September 1992

Questions & Answers -- Copyright Column

Laura N. Gasaway
University of North Carolina, laura_gasaway@unc.edu
QUESTION: Many librarians write reviews of books and music. This question relates to reuse of these published reviews without permission of the reviewer.

Outside of my job as a music librarian, I have written reviews for FANFARE, a national CD magazine. The Web was in its infancy, so the understanding was that all work was for one-time publication in the print edition. There was no online version at the time. Whenever anyone asked permission to use portions of reviews (or even whole ones) in advance, I granted it. But recently, it came to my attention that a batch of my reviews were posted on a commercial Website not owned or operated by FANFARE. To my dismay I have found many more reprints on the Web done without my knowledge or consent. Several of those who have appropriated this material claim copyright to it themselves, according to the marks on the files.

I challenged the publisher, who said that he believed that his copyright entitled him to sell portions of the magazine (or whole books) as he saw fit even though my reviews are not works for hire. Is there anything I can do?

ANSWER: One important matter is whether the reviewer ever assigned the copyright in his work to the publisher of the journal. Transfers of copyright must be in writing. If so, the publisher owns the copyright. Putting the journal online, however, raises all of the issues from the New York Times v. Tasini case which held that freelance authors own the electronic rights to their works unless the copyright transfer to the publisher specifically stated that the electronic rights were being transferred. It might help to remind the publisher of this. Unfortunately, however, the only real threat is filing suit.

Legally Speaking
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cause to believe that a crime has been committed, that the suspect has committed the crime, and that the search will turn up evidence proving that the suspect committed the crime.

The concept of particularity keeps officers from using a search warrant as a license for a general search. The warrant must specify the location to be searched, the type of records that are included, and the specific person whose records are being investigated. The police are not allowed to look at records with information about people who are not named in the search warrant.

The requirements of probable cause and particularity help to keep library and bookstore records private, while still providing a way for investigators to do their jobs. The purpose of the 4th Amendment is to establish rules by which everyone must live. These rules help our society achieve the delicate balance between the need for security and the right of privacy.

QUESTION: The library has some 16mm films from the Federal Aviation Authority (FAA) that are used by the Aviation Department. If federal government materials are in public domain, is it possible to convert the format of the films to video? If the library does change the format, does the film still remain in public domain?

ANSWER: If the films were actually produced by the FAA, a government agency, then they are public domain. This means that continued on page 78

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the library or anyone else may reproduce them, convert the format, etc. It might be a good idea to examine the films carefully to make sure there is no copyright notice. It is possible that they were actually produced for the FAA by a government contractor which actually does hold the copyright. Changing the format of a public domain work does not create any new copyright in the underlying work. It remains in the public domain.

**QUESTION:** There is a video produced by the BBC in 1988 called "Race for the Double Helix." It is out of print but available used through several vendors. The BBC will not respond to the library's request for permission to make a copy. Various offices respond that they are not the one responsible and cannot help. If the library makes every effort to get permission and fails, must it purchase a used copy or could it make a copy from a loa

**ANSWER:** The question omits some critical information. Did the library once own the tape which has now been destroyed or damaged? Is this an acquisitions question? If it is the former, section 108(c) applies. The library may duplicate the tape from a loa

**ANSWER:** Most universities require graduate students to sign some sort of release that gives the library the right to hold the dissertation and use it to fill interlibrary loan requests. If all results in making a copy, there is no much prob

**ANSWER:** Normally making one copy for a user is permitted under section 107(d) but multiple copying is not permitted. Having works accessible by multiple users within the company counts as multiple copying. However, if the copies are "transitory" and are destroyed as soon as the patron has received the results, there is no problem. But if the library is indeed making three copies and retaining them, it should seek permiss

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**Cases of Note - Commercial Appropriation**

**by Bruce Strauch (the Citadel) <strauchb@citadel.edu>**

**SURF NEKKID or You Should Be So Lucky**

Yes, those lusty lads and lassies at Abercrombie are at it again.


The long string of names are of course surfer dudes among whom we find one of the illustrous Strauch of this world.

Abercrombie is that famous outfitter that loves to use hunks and hunkettes to peddle shirts, khakis, jeans and outerwear. Its subscription catalog "Abercrombie and Fitch Quarterly" (Quarterly) is a national mini-scandal that uses 80% of the company's ad budget. This sex-oozing 250 page tome has seasonal themes, photos of hot models, stories, news and editorial.

In 1998, Abercrombie held a photo shoot at Old Man's Beach, San Onofre Beach, Caliif. While there, they purchased photos of the above dudes from surf photographer LeRoy Grannis for $100 each. Said photos had originally been snapped at the 1965 Makaha International Surf Championship in Hawaii.

Thus making the surfers into fairly old dudes as the Strauch who authors this fabulous column was only a senior in high school in that year. And I can guarantee you he's old.

Abercrombie put together the Spring 1999 Quarterly, "Spring Fever", with a section called "Surf Nekkid" and a 700-word story "Your Beach Should Be This Cool." Old Man's Beach was described, not Hawaii. But the story was illustrated with the dudes — names captioning the pics — in Hawaii.

Two pages later featured ads for "Final Heat Tees" shirts based on what the dudes were wearing in the Hawaiian competition.

The dudes saw this as a commercial mis-appropriation of their names and likenesses and sued.

It's not stated in the facts whether there were nekkid models. It's only way down in the opinion that you learn that — gasp — there were!

Abercrombie won in the district court on summary judgment and dudes appealed to continued on page 79