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## Online Copyright Dilemmas

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# LJ INFOTECH ONLINE DATABASES

BY CAROL TENOPIR

## Online Copyright Dilemmas

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DO ANY OF these legalistic statements sound familiar? Each came from the terms and conditions for online databases, and, if you have a DIALOG account, at some point you signed a contract saying you will abide by them. The statements are attempts to clarify and strengthen the copyright law in an online environment. However, if a searcher takes them at face value, it may seem as if all we can do is read search results directly from the screen.

Copyright protection provides incentive for publishers to publish and authors to write. Thus, it benefits readers and librarians by ensuring that intellectual property remains available in as many formats as possible. Most of us want to comply with copyright, but unreasonable requirements pose difficulties. Librarians' interest in copyright is evidenced by a recent flurry of copyright seminars, sponsored by the Special Libraries Association, American Society for Information Science, SOLINET, and others.

In the United States, copyright is still governed by the Copyright Act of 1976, but copyright protection stretches all the way back to the U.S. Constitu-



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tion. Congress passed the 1976 act before electronic copies or electronic journals were considered important, but CONTU (the Committee on New Technological Uses) affirmed that the act covered intellectual property in new media in general and the courts can decide on a case-by-case basis.

While court decisions may not always be consistent, most courts have affirmed copyright protection for electronic products just as they have for

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Copyright was never intended to stifle librarians' creativity. Don't get hung up on the letter of the law

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print. Courts and legislators still lean toward that protection. Assume that if something is copyrightable in print, it is also copyrightable in electronic forms.

### Copyright begins at creation

Copyright protection begins at the moment a piece of intellectual creation is fixed in a tangible medium (which includes digital media). The author need not file for nor post a copyright notice. Thus, every message posted on a list-serv, every original homepage, and every online file is copyrighted, unless the author or other copyright holder expressly gives up its rights.

However, Section 108 ("library exemption") of the Copyright Act allows libraries whose collections are open to the public to make a limited number of copies (five from a journal title in five years) for the purpose of interlibrary loan (ILL) before paying fees or seeking permission. Strictly speaking, ILL must occur only from library to library—that is, if you arrange to have electronic copies delivered directly to a user's E-mail box, the transaction is not covered by the exemption, and appropriate copyright fees should be paid.

Some publishers hope to exclude all electronic copies from this exemption, since technically a library doesn't "own" an electronic version but is just paying for one-time use. Without the concept of an owned collection, the library's right to copy may not exist.

### Contracts

When copyright laws seem ambiguous or lax, database producers and online vendors often turn to contracts to tighten restrictions on use of their materials. Even though giving away a copy of a journal article once you've read it may be acceptable under copyright law, it may be denied under database terms and conditions for online use.

Some terms and conditions specify benefits or rights that exceed copyright limitations. For example, many database producers specify an exact number of copies (commonly, 25) permitted for use within an organization. Others, like Chemical Abstracts Services, permit fairly liberal copying and even archiving within an inhouse database; that permission is built into its initial online and document charges.

### Online copyright compliance

Online services that provide full-text databases or document delivery are starting to build copyright fees into their prices, so libraries don't have to monitor copyright compliance. EBSCOhost advertises that its "pricing includes copyright fees for full-text documents."

When UMI ProQuest Direct quotes its fees—\$9.75 per full image article, or \$2500 for a block of 500 image articles, or \$28,100 for corporate customers for a block of 13,400 ABI/INFORM ASCII full-text articles—the average copyright fee is included, for both printing and display. Users of the system need not keep records of copies ordered, because a copyright fee is paid to the publisher for every article ordered. (This, of course, assumes that the customer does not then make additional copies of the ordered article.)

DIALOG has the most ambitious online copyright permission system.

## ONLINE DATABASES

DIALOG's Electronic Redistribution and Archiving (ERA) service was introduced in 1994 to make it easier for on-line searchers to comply with copyright and contract laws. By using the DIALOG PRINT or TYPE commands, users can request rights to make multiple copies of full-text articles for distribution within an organization, or to archive electronic documents to an inhouse database.

ERA costs vary from database to

database, but are always based on a "multiplier table," which explains the cost of multiple copies in contrast to that for a single copy. For archiving, the multiplier rate is based on the number of users. Before you place an order, consult the HELP RATES listing for each file; redistribution/copying and archive multiplier tables show the cost. In Foundation Grants Index, for example, the cost to make three to 15 copies is three times

the single record charge; the cost for 51 to 100 copies is five times. The cost to archive for up to 25 users is three times the single record charge; for 26 to 200 users, the cost will be six times. To copy or archive 201-500 copies of the same record, the cost is just ten times the single record charge. ERA charges show up on your monthly DIALOG bill.

LEXIS/NEXIS users comply with copyright by subscribing to the NEXIS TRACKER service. TRACKER allows for delivery of requested documents to a Lotus Notes Folder or a Microsoft Mailbox for redistribution via a company's local area network. Copyright and redistribution fees are covered by TRACKER subscription costs, which are based on a designated number of readers within an organization.

Historically, many librarians have used the Copyright Clearance Center (CCC) to comply with copyright. The CCC was organized over 20 years ago to monitor paper copies of print journals, but it is now expanding its coverage to include electronic journals and electronic copies. Librarians can either pay an annual copyright fee to the center or pay the fee on a per title basis.

### Where does the fee go?

Large online document delivery or full-text services such as EBSCO, UMI, NEXIS, and Information Access Company (IAC) have agreements to pay fees directly to publishers. The CCC distributes payments to publishers as well. This works smoothly as long as the publishers are also the copyright holders. However, when an author retains his/her own copyright, the situation gets more complicated.

Some full-text online files actually omit any article that has a copyright holder other than the publisher. This can leave gaps in electronic coverage; thus, full-text versions of print publications may not always be complete. Alternatively, the online system or database producer may gain permission from and pay copyright fees directly to each copyright holder, whether that holder is a publisher or an individual author. However, this can lead to paperwork nightmares, delays in electronic publication, or incomplete online versions.

This confusion has led law libraries to prefer LEXIS over Westlaw for law reviews, explains Carol Ebbinghouse, Western State University Law Library, Fullerton, CA, in "Who Gets the

# 'Guide to Library Automation'

This booklet answers the questions:

- *Why automate?*
- *Which hardware?*
- *Which software?*
- *What about networks?*
- *What about data entry?*
- *How do we get funding?*



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Money?" *Database Searcher*, March 1996. LEXIS loads entire issues, assuming that publishers take care of electronic copyright permission, while West seeks permission from every author.

Three writers' organizations—The National Writers Union (NWU), the Authors Guild, and the American Society of Journalists and Authors—are working to set up clearinghouses modeled after the CCC to distribute electronic copyright fees directly to authors. Earlier this year, Knight-Ridder's UnCover became the first document delivery service to sign up with the NWU's Publication Rights Clearinghouse.

The NWU is aggressively trying to defend authors' rights. Its "Operation Magazine Index" campaign monitors full-text databases to see how many articles are available online and what copyright fees are charged. It enlists authors to join in its lawsuit against database producers and online vendors by showing the authors how much database producers like IAC and online systems are charging for electronic copies.

The NWU urges freelance writers to

sign contracts with publishers that grant rights just for the first use of an article, not subsequent electronic copies. Authors would retain rights for derivative products like full-text online or CD-ROM databases, or they would be paid extra for them.

### What should librarians do?

In a time of uncertainty regarding electronic copyrights, librarians should act carefully. First, ask for permission. If you plan to distribute articles electronically or to create an inhouse database, be sure to ask the database producer for permission. Anytime you repost anything on the Internet or make electronic copies, ask the copyright holder for permission. The copyright holder may be the publisher or the author.

Second, when in doubt, pay royalties. One advantage of the many document delivery services is that they pay royalties to the primary publishers and even to the authors. Special libraries should have contracts with the CCC (Texaco did not) and eventually with authors' clearinghouses. They should use automatic features like DIALOG's

ERA and NEXIS TRACKER, which make it easier to comply with copyright and contract provisions.

Third, be prepared for new pricing models. While online access makes it easier for customers to make multiple copies, it also allows publishers to track each article request. Many online subscriptions are being based on a site license model, calculating the number of potential or simultaneous users. Read these licenses and negotiate portions that are too restrictive; be willing to renegotiate when circumstances warrant it.

Finally, make your best effort to abide by the laws without stifling your own creativity. Copyright protects the free flow of ideas. Information is a vital part of our economy and it requires protection. (This is ironic at the time when the global information network offers incredible opportunities for violating copyright!) On the other hand, copyright was never intended to stifle creativity, so don't get so hung up on the letter of the law that you fear trying new things. Librarians should work with authors and publishers to distribute things in new ways.

## What's Happening at the Holt Booth?

#1935



#1935

### Here Are the Highlights

#### MEET OUR AUTHORS

Ted Sorensen, *Why I am a Democrat* • Arthur Plotnick, *The Elements of Expression*  
Nicholas Basbanes, *A Gentle Madness* • Tom DeHaven, *Derby Dugan's Depression Funnies* (Metropolitan Books)

### Pick Up Our Colorful Giveaways:

#### POSTERS

W5: *Who, What, Where, When and Why* (magazine style children's reference series)  
*Derby Dugan's Depression Funnies* by Tom DeHaven, jacket illustration and design by Art Spiegelman

#### ADVANCED READING COPIES

Karen Joy Fowler's forthcoming novel, *The Sweetheart Season*

### And

see our newest Henry Holt Reference Books including *The Elvis Atlas: A Geographic Journey Through Elvis Presley's America* by Michael Gray and Roger Osborne



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