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1992

Law Library Briefs, Vol. 3, No. 5 (March, 1992)

William & Mary Law Library

Repository Citation

William & Mary Law Library, "Law Library Briefs, Vol. 3, No. 5 (March, 1992)" (1992). *Library Newsletter*. 10.
<https://scholarship.law.wm.edu/libnewsletter/10>

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The College of William and Mary
Marshall-Wythe Law Library

Volume 3, Number 5

March, 1992

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FROM THE EDITOR'S DESK

Last year, the Colonial Williamsburg Foundation's Library and the Law Library instituted a reciprocal borrowing policy. This agreement allows Marshall-Wythe faculty, students and staff to obtain a borrower's card and use the CW Library upon presentation of a valid William and Mary ID card. You may use rare materials in the CW Library or borrow two books for a two-week period. There is no fee for this privilege, but cards must be renewed annually by faculty and staff, and each semester by students.

Information in the CW Library's collection of significance to legal scholars includes materials on the historical approach to Virginia practice during the colonial period, many 18th-century attorneys "pocket companions" (practice manuals), copies of many Virginia county court records from the colonial and federal periods, early Virginia statutes, and other legal materials from the colonial period.

The Colonial Williamsburg Foundation's Library is located at 415 North Boundary Street on the second floor. The entrance is on the south side of the building by the

parking lot. The Library's telephone number is 220-7423.

Should you have questions concerning the use of the CW Library, please feel free to contact one of the reference or circulation staff members. ...MR

BITS AND BYTES

LEXIS & WESTLAW Refreshers. Many of you are preparing to spend the summer experiencing real life in the law. Your plans may be to clerk for a law firm or a judge. You may be planning to work for a public service agency or a government office. Whatever your summer plans include, arrive on your first day of work prepared to meet the challenge. Take a LEXIS and WESTLAW refresher course now.

The Law Library is offering LEXIS FastTrack and WESTLAW Summer Associate Training classes during the month of March. If you will be clerking for a law firm that participates in either of these programs, you will receive a letter from your recruiting partner requesting that you attend training. If you will be working for any other organization you may sign up for a training session of your choice. The sign up sheets are in the CALR Notebook at the Circulation Desk.

New LEXIS Terminals. We have added four new LEXIS terminals in the Library. The new terminals are located in Typing Rooms F, G, H, and I. The Law Library now has 17 LEXIS 2000™ terminals, 10 WALT PC's™ and 3 WALT II™ terminals.

Computer Services Update -- New Name, New Location. You can find help with your computer questions and problems in Room 249 located in the Computer Lab. This is the new Computer Services office where Morgan, Greg, Todd, Nancy, Linda, and Debbi will be offering the same efficient assistance you came to expect from them in carrel #79.

ACHOO! It's cold, flu and computer virus time again. We were warned to watch out for the Michelangelo virus which was set to go off March 6. To avoid infection from other viruses, practice safe computing practices:

- Avoid swapping disks from one PC to another.
- Be wary of downloading games or software applications from online bulletin board systems.
- Do not boot a computer system from a suspicious floppy without first scanning it for viruses.
- Install a virus defense program on your PC (F-Prot apparently detects many current viruses and is available on several bulletin board systems. Central Point Anti-Virus is also very good and is available from Walden Software.)
- Check your floppy diskettes before using them on the Computer Lab equipment. The "SCAN" program is available under the "UTILITIES" selection on the Computer Lab menu. ...MGH

LAWYERS

A lawyer is someone who defends your interest, and takes the principal.

-- John Stringer

Between grand theft and a legal fee,
there only stands a law degree.

-- Anonymous

Lawyers: persons who write a 10,000 word document and call it a brief.

-- Franz Kafka

From Poetic Justice: The Funniest, Meanest Things Ever Said about Lawyers, edited by Jonathan and Andrew Roth. Berkeley, CA: Nolo Press, 1988.

REF/PN/6231/L4P64/1988

MEET THE AUDIO/VISUAL STAFF

WALTER CARLTON

AUDIO/VISUAL PROGRAM SUPPORT TECHNICIAN

PHONE: 221-6351

Walter joined the staff in November 1991 and assists Reference Librarian Sue Trask in coordinating the audiovisual services provided by the Law Library. Among other things, his responsibilities include maintenance of the video and audio equipment of the Law School and ensuring proper set-ups for classes and guest speakers. He helps supervise the video editing studio in the Moot Court Room as well as the recruitment and training of student volunteers for videotaping trials. Essentially, Walter has his finger in every pie that has to do with video as it relates to the instruction and learning process at the Law School. He is primarily available on weekday afternoons.

Born in Portsmouth, Virginia, during the torrents of a tropical storm named Camille, Walter has lived in a whirlwind ever since. He did most of his growing up in small-town Pennsylvania and in big-town Alexandria, Virginia and is a 1991 graduate of the College of William and Mary with a B.A. in History. Walter's primary interests are in film, hiking in the mountains, and travel. Oh, ...and he's absolutely fanatical about music. He hopes to one day make a career in filmmaking. If you go to the Williamsburg Theatre on a Saturday night, wave to the projectionist after the film, because that's Walter, too. ...WC

VIDEOCASSETTES, COPYRIGHT AND THE CLASSROOM

Introduction

Section 101 of the Copyright Act of 1976 (17 U.S.C. § 101 *et seq.*) defines audiovisual works as "works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied." Videocassettes (videos) clearly fall within this definition.

Copyright Protection

Copyright protection grants creators of intellectual property, including film and video producers, certain rights regarding when and how their works are to be used. The purchase of a video gives the buyer ownership only of the case and the tape, not the creative work on that tape.

Section 106 of the copyright law bestows the following rights upon a copyright owner:

- 1) to reproduce the copyrighted work in copies
- 2) to prepare derivative works based upon the copyrighted work
- 3) to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- 4) to perform the copyrighted work publicly
- 5) to display the copyrighted work publicly

The fourth right, the right to publicly perform copyrighted works, allows copyright owners to retain artistic control from performances. This right has the most potential for misunderstanding and misuse.

Public Performance

One definition of "performance" is to exhibit the work by the technology for which it is designed. The showing of a video by VCR constitutes a performance.

A "public performance" is defined in Section 101 as "to perform [the work] at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." Section 101 provides an alternative definition of "public performance" being "to transmit or otherwise communicate a performance or display of the work . . . by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."

In Encyclopedia Britannica Educational Corp. v. Crooks, 558 F. Supp. 1247, 1254-55 (W.D.N.Y. 1983) (BOCES), the court decided that a performance of a videotape in a classroom equals a public performance for purposes of the copyright law. Under these definitions, a public performance license is required, unless the performance falls within a possible exception.

Public Performance Permission Rights

Public performance rights may be obtained in three ways. First, many videocassettes can be purchased with public performance rights so that they can be shown to groups in-house or off-site. Generally, however, videocassettes labeled "home use only" do not carry public performance rights.

Second, permission may be obtained from the copyright holder. This permission may be sought on an as-needed basis or by requesting blanket permission. Consent cannot be inferred when no response is elicited from a request for permission.

Finally, permission may be gained from an "umbrella" licensing company, such as Motion Picture Licensing Corp. (MPLC) or Films, Inc. Some schools or libraries pay an annual subscription fee to a licensing company for the public performance rights to videos produced by participating companies.

Face-To-Face Exemption

The face-to-face teaching exemption in Section 110(1) of the copyright law provides a means for showing a video to a group without obtaining a license. Because it is an exception, each requirement must be fully satisfied.

- First, an instructor or pupil must give the performance. Instructor has been broadly interpreted to include guest lecturers and need not be the teacher of a course.
- Second, the performance must involve a face-to-face teaching activity, which requires that the teacher and students be simultaneously present in the same general place. Based on a House report, the use of a closed circuit television system confined to one building satisfies the face-to-face requirement.
- Third, the use is limited to "teaching" activities, not recreation, entertainment or reward. Using a video as part of a film series does not qualify unless there is an attendant educational purpose. For example, a performance of Body Heat would be allowed if a professor used it as a basis for discussing attorney ethics.
- Fourth, the performance must occur at a non-profit educational institution.
- Fifth, the performance must take place in a classroom or place similarly devoted to instruction. An auditorium or library may qualify if it is used for instruction.

- Sixth, the performance must be given by means of a lawfully made copy. A videocassette rented from a video store is a lawful copy and may be used in exercising Section 110(1) rights.

Penalties

Section 504 of the copyright law permits the copyright owner to seek actual damages suffered as a result of an infringement as well as any profits accrued by the infringer. In the alternative, Section 504, as amended in 1988, allows statutory damages ranging from \$500 to \$20,000 per infringement.

Conclusion

The Copyright Act of 1976 represents a compromise between the interests of creators and users. Advances in technology have made video an easily accessible and attractive format for educational use. The showing of videos in the classroom, however, requires careful adherence to the copyright law, either by obtaining the necessary permission or by meeting the requirements of the teaching exception. The Law Library is formulating a policy addressing copyright and video use for the guidance of faculty and students. ...ST

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