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Questions and Answers--Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *An academic librarian inquires about a collaborative effort between his institution and another to share holdings information on a Website that is password protected. Holdings data are annotated to include a brief abstract which staff members produced if an abstract was not provided by the publisher. The data is arranged by subject on the Website and it has been very popular with students and faculty at the two institutions. If one of the institutions decides to open the Website to the public, what is the recourse? Which institution is liable if copyright is infringed?*

ANSWER: It is not clear that there are copyrights in the holdings data, but there may be. The two institutions would jointly own the database they have created as a compilation, but the individual bibliographic entries are not copyrightable as they consist of factual data only. The published abstracts may be copyrighted and are owned by the publishers/authors that created them, but it is unlikely that either a publisher or author would complain about their inclusion on the Website. The abstracts written by staff members are owned by their respective institutions as they are works for hire, typically written as a part of the staff members' duties.

If the two institutions signed a contract to make the holdings data available on a password protected Website, the institution that makes the Website available to the public has breached the contract. Whether it is practical for one institution to sue the other for enforcement of the contract is an issue that legal counsel at the respective institutions should determine.

QUESTION: *An author reported that she found a copy of my chart "When Works Pass into the Public Domain" at <http://www.unc.edu/~unclng/public-d.htm>. She asks about using a postcard published between 1923 and 1978 in a storybook she is writing. There is no copyright notice on the card and she wants to know whether it is in the public domain based on the chart. The postcard does include the name of the publisher and the photographer, but she has been unable to locate any information about either of them in order to seek permission to use the card.*

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Just as in the housing development, relief would be money damages.

But Paula was not asking for the destruction of the film. She merely wanted money damages. If MGM lost, it would be entitled to subtract from damages paid any expense in marketing the movie plus profit attributable to its own enterprise.

And there's an area for some creative Hollywood accounting. 🐼

ANSWER: A postcard published between 1923 and 1978 was protected by copyright if it was published with a notice of copyright: the copyright symbol or the word "copyright" or the abbreviation "copr." To constitute a valid notice, this should be accompanied with the name of the copyright owner and the year of publication.

Even though the exact publication date was not included, it may be possible to approximate the date based on clothing of those depicted, automobiles, storefronts, etc. Postcards published between 1923 and 1978 without a copyright notice are now in the public domain; however, one of the three required elements of notice is present on the card. Some courts have been pretty liberal in holding that defective notices did not invalidate the copyright. There is some possibility that the work is under copyright if the copyright was renewed after the first 28 years, but it not very likely. Even with this, however, it is unlikely that the publisher would come forward and complain about use of the postcard in a book. Sometimes authors who want to use a work in their books just go ahead and assume the risk if their publisher agrees.

QUESTION: *An elementary school teacher asks how to use PowerPoint slides in the classroom without being penalized.*

ANSWER: Under section 110(1) of the *Copyright Act*, graphic works may be displayed in a classroom of a nonprofit educational institution. The issue under this section of the Act is performance and display, not reproduction. Most argue that creating PowerPoint slides that reproduce copyrighted works in order to display them in a nonprofit classroom in the course of instruction is not actionable reproduction. So, displaying the slide to a class is no problem.

Further, permitting students to make their own copies of the slides used in class for private study may well be fair use.

QUESTION: *A university archivist indicates that her institution has a collection of the personal papers of a former U.S. Senator which includes extensive scrapbooks of newspaper and magazine articles that he collected. The archivist wishes to scan these and make them available on the Web. What are the copyright problems with doing this?*

ANSWER: The copyright in these articles typically is held by the publisher of the magazine or newspaper. It may be infringement to post these as such posting is a reproduction of the original copyrighted work. Many libraries and archives have gone ahead and scanned this material and made it available but with some restrictions on use. For example, the following statement appears in one such archive: "Copy-

right is retained by the authors of items in these papers, or their descendants, as stipulated by United States copyright law." Other archival collections indicate that if someone wants to reproduce one of these articles from the Web, permission should be obtained from the copyright owner.

As more newspapers make their back files available electronically, it may be possible to link to those articles rather than reproduce them.

QUESTION: *A public librarian asks about archiving electronic copies of specific journal articles when the library has a subscription to the electronic journal. The reason for the archiving is to provide easy access because the staff knows that copies of the article will be requested repeatedly.*

ANSWER: While this practice certainly makes sense to a librarian because it facilitates patron use of materials to which the library subscribes, the answer is controlled by the license agreement for the particular journal. If the license is silent as to whether archiving journal articles is permitted, librarians should ask the publisher for such permission and make sure that this is covered when the license agreement for that journal is renewed.

QUESTION: *In his book "Lies Across America," author James Loewen used case studies of museum text and interpretation that he felt were inaccurate. Did he seek approval before reproducing this text in his book from the curator or institution? Does a museum have ownership to the text, exhibit catalogs, etc.?*

ANSWER: Loewen was especially critical of how highway markers and descriptive plaques on monuments across America were inaccurate, often describing events that never occurred and omitting any mention of minority group participation. He quoted the language of the marker, plaques, etc., to point out the inaccuracies. Most of these were short statements that were unlikely to qualify for copyright protection. Assuming that he quoted longer descriptions from museum catalogs, there is no way to know whether he had permission. It may have been unnecessary for him to get permission, however. The fair use provision of the *Copyright Act of 1976* specifically lists exceptions from the Act's prohibition on copying. So, portions may be reproduced, i.e., quoted, for the purpose of criticism. The author's book certainly qualifies as criticism.

Museums do own the copyright in exhibit catalogs that they prepare, both the text and the compilation of images (not necessarily the individual images). Such ownership does not exempt the catalog from being quoted for criticism. 🐼