April 1999

Copyright Questions and Answers

Laura N. Gasaway
*Law Library, University of North Carolina*, laura_gasaway@unc.edu

Jack G. Montgomery
*Western Kentucky University*

Anne F. Jennings
*Sinkler & Boyd*, infofacto_aj@charleston.net

Follow this and additional works at: [https://docs.lib.purdue.edu/atg](https://docs.lib.purdue.edu/atg)

Part of the [Library and Information Science Commons](https://docs.lib.purdue.edu/atg)

Recommended Citation

Gasaway, Laura N.; Montgomery, Jack G.; and Jennings, Anne F. (1999) "Copyright Questions and Answers," *Against the Grain*: Vol. 11: Iss. 2, Article 22.

DOI: [https://doi.org/10.7771/2380-176X.3840](https://doi.org/10.7771/2380-176X.3840)

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.
Questions and Answers — Copyright Column

by Laura N. Gasaway (Director of the Law Library & Professor of Law, CB # 3385, University of North Carolina, Chapel Hill, NC 27599; phone: 919-962-1049; fax: 919-962-1193) <laura_gasaway@unc.edu>

Question: Is it necessary to keep a paper record of ILL borrower requests that are submitted by our patrons or is an electronic record of the past three years’ requests sufficient?

ANSWER: Records in any form are just fine. The CONTU Interlibrary Loan Guidelines simply say that the borrowing library must retain records for three calendar years. Certainly the intent of the guidelines is that the library be able to search the records by title in order to determine when the library has reached its “suggestion of five” for that journal title for the calendar year. The guidelines, however, are silent as to the format in which records must be retained.

Question: I want to use an audio recording from 1899 of an evangelist reading a portion of the Bible. Has the copyright expired? The U.S. Copyright office says they do not deal with anything prior to 1972. They wrote to me the following: “There is no federal copyright protection for a U.S. sound recording fixed prior to 1972. It is possible that material recorded (such as music, spoken words, etc.) may be protected. However, if the material in question consists of Bible verses, then no federal copyright protection exists.” This work was put on a record in the 1950s by Word Records with Paul Harvey, but they do not know anything back that far. The original recording was apparently made in the State of Illinois, but the state says that state laws do not apply.

ANSWER: Sometimes it is simply worth assuming the risk when one wants to use a work such as this 1899 recording. The great likelihood is that if there ever was a copyright, it has expired. As the Copyright Office indicated, sound recordings were not protected in this country before 1972. Therefore, even the 1950 placement of the recorded reading on a record was not eligible for copyright protection. The State of Illinois has already indicated to you that state law does not apply to the 1950 record. Thus, there is no protection for the sound recording. If the words were simply being read from the Bible, then there is no copyright in the text. Fixing the reading of the text in the sound recording in 1950 does not change the fact that the underlying work is from the Bible.

Question: Is there a faculty member who would like several popular videos placed on reserve (e.g., “The Crying Game”). Can a library purchase the videos so that a faculty member can show them in class? Can the library lawfully put these titles on reserve so that students can check them out and view them either in the library or at home?

ANSWER: Yes to both Questions. Section 110(1) of the Copyright Act permits a nonprofit educational institution to perform videos in class if showing the tape to the class is a part of instruction. The school could either purchase or rent the videos that are shown in the classroom. Note, however, that performance of videos in distance learning classes is not permitted without a license according to Section 110(2).

Only public performances are reserved for the copyright holder. Placing videos on reserve so that students may check them out to view them either at home or in individual viewing stations in the library is just fine. These are private as opposed to public performances. If your library should offer a public performance, then royalties would have to be paid.

Question: If a for-profit library sets up vertical files on main subjects, areas of interest, trends, in the industry, etc., may it photocopy journal and newspaper articles to place in the vertical file?

ANSWER: Section 108 does not mention the issue of copying for vertical files. Section 108(f)(4) indicates that libraries also have fair use rights, and making single copies for a vertical file is probably fair use. A court would apply the four fair use factors to make this determination. There is one thing that might lead a court to find that vertical file copying is not fair use, and that is because there were vertical files in libraries prior to the advent of the photocopier. Libraries used to put original copies of articles torn from journal issues and actual clippings from newspapers. If your company has an annual authorization license from the Copyright Clearance Center, then such copying of works covered by the license is permitted under the terms of the license.