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Nearly two decades have passed since the United States Congress passed the Copyright Act 1976, and for that many years American courts have struggled to interpret the Act so as to protect the rights of copyright owners as well as those of users of intellectual property. This task has been made all the more difficult by the electronic revolution that has taken hold in the publishing world. Librarians also have grappled with the Copyright Act as they attempt to provide a high level of service to their patrons and at the same time comply with laws that, in many cases, were intentionally drafted ambiguously to allow for later interpretation by the courts.

Ten years ago this summer librarians awaited anxiously a decision by the United States Supreme Court in the Sony Betamax case that would help clarify Section 107, the fair use provision of the Copyright Act. Today we await a decision by a federal appellate court that again has the potential to set the parameters of fair use for years to come. This article begins, then, with a discussion of the dispute between the American Geophysical Union and the Texaco Corporation.

THE JUDICIAL ARENA, FEATURING AMERICAN GEOPHYSICAL UNION v. TEXACO

On July 22, 1992, federal district court judge Pierre Laval sent chills through the veins of not only law librarians, but of everyone who works in the private sector, when he rendered his decision in American Geophysical Union v. Texaco, 802 F. Supp. 1 (S.D.N.Y. 1992). The case involved a researcher employed by Texaco, a major oil company, who had made single copies of articles published in scientific and technical journals without permission from the copyright owner nor payment of royalties. Judge Laval concluded that such copying was not a fair use under Section 107 of the Copyright Act 1976, and held Texaco liable for copyright infringement.

Judge Laval's decision included an analysis of the four factors listed in Section 107 that courts must consider in determining whether a use is fair. The first of those factors is the purpose of the use. Judge Laval concluded that the use was commercial, rather than non-profit, which to him meant that the copying was presumptively unfair. He also stated that the purpose of the researcher's use was not productive - the original work was not in any manner recast into another work. Strike one against Texaco.

There are two major problems with this analysis. First, the court did not distinguish copying that occurs in-for-profit institutions, such as Texaco and law firms, from copying by companies that directly profit by making copies, such as copyshops (See Basic Books, Inc. v. Kinko's Graphics Corp., 758 F. Supp. 1522 (S.D.N.Y. 1991)), or for-profit information brokers. The West Publishing Company has filed several suits against for-profit information brokers for copyright infringement. In each case West has succeeded in preventing the brokers from reproducing and distributing copies of West's proprietary materials. Copying by copyshops or for-profit information brokers invariably requires payment of royalties; their business is to profit by supplying copies. Making copies for personal research, even in a for-profit company, is quite different, however. In fact, the legislative history to the Copyright Act states that such copying may be a fair use or protected under the Section 108 library exemption. Section 107 is "not intended to be interpreted as any sort of not-for-profit limitation on educational uses of copyrighted works...[T]he commercial or non-profit character of any activity, while not conclusive with respect to fair use, can and should be weighed along with other factors in fair use decisions." H.R. Rep. No.1476, 94th Cong. 2nd Sess 75, reprinted in 1976 U.S. Code Cong. & Admin. News 5679. Secondly, the productive use test was discredited in the 1984 Betamax case which held that infringement is not to be presumed if the original work copied is not transformed into a different work.

The second factor considered in a fair use analysis is the amount copied. The Texaco researcher reproduced complete articles from several different journals. Judge Laval said that copying entire works generally precludes a finding of fair use. Strike two, said the judge. Although it is true that the more of a work that is copied the less it is likely that the use will be fair, the Copyright Act permits the copying of entire works in some instances. The Supreme Court in the "Betamax" case allowed viewers to copy broadcast television programs in their homes for the purpose of time shifting. Section 108(d) expressly permits a library to make a single copy of an entire article for a library user. Judge Laval read into the Act a presumption against copying entire works that does not exist.

The third fair use factor is the nature of the materials copied. There is greater room to copy
scientific or technical writings than there is to copy works of fiction, for example. Judge Laval concluded correctly that this factor favored Texaco.

The fourth and most important factor in a fair use analysis is whether the copyright owner was harmed by the use. ("This last factor is undoubtedly the single most important element of fair use." Harper & Row Publishers, Inc. v National Enterprises, 471 U.S. 359, 566 (1985)). Because Texaco did not pay royalties to the copyright owners, Judge Laval presumed there was harm. Indeed, he noted that the Copyright Clearance Center (CCC) offered a convenient means of paying royalties, and cited the existence of the CCC as a "monumental change" since the period of time around which the Copyright Act 1976 was being considered by Congress. Strike three, Texaco is out, concluded the judge.

The problem with this approach is that copyright owners may always contend that they are harmed whenever royalties are not paid. Because the fourth factor frequently determines the outcome of an infringement lawsuit, Laval's circular reasoning stacks the deck in favor of copyright owners. However, the whole point of fair use is that it permits copying without the need to pay royalties or receive permission. Furthermore, royalties are not due to copyright owners simply because there exists a convenient mechanism to pay royalties, in this case the Copyright Clearance Center.

Although the parties had agreed that the dispute would be decided on Section 107 alone, Judge Laval still chose to comment on Section 108, the library exemption. Section 108 provides that, under certain circumstances, a library may make a single copy of an article or excerpt for its patrons. Judge Laval erroneously interpreted Section 108 as allowing a library to make only one copy of one article for one employee in the company. Although making multiple copies of the same article is prohibited when the copying is related or concerted, rather than spontaneous (17 U.S.C. § 108(g)(1)), the same article may be copied more than once for different people at the same institution. And although copying the same article, or even different articles from the same journal, is prohibited when such copying is systematic - where the effect is that the copying substitutes for one or more subscriptions to a work (17 U.S.C. § 108(g)(2)) - that issue was not before the court.

Judge Laval's conviction that Section 108 has limited application in the for-profit sector is not supported by the legislative history of the Copyright Act. It is true that the library exemption is not available to a library that obtains a "direct or indirect commercial advantage" from its copying activities (17 U.S.C. § 108(a)(1)). However, the legislative history of the Act states that "the advantage refers to the immediate motivation behind the copying, not to the ultimate profit-making motive of the enterprise." House Report at 75. Congress clearly did not intend to exclude libraries in for-profit institutions from qualifying for the library exemption.

Fortunately, Judge Laval's decision will not be the final word, for Texaco has appealed the decision. The case is of such interest to librarians that several professional library associations, including the American Association of Law Libraries, submitted amicus briefs to the appellate court supporting Texaco. The American Association of Law Libraries joined with the Association of Research Libraries, the Special Libraries Association, and several other professional associations in filing an amicus brief in support of Texaco. The American Library Association filed its own amicus brief supporting a reversal of the district court decision.

OTHER JUDICIAL MATTERS: KINKOS, WEST, AND THOMSON

It is not only librarians in for-profit libraries who are concerned over copyright issues. Librarians in non-profit academic, court, and county law libraries also are anxious over courts' interpretations of the Copyright Act, particularly since the 1991 Kinkos case. In Basic Books, Inc v. Kinkos Graphics Corp, 785 F. Supp. 1552 (S.D.N.Y. 1991), a United States District Court held that a for-profit copyshop's unauthorized copying of articles and chapters from books to create anthologies for instructional use in educational institutions was not a fair use.

Many law professors create anthologies of court decisions, statutes, and articles for classroom discussion. Although the defendant, Kinkos, was a for-profit company that made its money from copying, the District Court concluded correctly that Kinkos was not copying for educational purposes, and the decision was a wake-up call to academia: those in non-profit educational institutions generally must receive permission before creating anthologies of copyrighted works. In somewhat of a surprise, in late 1993 Kinkos announced that it was abandoning its "Professional Publishing" activities and would no longer compile anthologies even with permission from copyright owners.

America's largest legal publisher has, in recent years, asserted aggressively its perceived rights under the Copyright Act, following up on its successful suit against its online competitor Mead Data Central in the mid 1980's. In West Publishing Co. v. Mead Data Cent., Inc., 799 F. 2d 1219 (8th Cir. 1986), aff'd 799 F. 2d 1219 (8th Cir. 1986), cert. denied, 479 U.S. 1070 (1987), West successfully asserted that Lexis' star pagination feature, which relied on West reporter volume and page numbers, infringed West's arrangement of case reports. The West Publishing Company has successfully sued several for-profit information brokers who were copying and distributing decisions from West reporters - including copyrighted headnotes and synopses - to their customers. In each case the defendants either settled or were enjoined from continuing their activities. The
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most recent suit was filed on November 26, 1993: West Publishing Co. v. Hauger, No.93-7137 (C.D. Ca.). West recently introduced its Fax Cover Sheet service on Westlaw. Anyone using the off-line fax printing option can send a fax to a branch office or to clients at a cost of $7.50 per document plus $1.50 per page. Faxing a fifteen page case would cost $30.00.

West is not alone. In July 1993 Thomson Canada Ltd, another huge legal publisher, filed suit against the Law Society of Upper Canada for copyright infringement for making and selling copies of Thomson’s copyrighted works without permission, including reports of court decisions. Thomson Canada Ltd. v Law Soc’y of Upper Canada, No. T-1619-93 (Fed. Ct., Trial Division). The parties are attempting to settle the dispute, and it appears likely that the Law Society will agree to pay a per page royalty to the publishers for materials copied and distributed to others (lawyers, judges, and even other libraries) for a fee. The Law Society’s document delivery service currently carries a fee of $.25 per page plus a service charge of either $8.00 (for requestors residing within Toronto) or $5.00 (for requestors outside Toronto). As of July 1994 the parties had yet to agree to the specific terms of the settlement.

NEWSLETTERS

Copying newsletters continues to be one of the most vexing problems for law librarians, particularly those in the for-profit sector, who may feel pressured by attorneys to photocopy newsletters for circulation within the firm. The law on copying newsletters is clear: the right to copy an entire newsletter, or a substantial portion of a newsletter, is very limited.

Lawyers and law librarians were given a reminder when a newsletter publisher sued a Virginia law firm in 1991 for making multiple cover-to-cover copies of a newsletter for internal use by firm attorneys in Washington Business Information, Inc. v Collier, Shannon & Scott, No.91-0305-A (E.D. Va. filed Feb. 26, 1991). Although the firm initially contended that the copying was permitted under the Copyright Act, it ultimately settled the case for an undisclosed (but rumoured to be huge) amount of money. Subsequent court decisions make it very clear that there is little room to make cover-to-cover copies of newsletters, even in non-profit associations. See Pasha Publications v Enmark Gas, 22 U.S.P.Q. 2d 1076 (N.D. Tex. 1992) (for-profit company ordered to cease making copies of newsletters), and Television Digest Inc. v United States Telephone Ass’n, 841 F. Supp. 5 (D.D.C. 1993) (non-profit trade association’s copying of a newsletter for its staff members was not a fair use). Of course, making a single copy of small portions of a newsletter may still be permissible without the copyright owner’s permission.

THE LEGISLATIVE FRONT
COPYRIGHT REFORM ACT OF 1993

Librarians are very concerned over provisions of the Copyright Reform Act 1993 that would eliminate the incentive of copyright owners to register their works with the Copyright Office. The proposed legislation would repeal Sections 411(a) and 412 of the Act, and registration would no longer be a prerequisite for filing an infringement suit and collecting statutory damages and attorneys’ fees. Librarian of Congress James Billington has testified that this legislation would threaten the Library of Congress’ collections by cutting off deposits that accompany registered works (currently Section 407 of the Act). Those concerns were echoed by Georgetown University Law Librarian Robert Oakley, who spoke on behalf of the American Association of Law Libraries and other major American library associations. Professor Oakley also noted that the Advisory Committee on Copyright Registration and Deposit (ACCORD) did not recommend the repeal of section 412. Instead, the Committee suggested creating special rules for the registration of certain materials, such as photographs, for which registration is burdensome. (Oakley: 1994).

Although Congress has been pressured not to repeal Sections 411(a) and 412, the Clinton administration may attach the repeal of Section 412 to GATT implementing legislation.

FAIR USE AND UNPUBLISHED WORKS

Both librarians and authors were concerned over several court decisions in the late 1980s severely restricting the use of unpublished works. See, e.g. Salinger v Random House, 811 F. 2d 90 (2d Cir. 1987), cert. denied, 484 U.S. 890 (1987), and New Era Pubs. v Henry Holt, 873 F. 2d 576 (2d Cir.1989), cert. denied, 493 U.S. 1094 (1990). Congress subsequently amended the fair use provision of the Copyright Act to clarify that the unpublished nature of a work will not bar a finding that a use is fair. (P.L. 102-494, 106 Stat. 3145 (1992)). The amendment to Section 107 applies to diaries, letters, and other unpublished materials created before, on, or after the date of enactment of the 1992 amendment.

LIMITATIONS TO THE FIRST SALE DOCTRINE:
THE RECORD AND COMPUTER SOFTWARE RENTAL AMENDMENTS

Amendments to the first sale doctrine of the Copyright Act made by the Record Rental Amendments Act 1984 and Computer Software Rental Amendments Act 1990, 17 U.S.C. $109 (1988 and 1990 Supp.) provide that owners of sound recordings or computer software may not rent, lend, or lease those items for direct or indirect commercial advantage without permission of the copyright owner. The prohibition does not apply to non-profit libraries or educational institutions so long as they do not profit from such lending.
The amendments have caused some confusion among librarians in for-profit companies (such as law firms) who wonder whether they may lend sound recordings or software if they do not reap any commercial advantage from the transaction. Some question why the proviso exempting non-profit libraries and education institutions from the general prohibition against lending sound recordings and software is necessary when the amendments already included a general prohibition against gaining a direct or indirect commercial advantage from renting, leasing, or lending software or sound recordings. The legislative history of the Act suggests that libraries in for-profit entities may not lend software or sound recordings even for non-commercial purposes. (See S. Rep. No.265, 101st Cong. 2nd Sess. 6-7 (1990)). Although the answer seems to be "no" - only non-profit libraries and educational institutions may lend software and sound recordings, and then only if they gain no direct or commercial advantage thereby - the Acting Register of Copyrights concedes that there is some confusion as to what is a "nonprofit library". (Anon: 1994)

In mid-1993 the United States Copyright Office requested comments on the extent to which the Computer Software Rental Amendments Act 1990 achieved its intended purpose with respect to lending by non-profit libraries and educational institutions. In October 1993 the American Association of Law Libraries, the Association of Research Libraries and the Special Libraries Association made the following points in a joint statement to the Copyright Office:

- the amendments neither facilitate nor impede the libraries from fulfilling their institutional functions;
- whether a work of intellectual property may be lent by libraries should not depend on the format of the work;
- librarians are concerned that the software amendments portend future diminutions of users' rights based on the format of a work;
- librarians do not believe that the library exemption harms the interests of copyright owners;
- librarians do not believe that new legislation is needed to clarify existing legislation or to rectify any imbalance between the rights of owners and the needs of users;
- librarians are concerned that continued erosion of the first sale doctrine would severely limit legitimate borrowing activities;
- the libraries have no evidence that non-profit lending of computer software has resulted in unauthorised copying, adaptation, redistribution, public performance, or display.

TERM OF COPYRIGHT

By the Copyright Renewal Act 1992 Congress amended Section 304(a) and gave works in copyright in 1978 an automatic 47-year renewal term. Such works now are protected for 75 years from the date they were first published regardless of whether a renewal was filed. The length of protection is fairly complex (17 U.S.C. §§ 304-305), but the following general rules may provide guidance for librarians:

- works originally copyrighted before 1950 that were renewed before 1978 are protected for 75 years;
- works copyrighted between 1950 and 1963 are protected for 28 years. If the copyright was renewed, they are protected for an additional 47 years;
- works copyrighted between 1964 and 1977 are protected for 75 years;
- works by individual authors created since 1978 are protected for 50 years after the author's death;
- works by joint authors created since 1978 are protected for 50 years after the last surviving author's death;
- works by corporate authors created since 1978 are protected for 75 years after the date of first publication, or 100 years after the date of creation, whichever expires first;
- as of January 1, 1994, anything published prior to 1919 is in the public domain.

SECTION 108(i)

The 1976 Act required the Copyright Office to report to Congress at five year intervals whether Section 108 (the library exemption) created the appropriate balance between users' and copyright owners' rights. (Copyright Office: n.d.) Congress repealed Section 108(i) in 1992, by the Copyright Amendments Act 1992 (Pub. L. No. 102-307, 106 Stat. 272, sec.301).

COPYRIGHT IN PAGINATION OF COURT OPINIONS

As noted earlier, West Publishing Company, America's largest legal publisher, has gone to court several times to assert its perceived intellectual property rights. In 1985 West successfully prevented its primary online competitor, Mead Data Central (which produces the Lexis online legal database) from including pagination from West case reporters in the Lexis database. West Publishing Co. v Mead Data Cent., Inc., 616 F. Supp. 1571 (D. Minn. 1985), aff'd, 799 F. 2d 1219 (8th Cir. 1986), cert. denied, 479 U.S. 1070 (1987). Subsequent Supreme Court decisions place in question the holding. See Feist Publications Inc. v Rural Telephone Service, 499 U.S. 340 (1991) (garden variety white pages of a telephone directory lack so little creativity in selecting, arranging, or coordinating the unprotected underlying facts that it is not a copyrightable compilation). Bellsouth Advertising & Publishing Corp. v Donnelley Info. Publishing, Inc. 999 F. 2d 1436 (11th Cir. 1993) (there is no copyright in a yellow pages telephone directory). Since that decision there have been efforts to negate its effect by legislation, and, more recently, adoption of vendor neutral citation systems that do not rely on West reporters.
H.R. 4426 was introduced before Congress in 1992 to prohibit copyright protection for names, numbers, or citations for state and federal laws and regulations. The Bill also would have prohibited copyright for volumes or page numbers of state or federal regulations and judicial opinions. Testifying in support of the bill on behalf of the American Association of Law Libraries, Professor Laura Gasaway maintained that mechanical application of page numbers to case compilations lacked originality. Professor Gasaway stated that allowing any publisher to control the established means of citation to important legal materials in the public domain gave the publisher the power to exclude others from the market. (Gasaway: 1992). Although the Bill in judicial decisions and statutes has continued. In mid-1993 the Wisconsin Attorney General stated that "...there is serious doubt whether there is copyright protection for the standard compilation of judicial opinions and this doubt extends to the pagination of those compilations." (Wisc. Op. Atty. Gen. 8-93 at p.9 (June 4, 1993)). The Judicial Electronic Dissemination of Information (JEDI) Committee of the American Bar Association's Section of Science and Technology has prepared a discussion draft that supports the development and adoption of revised citation conventions that enable citation to cases published in a variety of media, including electronic media, and permits diverse publishers to publish public domain cases and other materials in a variety of media. Electronic Mail: 74020,210 @ CompuService.Com (May 1994).

Federal and state court rules that require legal writers to cite to proprietary sources, such as West reporters, are a major obstacle to the generic citation movement. But not all courts are sitting idly by. In December 1993 the Louisiana Supreme Court adopted a new rule authorizing public domain citation format in Section VIII of the General Administrative Rules. The subcommittee of the task force on the cost effective provision of information resources for Louisiana Courts that devised the new citation system urged adoption of the rule to assure fair competition in the legal publishing marketplace and to promote cost-effective access to legal materials.

Since 1972 the sole source for citing Louisiana appellate court decisions had been to use a citation from West's Southern Reporter. West's claim of copyright to the pagination in its reports deterred other potential publishers from entering the court reporting market because they were unable to give pinpoint cites to the Southern Reporter within the text of the opinion. With the new rule, Louisiana cases published or disseminated in electronic formats will be citable without reference to the claimed intellectual property of West or any other publisher. The length of the bandwagon has yet to be determined, but today many attorneys and courts champion the adoption of vendor neutral citation systems. The United States Court of Appeals for the Sixth Circuit has adopted, on a trial basis, a nonproprietary citation system that encourages use of an electronic cite by attorneys and judges when citing cases to or from the Sixth Circuit. The Third Circuit also is experimenting with a somewhat similar citation system. In late June of 1994 the Board of Governors of the State Bar of Wisconsin unanimously recommended adoption of a vendor and a media neutral citation system. A petition to change the Supreme Court Rules is expected to follow. In May 1994 the Chief Justice of the Colorado Supreme Court stated that published decisions of the Colorado appellate courts will be henceforth numbered by paragraph, and that pinpoint paragraph citations are an acceptable alternative to pinpoint page citations in West's Pacific Reporter. Of course, resolution of the citation issue depends a great deal on the rules in The Bluebook: a Uniform System of Citation.

DOCUMENT DELIVERY

In 1992 the Association of American Publishers (AAP) released a "Statement on Commercial Fee-Based Document Delivery" that received a cool response from members of the library community. The AAP contends that libraries that charge service fees for transmitting articles and chapter-length excerpts can do so only after permission is received by the copyright owner. The AAP reasons that "the newly-emerged, fee-based and technology-enhanced copying and distribution services of libraries . . . are indistinguishable in purpose and effect from those of commercial document suppliers . . . and not permissible under the CONTU guidelines governing the copying done to support the practice of interlibrary lending."

AAP's position is not supported by the Copyright Act. Section 108 of the Act permits lending of library materials, including transmitting a single photocopy of a copyrighted article or short excerpt, if the library is open to the public or to outside researchers, if a notice of copyright is included with the photocopy provided, and if the supplying library receives no direct or indirect commercial advantage from the activity (17 U.S.C. Section 108(a)). Section 108 rights are subject to the proviso that libraries cannot engage in related or concerted reproduction or distribution of single copies of the same material on separate occasions (17 U.S.C. Section 108(g)(1)), or if the copying is systematic (17 U.S.C. Section 108(g)(2)).

As for the Publishers' contention that document delivery contravenes the CONTU Guidelines, those Guidelines address the activities of borrowing libraries, not supplying libraries. If the requesting library attests that the request complies with the CONTU Guidelines or another provision of the Act, the supplying library may provide the copy if the other requirements of Section 108 are met. This means, of course, that a library should not fill requests received from for-profit information brokers who themselves will profit from the copy by reselling.
it to their clients.

THE ONLINE WORLD
JURIS AND WESTLAW: A TALE OF TWO LEGAL DATABASES

On September 30, 1993 the West Publishing Company announced that it would not renew its contract with the United States Department of Justice (DOJ) by which it licensed West's caselaw data for DOJ's online JURIS database. West's action was a response to a demand by Ralph Nader's Taxpayers Assets Project that the JURIS database, including decisions loaded from West's Westlaw database, should be available to the general public. Asserting that the leased materials included proprietary information such as case summaries and headnotes, West decided to withdraw its database from JURIS. The Department of Justice ultimately terminated JURIS at the end of 1993. More recently, Tax Analysts, a Washington, D.C.-based company, succeeded in getting DOJ to release dozens of databases in the JURIS system, including court briefs filed by government attorneys, public laws and regulations, and other federal agency documents.

NATIONAL INFORMATION INFRASTRUCTURE

AALL Washington Affairs Representative Robert Oakley testified on behalf of several non-profit associations on the need to guarantee that the rights granted to educators and to libraries and their users apply in the electronic environment as they have in the paper environment. (Oakley: 1993). Professor Oakley made the following points:

- The NII should preserve fair use and the library exemptions and allow for a variety of pricing structures.
- The rights granted to users under Sections 107 (fair use) and 108 (the library exemption) should apply in both the print and electronic environment.
- The copyright laws should be amended to accommodate electronic preservation.
- Licensing proposals should not be used to eliminate fair use and the library exemptions.
- Libraries and other educators will continue to educate users about their rights and responsibilities.
- Intercommunication and interoperability standards should be established through a voluntary process, and government agencies should participate in the process of setting those standards, but not control the process.

LAW FIRM COPYRIGHT GUIDELINES

In mid-1993 the AALL Copyright Committee drafted guidelines for the use of copyrighted materials in law firm libraries. The Guidelines will remain in "draft" form until a final decision is reached in the Texaco case. The text of the Guidelines follow.

DRAFT AALL Model Private Firm Copyright Draft Guidelines

Introductory Statement: Reproducing copyrighted materials is governed by the Copyright Act 1976, 17 United States Code.

Firm Statement: FIRM does not condone the unauthorised reproduction of copyrighted materials, in any format.

Responsibility Statement: Compliance with the Copyright Act is the individual responsibility of every employee, including partners, associates, paralegals and staff members.

Photocopy Signage/Public Notice: Copyright signs are posted at all photocopiers in the firm, as follows: "THE MAKING OF A COPY MAY BE SUBJECT TO THE UNITED STATES COPYRIGHT LAW (Title 17 United States Code)." In addition, the following notice will be stamped on or affixed to the first page of every item photocopied by the library, as follows: "THIS MATERIAL IS SUBJECT TO THE UNITED STATES COPYRIGHT LAW; FURTHER REPRODUCTION IN VIOLATION OF THAT LAW IS PROHIBITED." And finally, the Library displays notice/warning signs where photocopy orders are placed and on the actual photocopy request form. (See Notes for wording)

Observe and comply with these signs and notices.

Routing and Library Photocopy Statement: It is library practice to route originals and/or tables of contents. Additional original copies of a publication may be purchased when the length of routing lists becomes impractical.

The library will not, nor should individuals, make multiple copies of articles or cover-to-cover copies of newsletters, periodical issues or volumes. This practice should be observed for both standard library materials and materials obtained from online services as well. NOTE: Special attention should be given to "fair use" regarding newsletters.

The library will make one copy of an article in response to a specific request from an employee for individual scholarship, research or educational use. The recipient of the article should not make or distribute additional copies of the article without permission.

ILL Statement: The library typically will borrow or lend original copies of copyrighted materials. In response to requests from other libraries, the library will make one copy of an article so long as the requestor attests, and the library reasonably believes, that the request complies with the Copyright Act or the CONTU guidelines. In requesting materials from other libraries, this library may request a single copy of an article or brief excerpts from a book, so long as the request is in compliance with the Copyright Act
or the CONTU guidelines. [CONTU suggests that a library subscribe to a journal title if it requests photocopies of articles published in the periodical within five years prior to the date of the request more than five times within a given year.]

Questions/For More Information: Please direct any copyright concerns to [Librarian and/or Intellectual Property Attorney].

Permissions Statement/Copyright Clearance Center: The library will seek permission to reproduce material that goes beyond these guidelines and, when necessary, will pay royalties for copies made when such copying is beyond that permitted under the Copyright Act. Royalties may be made directly to the copyright owner or other alternative mechanisms such as the Copyright Clearance Center.

NOTES

1. Review and Implementation: A comprehensive review of copyright law as well as firmwide duplication and copyright related activities should be completed before implementation of a firmwide policy. At a minimum level, this should include a review of Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, the Heller/Wiant Copyright Handbook, an understanding of all firmwide online database contracts, and a general review of seminal cases of note, such as:


2. Sign-off: Review and approval of a policy should be at the highest levels of firm legal and staff management. The policy or guidelines should be disseminated to all attorneys, paralegals and staff.

3. Legal/Staff Responsibilities: Final resolution of copyright related issues requires discussion, analysis and agreement. While firm librarians serve as knowledgeable conduits for firmwide copyright issues, their role in this issue may vary from firm to firm. A statement of policy or guidelines is an essentially legal issue or document and requires significant input from various segments of the firm.

4. Signage: Failure to place standard notice of copyright signage at every unsupervised copier in the firm may result in the Library's forfeiting its rights under section 108 of the Copyright Act. Wording and practice vary somewhat on this issue. One alternative is:

NOTICE

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17 U.S. CODE) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL. THE PERSON USING THIS EQUIPMENT IS LIABLE FOR ANY INFRINGEMENT.

The same also applies for utilization of a standard stamp (or equivalent) for each copyrighted item reproduced by the library and the warning notice displayed where photocopy orders are placed and on photocopy request forms. Wording varies somewhat on stamps. One alternative is: "This material may be protected by copyright law (Title 17 U.S. Code)."

And finally, notice/warning signs are displayed where photocopy orders are accepted and on actual photocopy request forms, as follows:

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproduction of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the reproduction is not to be "used for any purpose other than private study, scholarship or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would violate copyright law.

5. Routing and Library Photocopying Statement: Each firm must come to terms with how it understands "fair use" and how that is borne out in actual practice. This "Statement" discusses what that understanding is.

6. ILL Statement: While a specific scenario has been suggested for ILL, each firm must
determine a specific approach based on an understanding of internal needs and inter-firm relationships and agreements, as well as the CONTU guidelines (see Copyright Handbook). This "Statement" describes what that understanding is.

REFERENCES


