Questions and Answers: Copyright Column

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Libraries are often confused about the difference in the copyright implications of in-house copying for users and interlibrary loan. The following questions are samples of some I have received in the past few months dealing with this issue.

**Question:** A hospital library is uncertain what restrictions apply when the library owns the journal and copies for in-house library patrons. Does it make a difference if it charges the patron for such copies?

**Answer:** In-house copying is basically what sections 108(d) and (e) of the Copyright Act permit. Think of this provision as the one governing copying for an end user even if the library ultimately will have to obtain the copy from interlibrary loan. However, the library must first meet the requirements of section 108(a): (1) the library is open to the public or to researchers doing research in the same or a similar field; (2) there is no direct or indirect commercial advantage to the library from such copying activities and (3) each copy reproduced contains a notice of copyright. Further, the library must give the user the warning specified in sections 108(d)–(e), i.e., the Register's warning, prior to making the copy for the user. Whether the library charges the user for making the copy is not the issue; cost recovery or making a profit is what matters. If the library makes a profit on that copy by what it charges the user, then the library has received a direct commercial advantage. If instead the library simply covers its cost in reproducing the copy for the user, then there is no direct or indirect commercial advantage.

**Question:** Does it make a difference if the library is in a for-profit entity?

**Answer:** This is not absolutely clear. Certainly, the answer is easier if the library is in a nonprofit organization. The question of whether a library in the for-profit sector copies for commercial advantage has never been litigated.

### Legally Speaking

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**Obtaining Federal Trademark Registration**

In order to obtain a federal registered trademark for a series title, a publisher must file a trademark registration application with the PTO. If the series title is found to be non-descriptive by the PTO, the series title will be registered on the Principle Register. If, however, the series title is deemed to be descriptive by the PTO, then registration will only be permitted on the Supplemental Register. Registration and the Supplemental Register do not provide the publisher with the full scope of protection provided by the Principle Register but it will probably preclude another publisher from using the registered series title for their publications. Furthermore, the publisher of a series title that is registered on the Supplemental Register may at some later date demonstrate that the series title has acquired secondary meaning. If the publisher can prove the series title has acquired secondary meaning, the series title will be eligible for registration on the Principle Register.

**Conclusion**

Literary titles, whether a single title or a series title may be protected. Although the copyright law will not protect titles, trademark and unfair competition law may protect these valuable properties. Federal trademark law is particularly useful for publishers who wish to register series titles while trademark common law and unfair competition laws are most suitable for the protection of single titles.

Please note: This article is not legal advice. You should consult an attorney if you have legal questions that relate to your specific publishing issues and projects.

### Endnotes

2. J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 10.3 at 10-7 (Fourth Ed. 1997).
3. Id. § 10.3 at 10-7 to 10-8.