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Questions and Answers--Copyright Column

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court largely tracked the same logic as before.

Where will it all end? Spurred by the apparent success of **Georgia State**, other colleges and universities have adopted similar eReserve and/or eCoursepacket approaches. Publishers have fought back, filing similar cases against U.S. universities, including **UCLA**, and against foreign institutions, including **York University**, **Delhi University**, and in New Zealand. The jury is still out, but the publishers have so far not done well in the Indian case.

Delhi University Photocopying Case

In September, a trial court in India ruled against publishers in an even more blatant case of copying, one where the university worked directly with a photocopy service to make hardcopy course packets for sale to students. See *University of Oxford et al. v. Rameshwari Photocopy Services et al.*, CS(OS) No. 2439/2012, High Court of Delhi, Decision dated 16 September 2016. The trial judge stated:

[Providing course packets], in my view, by no stretch of imagination, can make the [photocopy shop] a competitor of the [publishers]. Imparting of education by the defendant ... University is heavily subsidized with the students still being charged tuition fee only of Rs. 400 to 1,200/- per month. The students can never be expected to buy all the books, different portions whereof are prescribed as suggested reading and can never be said to be the potential customers of the plaintiffs. If the facility of photocopying were to be not available, they would instead of sitting in the comforts of their respective homes and reading from the photocopies would be spending long hours in the library and making notes thereof. When modern technology is available for comfort, it would be unfair to say that the students should not avail thereof and continue to study as in ancient era. No law can be interpreted so as to result in any regression of the evolution of the human being for the better. [Page 84]

Social advocates hailed the verdict, saying the court had correctly upheld the supremacy of social good over private property. Students had rallied behind the photocopyer, saying most of the books were too expensive.

The publishers plan to appeal, arguing that the trial court's approach goes far beyond any reasonable interpretation of the exception in the copyright act for educational copying.

Stay tuned for next year's updates of these fast-changing legal areas.

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Questions & Answers — Copyright Column

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QUESTION: *A librarian at the National Library of Medicine notes that significant changes have taken place in hospital libraries over the past few years and asks about copyright concerns due to these changes. Today, many hospital libraries have neither a physical library space nor any staff with extensive library training. They have become borrow-only libraries, and borrow via DOCLINE interlibrary loan. (1) Can these "libraries" be considered libraries for the purposes of section 108? (2) Are cached and ephemeral digital copies delivered to borrow-only libraries from which that library then makes copies to deliver to their patrons counter to 108? (3) Should these libraries be moved away from DOCLINE and into Loansome Doc, more of a document delivery system but without the commercial prices?*

ANSWER: (1) While much has changed in society and in the library world, section 108 has changed only in minor ways. The statute does not define library, but there are some criteria that have to be met in order to take advantage of the of the 108 exceptions. First, any reproduction must be made without direct or indirect commercial advantage. Second, the collection must be open to the public or to researchers doing research in the same or a similar field. Third, reproductions must contain a notice of copyright.

From the description, there is no collection that can be open to the public, so it appears that these hospital libraries do not meet one of the criteria to take advantage of the section 108 exceptions. The purpose of DOCLINE is "to provide efficient document delivery service among libraries in the National Network of Libraries of Medicine." So, it is reasonable to assume that if the national network defines those hospital libraries as libraries, then they are so. The hospital library would be covered by section 108(g)(2), the suggestion of five, for receiving copies through DOCLINE interlibrary loan.

(2) Just as other libraries are not permitted to retain cached copies for a time longer than reasonable for delivery to the patron, the same is true of these hospital libraries. The statute does not permit creation and use of a database of digital copies received via patron requests to be used repeatedly. Copies received from ILL must become the property of the user and not that of the hospital library, according to section 108(d)(2). Further, under section 108(g)(1) there may be no concerted or systematic dis-

tribution of copies as would occur if the library creates a database of digital copies requested through ILL.

(3) Moving these libraries out of DOCLINE interlibrary loan and into Loansome Doc is an administrative decision that NLM can make, and it may be a better choice for copyright purposes. Loansome Doc allows registered users in country and abroad to send a request to a medical library and receive full-text of a document. The ordering library may charge a fee. If there are any royalties due, the ordering library would forward those to the copyright owner.

QUESTION: *A college music composition major seeks help in determining the copyright status of a short poem which he wants to set to music. His grandmother found a framed copy of the poem at a garage sale some years ago. The poem has no credited author; when searching the lines of the poem, there are few results. Each result credits "Unknown Author." Nor can the student locate information about when the poem was published. For poems of this nature, where no information can be found about its origin, what are the laws regarding public use?*

ANSWER: It is certainly possible that the poem is in the public domain, for a variety of reasons. One reason might be the age of the poem, another reason could be that the copyright owner published the poem without notice under the **1909 Copyright Act**, in effect until 1978. Or the poem may have been used so often, with no author attribution or copyright notice that the work has moved into the public domain.

So, the real question may be whether there is any risk in setting the poem to music and either publishing it or performing it publicly. If there is no commercial use of the poem, the risk is very slight due to the search the student has conducted and the fact that the poem was repeatedly cited as "Unknown Author."

QUESTION: *A public librarian asks about the copyright status of documents from the United Nations.*

ANSWER: Documents produced by the United Nations are protected by copyright. The UN Website (<http://www.un.org/en/aboutun/copyright/>) states that permission is required to use, reproduce or transmit by any means materials from its Website. There is an exception for news-related materials which may be

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used if credit is given and the UN is notified of the use. To request permission to use UN documents, see United Nations Publications: Rights and Permissions, <https://shop.un.org/rights-permissions>.

QUESTION: *A corporate librarian asks about creating a short video highlighting the library's services for its users. She wants to use a popular song as background music in the video. How does the company obtain permission for using the music?*

ANSWER: There are several possibilities for obtaining permission to use music in a corporate video. First, it is important to note that a company's ASCAP and BMI license do not cover such use. Those licenses are for public performance of the music only. Incorporating music into a video requires a synchronization or "synch" license as well as a master use license for use of the sound recording.

An alternative is to use music covered under a Creative Commons license (see <https://creativecommons.org/about/program-areas/arts-culture/arts-culture-resources/legalmusic-forvideos/> for a list of such royalty free music). For companies that want greater assurance, there is **RightFind Music** from the **Copyright Clearance Center**. **RightFind** provides a

Website to download and manage music from a collection of more than 500,000 tracks licensed for use in company presentations. For an annual fee, the license provides the right to use high-quality music to enhance training, marketing and sales presentations and videos along with the assurance that the organization is backed by indemnification.

QUESTION: *A university librarian asks about the new regulations for designating an agent under the Digital Millennium Copyright Act. How does a university now designate an agent?*

ANSWER: Under the *DMCA*, service providers such as colleges and universities that provide email services and host Web pages may avoid liability for infringement of copyrighted materials stored on their servers in the course of providing the internet service, see section 1201 of the *Copyright Act*. Among other requirements, service providers that wish to take advantage of the exception are required to name an agent to receive infringement complaints from copyright owners. The interim regulations that were in effect required the filing of a form and payment of a one-time fee to the Copyright Office. If the agent or any other information changed, the service provider was required to correct the information and pay another fee.

The new regulation substitutes electronic filing plus greatly reduced fees. The regis-

tration is good for only three years and must then be renewed, however. All of the old paper designations of an agent expire at the end of December 2017. The difficulty for service providers will be remembering to renew the designation to avoid liability for copyright infringement by anyone using the service provider's system.

QUESTION: *An archivist inquires about whether digitizing a letter written before 1978 and making it available on the Web creates any copyright concerns.*

ANSWER: The short answer is yes. But it depends on when the letter was written, whether it has remained unpublished, etc. If the letter was written before 1978 and remained unpublished until the end of 2002, it passed into the public domain then or life of the author plus 70 years, depending on which is greater. If it was written before 1978 but was published between then and the end of 2002, the copyright extends until the end of 2047 or life of the author plus 70, whichever is greater.

Digitizing the letter for preservation purposes is unlikely to be a problem. It is the posting it on a Website that may be problematic if the letter is still under copyright. If the letter is still under copyright, the archive should request permission from the copyright owner to post the letter on the Web. 🌳

Optimizing Library Services — Collaborations and Partnerships for the Modern Academic Library

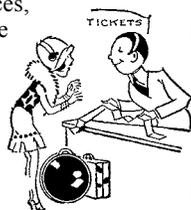
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The world of higher education is in an era of continuous change. Rising tuition and fees, accumulating student debt, and a perceived disconnect by the general public between a college education and personal prosperity have forced colleges and universities to examine their products and change the ways they do business. Pressured more than ever to demonstrate their impact on students and the broader economy, colleges and universities are now viewed through the lenses of multiple audiences, including consumers, politicians, and employers. Fiscal challenges, competition from many sources, and political pressures to lower cost and increase value have forced institutions to look long and hard at how they expend resources and educate students.

Like the institutions they serve, academic libraries face pressures from many of the same sources, being held accountable to multiple constituencies. **Weaver** (2013) identifies eight challenges facing contemporary academic libraries: changing student profiles and expectations; new methods of delivering curriculum and accommodating different learning styles; organizational structures resulting from convergence and super-convergence; the need for librarians and staff to develop new knowledge and skills; uncertain political and economic forces; increased performance measurement and assessment; a constant need to engage with new technologies and ways to communicate; and a need to develop shared services to deliver services in challenging economic times.



In the past, libraries were commonly seen as the heart of the campus, collecting knowledge — mostly in print formats — from outside the institution, organizing it and making it accessible to those it served. The purpose of the library was rarely questioned. Today, the academic library has morphed into a less centralized yet more dynamic entity. While the collection of information still occupies an important place in the mission of the library, the content is now packed largely in digital formats. With relative ease of access and abundance of content, digital information has presented both challenges and opportunities to the academic library.

While some institutions have embraced the changes in their libraries, many institutions do not see the need to invest in them. With numerous competing priorities for institutional resources, libraries are often left behind in the competition for funding. To meet the challenges of the 21st century, libraries have become a more service-intensive organization with less emphasis on their role as a repository for information. Libraries continue to provide access to expensive information, but they have less to spend on that information. Reference services persist at most libraries, but the librarians who perform these services are challenged to offer new services involving digital technologies, data, and other means of supporting teaching, learning and research. In order for the modern academic library to be successful, the ability to collaborate with

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