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Questions & Answers -- Copyright Column

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**Questions & Answers — Copyright Column**

**QUESTION**: An academic library has a scanner that is available to students. Not surprisingly, students often want to use it to digitize parts of library books which the library does not allow. Now the question has arisen about scanning images from books for use in class presentations and projects. Should the library permit students to scan images for these purposes? Should students follow the Classroom Guidelines just as faculty do such as limiting use to one class, etc.?

**ANSWER**: The library likely has been more restrictive than it is necessary. Libraries typically do not restrict copying by students on unsupervised photocopy equipment; the library’s only responsibility is to post a notice that reproduction of copyrighted work is subject to the copyright law. See section 108(1). Scanning is really no different. If the library is not doing the scanning for the student, the equipment is “unsupervised.” Other than posting the 108(1) notice or near the scanner, there is no statutory responsibility to restrict the reproduction. On the other hand, should the student asks the librarian if she may copy an entire book, the librarian may want to say no and refer the student to the copyright law.

For presentations, it is section 110(1) and (2) for performances and displays that applies to the student. While subsection (1) relates to display of images and does not mention reproducing images, it is common practice to do so by making a Powerpoint slide, etc. For a transmitted performance through course management software or a password protected Website, the statute does envision making a copy in order to facilitate the performance, but only if there is no digital version of the work available.

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**ANSWER**: The Classroom Guidelines apply to the institution and the faculty member and not to individual students.

**QUESTION**: When does the estate of the author come into the picture for the expiration of copyrights?

**ANSWER**: The term of copyright is completely tied to the death date of the author and is life of the author plus 70 years. Copyrights are property, and after the death of the author, copyrights pass through the author’s will to whomever she designates as the beneficiary. Should the author die intestate (without a will) then copyright passes to the heirs of the author. The 1976 Act intended that the copyright exist not only of the life of the author but also for two generations of her heirs. Whether the author, a beneficiary of the will or an heir owns the copyright, the term remains the same and is measured by the life of the author, not the owner of the copyright.

**QUESTION**: If an academic librarian is preparing a presentation for students and for colleagues, may he incorporate content from a blog without infringing copyright?

**ANSWER**: Blog content is copyrighted just as are other literary works. So, there are no special rules for blog content. A fair use portion of blog content can be used, just as a fair use portion of anything may be used. No permission is required to use a fair use portion, but for more than that, the librarian should contact the blog author, explain the use he wants to make of the blog content and ask permission to use the material.

**QUESTION**: May a library bookclub show a commercial motion picture and still comply with copyright?

**ANSWER**: Certainly it is possible for a library bookclub to view a movie, but the viewing is a public performance. Therefore, the library must seek permission and pay performance royalties, if required. If the library acquired the public performance rights when it purchased the copy of the movie, then no further permission is required. But simply purchasing the movie on DVD does not typically include the public performance rights.

**QUESTION**: Many academic institutions now have Copyright or Scholarly Communications Officers. What do these people do?

**ANSWER**: Colleges and universities have begun to recognize how important copyright is to its faculty, staff and students. While university attorneys are there to advise the institution on all legal issues, including copyright, they typically are not able to provide the services and help that a Copyright Officer can. Typically, these positions require a law degree, and often also a library degree. The duties of a Copyright Officer may include: (1) developing educational materials, online instruction and Websites about copyright for the institution; (2) offering copyright education and training programs for faculty, students and staff; (3) assisting the library by reviewing licenses for copyrighted materials; (4) answering questions for individual faculty members about the use of copyrighted works in their teaching and scholarship; (5) advising faculty about copyright transfers for their publications; (6) coordinating activities with the campus Office of Legal Counsel and (7) serving as an ex officio member of the campus Copyright Committee.

Additionally, campus Copyright Officers often develop relationships with other copyright experts around the country to share information and materials. Some officers also have responsibility for developing testimony in various hearings, etc.

**QUESTION**: Are libraries considered to be an educational institution?

**ANSWER**: For copyright purposes, the question is not whether an institution is educational in nature but whether it is organized under the U.S. tax code as a nonprofit educational institution. Nonprofit educational institutions have certain privileges and exceptions that apply to them in copyright which are not available to for-profit educational institutions or to non-educational organizations.

So, to answer the question, libraries are not necessarily educational institutions. To some extent, the answer depends on the type of library. A library in a school or college or university is a part of an educational institution, and therefore it is educational. A corporate library, even a nonprofit corporation library, is not an educational institution. A public library, while it definitely has an educational mission is a nonprofit library but not a nonprofit educational institution.

The Sixth Circuit had not taken a published stance on this, but had affirmed a district court’s refusal to make the inference from a bare showing of corporate receipt. In Glanzmann, a secretary at Columbia Pictures received a script which the corporate receipt theory would require a quantum leap to Stephen King then having access to it despite the complete impossibility of that under the facts.

*This was Stephen King’s novel *Christine* and a ten-page plot sketch called “Side-swevi.”*

Other circuits required evidence of reasonable possibility of the work getting into the hands of the infringer. *Towler v. Sayes*, 76 F.3d 579, 583 (4th Cir. 1996) (requiring a “close relationship” for the corporate receipt doctrine to apply).

The Sixth Circuit noted it’s hard for plaintiff to show chain of possession once the CD enters the maw of a giant corporation. But Blige had clear evidence of independent creation. “[A]n inference of copying is rebuttable by evidence of independent creation of the allegedly infringing work.” *Ellis*, 177 F.3d at 507.

*Dr. Dre* documented the various states of development and was finished with “Family Affair” by January 10, 2001. “Party Ain’t Crunk” was not in final form until March of 2001 and was not in MCA’s hands until May of that year.

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