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Questions and Answers--Copyright Column

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Questions & Answers — Copyright Column

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QUESTION: *A music librarian asks about term extension for sound recordings in the European Union that would extend from 50 to 70 years the copyright term for sound recordings. Has it been enacted?*

ANSWER: Directive 2011/77 was adopted September 12, 2011 to extend the term of protection for performers and sound recordings to 70 years which would give to performers the same protection that authors enjoy — 70 years after their death. The stated reason for the extension was to improve the income for performers who often do not have other regular salaried income. It will also benefit record producers who will generate additional revenue from the sale of records in shops and on the internet.

Typically EU directives mandate that every Member State must achieve certain results but countries are free to determine how to do so. This directive was to be effective in the member countries by November 2013. As is true with many EU directives, this may or may not occur by that date.

The text of the Directive may be found at: http://ec.europa.eu/internal_market/copyright/term-protection/index_en.htm.

QUESTION: *An academic librarian asks whether student-created manuals (approximately 75-100 pages) can be filled with handouts and resources for their placements agency or school district to use (e.g., group therapy exercises, time management tips, etc.). Some of the exercises and handouts collected are from copyrighted books. These manuals/booklets are never published and are not cataloged or added to the collection by the library. Is it problematic for students to donate the collections of materials to their*

placements without written permission? Is there some kind of disclaimer they should put in the front of the manual about this?

ANSWER: The manuals that the students prepare as a course project are pretty definitely a fair use when the only copy goes to the faculty member for grading, etc. When single copies of the copyrighted materials are reproduced by the student for the manual, it is excused as a fair use.

The copyright problem arises when the student donates the manual to the placement because now the materials no longer are just within the school where the student is compiling the manual for a course. It may be fair use to donate the manual to the placement site, but it is not so clear. The problem is made worse when the placement wants to reproduce those exercises and materials to use. That placement location needs permission to reproduce the materials. Thus, if the manual is donated, a disclaimer on the front which says that reproduction of the materials contained in the manual likely require permission would help.

Another alternative would be for the student to prepare a brochure that contains bibliographic references to materials on the Web with urls, traditional books, etc., which will be presented to the placement site. This presents no problem as there is no longer any reproduction.

QUESTION: *In 1973, a college recorded several oral histories as part of a project with three other colleges and universities. It interviewed older people, all but three of them born prior to 1920. Except for the three younger folks (from the 1930s and one from 1947) they are all surely now deceased. In fact, in one instance, it is clear that the interviewee is long dead, and so is her family. The library cannot find any release letters, but there is a monograph on the project that specifically states that there was a release form but that lots of the interviewees felt that they did not have anything interesting enough to merit signing a release form. The interviewers were students who were doing this as part of a class project or perhaps as work study students assigned by the College to the project.*

A local researcher/writer is eager to use these oral histories in her local history research. It seems absurd not to allow her to do so, even without any specific permissions from the now deceased interviewees. The researcher self-publishes, so the idea that she would make any sort of financial gain from their utilization is quite remote.

(1) Who holds the copyright on these oral histories? (2) Would the researcher's

use be fair since there is no financial gain anticipated? (3) If the interviewees are long dead, do these become public domain? (4) And more to the point, may the library allow these to be used without specific letters of release from the participants? (5) If not, should the library try to secure some kind of posthumous permission?

ANSWER: Naturally, the answers to these questions would be much easier if the library could find releases, but often these projects did not have them in the years before copyright was understood to be such an issue. In 1973 the 1909 Copyright Act was in effect. Works were protected for 28 years. But works published after 1964 were automatically renewed for copyright for a total of 95 years after the date of first publication.

(1) Ownership of the copyright is another issue. The institution would own oral histories, although the interviewees would own their words. Based on the description provided, however, most of the interviewees really were not too worried about copyright. Thus, the institution owns the histories and may decide what to do with them. (2) It seems that the library should let the researcher use the oral histories because her use would be fair use, especially if she is simply quoting from them and not republishing the entire oral history. The library may ask that she cite them as "Unpublished oral histories owned by the institution." (3) Unpublished works that existed before 1978 entered the public domain at the end of 2002 or life of the author whichever was longer.

For these works, the term would be life of the author, so some of these works would be public domain and some not. (4) Should the library decide to post the histories on the library's Website ultimately, it might do so with a disclaimer about how the histories were gathered, that they have never been published, and the copyright status of them is unclear.

In actuality, there is little risk in just posting them. (5) Trying to get posthumous permission would be awful. Even with published authors, heirs are usually far worse about giving permission than was the original author.

QUESTION: *Now that the judge in the Google Books case has decided that Google's scanning of the works is fair use, is the case over?*

ANSWER: No, as indicated in earlier columns, this is the case that will not die! The U.S. Court of Appeals for the Second Circuit directed the federal district court judge to rule on whether the Google Books Search constituted fair use prior to deciding whether the suit warranted class action status. On November

continued on page 43



Legally Speaking from page 41

one; and if you repeat it frequently enough, people will sooner or later believe it.

Given **Judge Chin's** extraordinarily careful analysis of the complex issues raised by the proposed settlement two years ago, one might have expected a far more insightful analysis of the fair use issue. But it is what it is, and we will have to wait to hear what the appeals court says. For the time being though, **Google** has won this battle and maybe the war. 🌂

Mr. Hannay is a partner in the Chicago-based law firm, Schiff Hardin LLP, and a frequent contributor to Against the Grain and the Charleston Conference.

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Questions & Answers from page 42

14, 2013, **Judge Denny Chin** dismissed the **Author's Guild** suit against **Google**, finding that **Google's** scanning was transformative and therefore was fair use.

Judge Chin stated: "In my view, **Google Books** provides significant public benefits. It advances the progress of the arts and sciences, while maintaining respectful consideration for the rights of authors and other creative individuals, and without adversely impacting the rights of copyright holders. It has become an invaluable research tool that permits students, teachers, librarians, and others to more efficiently identify and locate books. It has given scholars the ability, for the first time, to conduct full-text searches of tens of millions of books. It preserves books, in particular out-of-print and old books that have been forgotten in the bowels of libraries, and it gives them new life. It facilitates access to books for print-disabled and remote or underserved populations. It generates new audiences and creates new sources of income for authors and publishers. Indeed, all society benefits." See <https://www.dropbox.com/s/6ndmugw443nz36w/google%20summary%20judgment%20final.pdf>.

So why is the case not over? The **Authors Guild** has already announced that it will appeal the ruling. 

Rumors from page 26

Marion's Swamp Fox Restaurant. What a coincidence. And **Charles** will be guest editing the November issue of **ATG** on textbook adoption in academic libraries. Coming up!

Did you meet **Kathleen Kern**? She is researching the publisher-library relationship in the STM information marketplace. Over the past two years, during the

Charleston Conferences, **Kathleen** has been conducting interviews.

How Rumors do start! **Erin Luckett** <eluckett@newsbank.com> said that one of her colleagues said she was talking with a librarian that attended the **2013 Charleston Conference** and the librarian heard from a cab driver that there was talk of moving the conference outside Charleston because it was getting too big.... So in addition to the regular comments from attendees, something else to be aware of....gossip from a cab driver.... Don't worry, the **Conference** doesn't want to leave Charleston!

Speaking of the **Charleston Conference**, the evaluations are in and y'all did a good job! More people than ever filled out the electronic evaluations! Hooray! Comments about the Saturday Charleston Premiers were very positive. Kudos to **David Myers** who I understand is now CEO at **Desq Data Solutions**. Thanks, **David**!

continued on page 76

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Watch our Website for program and registration announcements: <http://www.nasig.org>. Questions? For more information, contact <conf-plan@nasig.org>. 