Questions & Answers -- Copyright Column

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

Follow this and additional works at: https://docs.lib.purdue.edu/atg

Part of the Library and Information Science Commons

Recommended Citation
DOI: https://doi.org/10.7771/2380-176X.4260

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.
Copyright Infringement — It Has To Be At Least Sort Of Similar


This falls into the “this just in” category.

Anne Hiltnor sued Stephen King, Simon & Schuster and Glassbook, Inc. for copyright infringement and invasion of privacy. She claimed King’s novella Riding the Bullet was lifted from an unpublished manuscript entitled Robert Adams, written by her late brother with her having an ownership in the copyright as his heir.

Copyright

The Ninth Circuit found that the two works were neither “substantially similar” — neither sequence or events nor character development — nor was anything from Robert Adams quoted directly. See 4 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 13.01[B], at 13-8 to 13-9 (2001) to state an actionable copyright claim, a plaintiff must show that “the defendant’s work is substantially similar to [the] work [in question] such that liability may attach.”

They don’t address the issue of how King might have had access to an unpublished manuscript. But presumably the brother submitted it to Simon & Schuster, probably over the transom so the thing was immediately vanished.

Invasion of Privacy

There are four potential forms of invasion of privacy: (1) unreasonable intrusion into the seclusion of another; (2) appropriation of someone’s name or likeness; (3) public disclosure of private facts; and (4) publicity that unreasonably places another in a false light.

The Court found that since there was no shred of similarity between the characters in the two works, King had not (2) appropriated her identity. Since nothing in Riding the Bullet deals with her private life, (3) and (4) are knocked out.

And finally as to (1) intrusion into seclusion: “Her allegation that she has been under surveillance for years is completely conclusory and is not supported by specific facts.”

Questions & Copyright Column

Column Editor: Laura N. Gasaway (Director of the Law Library & Professor of Law, University of North Carolina, CB #3385, Chapel Hill, NC 27599; Phone: 919-962-1321; Fax: 919-962-1193) <laura_gasaway@unc.edu> www.unc.edu/~unclng/gasaway.htm

QUESTION: Professors often ask librarians why the library does not just go ahead and digitize the entire collection. How should one respond to this?

ANSWER: I suggest loud guffaws! Faculty members appear to think the only reason that they do not have digital access to everything is laziness on the part of librarians. They are usually unaware of the major copyright concerns that would accompany such an effort. In fact, Project Gutenberg and other digital projects have had more difficulty with copyright than anything else.

A more serious answer to the faculty is that it would take a huge grant to fund the digitization project itself and an even larger on-going grant to pay the copyright royalties. Few copyright owners would be willing to permit digitization for a flat fee, and likely would charge a per use royalty. Moreover, some publishers would flatly refuse to grant permission to digitize under any conditions. Thus, library collections probably will not ever be solely in digital format, or at least in most of our lifetimes.

QUESTION: The library is trying to do a much better job in managing its electronic reserves collection by seeking permission for reproducing the work for the reserve collection after the first semester use, etc. A faculty member does not want to ask permission for using an article repeatedly and has asked if he could not simply place his personal copy of the physical journal issue on reserves.

ANSWER: Certainly, it is only when the library reproduces the work either through photocopying or electronically for reserves that the library needs to be concerned with keeping records, seeking permission after the first semester, and the like. Placing the hard copy on reserve, either from the library’s own collection or the professor’s personal copy of the journal issue, is fine.

QUESTION: What is the personal liability for a librarian who writes copyright guidelines for faculty when faculty members either do not understand the guidelines and infringe or simply do not comply with them?

ANSWER: It is the direct infringer and the institution that would be liable for infringing copyright in violation of the policy or guidelines, not a librarian who drafts guidelines for the institution. The librarian who drafts the guidelines is doing so at the request of a college or university official as a part of his or her job duties. Librarians are not responsible for ensuring that every faculty member and student follow the policy or the law down to the nth degree. While an unhappy copyright owner could initially name the librarian in a suit against the institution and/or the faculty member, it is likely that the suit would be dropped against the librarian who was not responsible for the infringing conduct.

QUESTION: How can the provider of full text articles in a database restrict delivery of articles from that database via interlibrary loan? Is there a difference between electronic delivery and printing and manual delivery?

ANSWER: Most databases are not only copyrighted, but they are also governed by
Questions & Answers
from page 68

license agreements. The license agreement
certainly may restrict the use of those ar-
ticles to a particular organization or insti-
tution and may absolutely prohibit their use
for interlibrary loan. So, a librarian
should read the license agreement to
determine whether or not articles in-
cluded in the licensed database
may be used to satisfy interlibrary
loan requests.

There is no difference be-
tween types of delivery of ar-
ticles via interlibrary loan. The
issue is whether the library
complies with the CONTU
guidelines and abides by all li-
cense agreements for obtaining
access to and use of articles from
databases.

QUESTION: Some of the fac-
ulty members in a particular ac-
cademic department want to post their pub-
lished articles on the institution’s external
Website in pdf format. Will publishers readily give permission for this?

ANSWER: It depends. If the faculty
author has transferred the entire copyright
to the journal publisher, then naturally he
must request permission to post the article
in any format. If the faculty member re-
tained the electronic rights to the article,
then she can put the article on a Website
without permission. Some copyright trans-
fer agreements even state that the author
may place the work on the Web six months
or a year after it appears in the
printed journal. So, there is no
across-the-board answer; in-
stead, it depends on what
rights were transferred to the
publisher and what the actual
copyright assignment
said.

QUESTION: The college has videotapes
of faculty giving presenta-
tions, conducting review lectures and
demonstrating different tech-
niques. Who owns the
copyright in these video-
tapes? What happens when the
college member leaves the institution?
May the library duplicate the videotapes
for other institutions?

ANSWER: The ownership of the video-
tapes depends on whether the institution
has a copyright ownership policy. Nor-
mally, the videotape (the physical object)
would belong to the institution, but the fac-
ulty member may own the rights in her presen-
tation that is captured on the video. The
tradition in higher education in the United
States is that the faculty member owns his
copyrighted works. When the taping was
done, if it was done correctly, the faculty
member was asked to sign a release form
to permit the videotaping in the first place.
That form may also have assigned all rights
to the institution.

In the absence of a signed agreement,
what can then be done with the video de-
deps entirely on the ownership policy. If
the institution owns the copyright in fac-
culty-produced work, it is the copyright
holder and may therefore duplicate the
tapes if it so desires and share copies with
other institutions, etc. If the faculty mem-
ber owns his copyrights, then any duplica-
tion and distribution needs to be done only
with his permission. Many copyright own-
ership policies spell out the rights of both
the faculty member and the institution when
the faculty member leaves that school. In
the absence of a policy, if the faculty mem-
ber holds the copyright, then the videotape
could continue to be used locally within
the institution, but could not be duplicated
without permission.

Kluwer Online
Accelerating the World of Research

Kluwer is proud to present a new and improved Kluwer Online:

- Faster
- Easier to use
- New e-products
- More powerful search options

- Streamlined navigation tools
- A new look and feel
- Cutting edge journal content
- New titles and subject areas

At www.kluweronline.com, you’ll find free sample copies of
each of our 650 journals and information about registering your
institution for access to all of Kluwer’s new electronic products.

To order: Toll-free (in U.S.): 1-866-269-WKAP or 1-781-871-6600
or (Worldwide): (+44) 78 657 6422
Please visit www.kluweronline.com for complete details and ordering information.

www.kluweronline.com