patron or via interlibrary loan if the article makes up the entirety of a specific issue of a journal. For example, a patron who requested an article in a supplement of a medical journal. That supplement contained only that one particular article, however.

ANSWER: Section 108(d) of the *Copyright Act* says that libraries may provide a single copy of an article from a journal to a patron. The exception contains neither a page limitation nor any restriction on what happens when an article comprises an entire issue. If it is a single article, the library may reproduce it for the patron. The assistant should make sure that it is just one article and not a symposium issue which has multiple articles on the same topic, however. Further, this assumes that the journal is a subscription and not a licensed digital journal. If it is a licensed journal, then the terms of the license agreement apply regarding reproducing copies and to whom they may be provided.

QUESTION: Does the library in a for-profit school need a license for each film or even books it lends to students?

ANSWER: Good news! Lending books or films to the school's students, faculty, or staff does not require a license. This is covered by the first sale doctrine instead of section 108. The first sale doctrine is found in section 109(a) of the *Copyright Act*. It says that when someone has a lawfully acquired copy of a copyrighted work, he or she may dispose of that copy however he or she chooses. This also means that libraries may lend the copies they own without any additional payment of royalties to the copyright holder. It does not permit reproduction of the work but applies just to the copy owned. Note that the first sale doctrine applies to acquired copies, meaning purchased or donated copies, and not to digital copies licensed to the library. In case of licensed digital copies, the terms of the license agreement concerning the lending of copies apply. 🌳

The Scholarly Publishing Scene — Multi-Client Studies

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Back in the early nineties, after the initial assignment rush that attended the founding of my publishing consulting practice began to wane and I needed to goose revenues, I took a leaf out the playbook of much larger consulting companies and conducted two major multi-client studies. Such studies involve getting multiple organizations interested in a particular issue to support research culminating in a report that describes the research, tabulates results, and summarizes and interprets them. The value for the supporting organizations is that the deliverable is worth more than the amount of money each puts into the study. The benefit to the organization carrying out the study is that the total amount of money collected subsidizes a major research effort and provides a reasonable profit.

The first step, of course, is to pick a topic of sufficient interest to stakeholders in a changing, or better yet collapsing market or a burgeoning customer demand. Then give the research project a sexy name that will encourage them to listen to a proposal. The names for my two multi-client studies were **The Changing Landscape for College Publishing**, which addressed forces buffeting the college textbook publishing business and **The Developing Worlds of Personalized Information**, which dealt with the future of professional and scholarly publishing.

The next step is to define the methodology. Both studies would use the same one, basically. Research would be carried out through a combination of in-depth face-to-face and telephone interviews and written questionnaires. Next determine how the qualitative and quantitative data and conclusions and recommendations would be presented in a final report.

Then we had to find potential sponsors and sell them on their need for the study. Fortunately, my partner, **Carol Gold**, whom I brought in for her unmatched market research expertise in the publishing area, and I had enough industry connections we knew well enough so that we could get an audience without having to make cold calls. We sounded believable enough to get 13 sponsors for the college publishing study at 15 grand each. They were **Barnes & Noble**, **RR Donnelly**, **IBM**, **Kinko's**, **The Maple Press**, **Xerox**, and seven publishers, including **WC Brown**, **WH Freeman**, **Houghton Mifflin**, **McGraw-Hill**, **Macmillan**, **Thomson**, and **Times Mirror**. Most of these names will be familiar to readers of this column, others not so much perhaps.

We did a bit better with the professional and scholarly publishing study, again at 15 grand per sponsor. Besides **RR Donnelly** and **Lotus Development**, we had 13 publishers and information services organizations, including **Butterworth Heinemann**, **Elsevier**, **Engineering Information**, **Harcourt Brace**, **McGraw-Hill**, **Mead Data Central**, **RS Mean**s, **The New England Journal of Medicine**, **OCLC**, **Scientific American**, **Thomson**, **Times Mirror**, and **Williams & Wilkins**. It was great, but not totally great. **Carol** and I had both had lengthy stints at **Wiley**, but we couldn't get **Will Pesce** and his crew to back either study.

The Scholarly Publishing Scene
from page 68

The in-person interviews were conducted in numerous locations around the country in respondents' offices; they lasted an hour on average. For the college publishing study, I conducted all of these interviews myself (it was back to my old acquisition editor days, when I used to roam college campuses looking for potential book authors.) For the professional and scholarly publishing study, I teamed with four outside interviewers to conduct over 150 in-person interviews, 90 with users and buyers of information and 60 with representatives from organizations involved in the information distribution chain. For the telephone interviews in both projects, **Carol** and I used an interview guide as a checklist and selectively recorded interviews (the tape recorder picked not only the sound of our voices, but also my fountain pen scratches as we took notes.)

The written questionnaires involved larger numbers of respondents. In the case of the college publishing study, different sets of written questionnaires were distributed to different groups. We mailed one questionnaire to the 829 members of the **Textbook Authors Association** and received 350 responses (pretty good.) With the help of **Barnes & Noble** and the **National Association of College Stores**, we emailed another questionnaire to college bookstore managers and received 1,033 re-sponses. Faculty members and students helped us hand out and collect a third questionnaire for students; we received 320 responses.

For the professional and scholarly publishing research project, we mailed 7,522 questionnaires to users and buyers of professional and research information. Lists of names were provided by the study's sponsors. To obtain an adequate response, we offered the incentives of making a contribution on the respondents' behalf to the **March of Dimes Birth Defects Foundation** and of sending a summary of survey findings to requesting respondents. A month or so later we sent out a second questionnaire mailing to non-respondents. This time we included a crisp one-dollar bill and a small note requesting a speedy response. The dollar dramatically increased response rates across all sponsor lists. "It's amazing," our report noted, "how well this techniques worked with profession-als!" All told, of the 7,252 questionnaires that were delivered successfully, 1.986 responses were received — a 27.4% response rate, which among professionals is considered very healthy. Disciplines represented among respondents included architecture and construction, business and finance, computer science and engineering. education, and medicine and health care. We also heard from librarians and industry players. A little over a third of respondents were in the 25-39 age range, a little less than half were 40-59, and 10% were over 60. Eighteen percent of respondents worked in companies with fewer than 10 employees; 24%, 10-99 employees; 16%, 100-400; 9%, 500-999; 24%, over 1,000; and 9% didn't answer that question. All in all, we reached a diverse collection of respondents.

Developing and selling a multi-client study, doing interviews, and writing a multi-client study report involves some expenditure of funds, but mainly time and sweat. Printing and mailing questionnaires costs some money. A major expense accrues from the services of a company that not only tabulates answers to multiple-choice questions but also cross-tabu-lates them (e.g., of those who have electronic databases available to them at work, how many use them and how many use them often?).

The final expenses involve printing the report, hiring a hall, and feeding the sponsors at a conference where the report is presented, and sponsors get to ask questions and provide feedback. **The Changing Landscape for College Publishing** came out in June 1992. It contained six cartoons penned by **Mort Gerberg**, who drew cartoons for *The New Yorker* and *Publishers Weekly*. **The Developing Worlds of Personalized Information** came out in September 1993. It contained humorous stock photos. Both reports were perfect bound, in 8-1/2 by 11 trim size. They were printed-on-demand on **Xerox** DocuTech machines. It was the early days of on-demand printing, so printing lead time was a couple of days at most. I was able to tell sponsors that reports would be available at 11:59 pm on the last day of the month that we promised they would be ready. 🦃