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Report of the ALA Task Force on Bibliographic Data Bases

I. Charge to the Task Force and Its Actions

At the 1984 Annual Meeting ALA Council approved the following resolution.

That the American Library Association, through its President, urge the bibliographic utilities to minimize restrictions placed on their members' use of bibliographic records maintained in their online data bases; and that the President of the American Library Association appoint a task force to review the issues involved in ownership of bibliographic records through copyright, the increasing costs to libraries and any other barriers to obtaining, using and sharing machine-readable bibliographic records, with a report to be made to Council at the 1985 ALA Midwinter Meeting.

President E.J. Josey appointed the Task Force but time needed for investigation and deliberation made a report in January impossible. The Midwinter meeting was used by the Task Force to gather information. Four meetings were scheduled, including a public hearing. At the hearing five persons who had asked to make formal presentations were permitted to do so. More than 150 persons were in the audience and an open question and answer session continued until no one asked to speak further.

Early in its discussions the Task Force recognized that its charge, while perhaps representative of general library needs, was too broad for thorough investigation by a non-specialist panel. Since it is a matter of common knowledge in the library community that the "real" issue is copyright of, and access to, records in cooperatively created data bases, the Task Force chose to limit itself to these considerations. Task Force members were supplied with copies of articles or citations for all relevant literature that could be identified. A total reading load amounting to hundreds of pages provided many repetitions but also many points of view.

Following the Midwinter Meeting all Task Force members were invited to submit to the Chair written documents representing their points of view. These were amalgamated into a draft report which was mailed to the Task Force for review and a Task Force meeting was established. Thirteen of the sixteen Task Force members were able to attend. Discussions at that meeting followed by an additional draft developed the document you have in hand.

The report begins with a discussion of the environment in which the ownership of bibliographic records and their use exists. It then defines the issues which the Task Force believes relate to its specific charge: minimize restrictions, copyright issue, cost barriers, other access barriers. We emphasize these are definitions and identities, not solutions.

The report then describes a set of principles which the Task Force believes arise out of basic library principles as well as established ALA principles as these apply to the issues. It concludes with a set of recommended positions and actions proposed for ALA Council and staff.

II. Introduction

Over the past two decades new technologies have created valuable resources and services which benefit greatly the library and information community as well as users. Online data bases have become extremely valuable resources which have contributed significantly to the efficiency of library operations while they have also increased both potential and real resource sharing.

Concomitant with this phenomenon has come a multiplicity of complex issues including: ownership of bibliographic records, legitimacy of copyright registration, use and sharing of machine-readable records from online data bases, and rights and responsibilities of member libraries in relation to both their bibliographic organizations and other libraries with which they work cooperatively.

The issues are not totally economic in nature. The more compelling questions are ones such as: how can we establish the value, for all interested parties, of records contributed to data bases? In a cooperatively created data base, are all the records co-owned? Are there uses of cooperatively created data bases that should not be permitted? Does the economic value of a data base ever supercede its other values?

One major concern is the use and application of the term ownership as applied to bibliographic records. Black's law dictionary defines ownership, in part, as "a collection of rights to use and enjoy property, including the right to transfer it to others." Copyright generally confers the sole right to produce or reproduce a work, or any substantial part of it, in any form, and the right to publish a work. Copyright is, however, assignable to another party. Contracts are frequently used to confer or define rights of ownership and may include restrictions on use or reuse. In relation to bibliographic records, ownership may have the following attributes: creation of a record, possession of a record, ability to control access to a record and ability to use a record for multiple purposes.

The library community finds itself in the unique position of owning significant products, cooperatively created online data bases, and must take ethical and mature stances in regard to this invaluable resource. Whether philosophically acceptable or not, copyright registration is one means that has been used to protect data bases. In relation to bibliographic organizations copyright is not well understood, but in simplest terms, registering a copyright claim for an online data base compilation does not register a claim on individual records within that compilation. Registering a copyright claim does not in and of itself prohibit or impede any use of records to which members are entitled. In cases of dispute, a claim of copyright can only be established in a court of law.

It is in the application of copyright, or claim of ownership, to policies and guidelines for use and reuse of records that restrictions may occur. Without a bona fide copyright registration or contractual obligation or other form of legal ownership, however, effective action against unauthorized uses is difficult. A basic misunderstanding of the differences between authorized uses (typically those uses most common for data base contributors) and unauthorized uses (sometimes by third parties) is often contributory to the emotion-charged atmosphere surrounding this entire issue of data base copyright registration. The key, then, is the application of policy, not the fact that a copyright claim is registered.

The American Library Association has as a goal and compelling interest the promotion and improvement of library service and librarianship. Also among its priorities are promoting access to information and improving resource sharing. It is in these contexts that the Task Force on Bibliographic Data Bases issues this report to the ALA Council.

III. Current Environment: Technological, Economic, Philosophical

A. Cooperative nationwide data bases exist not for themselves but as means to ends desired by their participants. These ends include, but are not limited to, access to bibliographic records for cataloging or other processing; use of holdings symbols for locating a title and initiating an inter-library loan request; assisting users directly through online searches; gathering information about library holdings for collection development decisions; and making possible the production of offline products such as microform or printed union lists. Continued existence of nationwide data bases (whether centrally maintained or distributed) is essential if libraries are to continue to serve these information needs.

B. Database providers, and contributors to them, often have a significant stake, usually financial, in the protection of cooperatively created data bases.

C. Many agencies which create, contribute or pay for the creation of records to add to cooperative data bases are public agencies. Records created under these circumstances may be considered in the public domain, or may have been created specifically to develop products to be shared with others, independent of membership or affiliation.

D. Although initially conceived as means to an end, data bases have become valuable assets in their own right.

E. The phenomenal growth, and subsequent value, of online bibliographic data bases, coupled with powerful new technologies, has created a conundrum for both bibliographic organizations and their members. This puzzle is the conflict, real or perceived, between open access to the data in support of traditional library objectives and the public need, and protection of the data bases from unauthorized use by those who did not contribute to its development and who, by such use, may endanger the continued viability of a resource important to the common good.

F. Technology has created an environment wherein significant segments of data bases can be reproduced with ease and relatively small financial investment, either by means of machine-readable tapes or by direct downloading.

G. Microcomputer technology has developed significantly increased storage and handling capacity which may make large, centralized data bases less necessary for member's technical operations, and stand-alone systems more cost-effective, with a potential, detrimental impact on resource sharing and other data base uses.

H. Resource sharing on a national and international basis, long identified as a goal of the library community, and close to reality through massive cooperatively created data bases, may break down if individual libraries choose to become more isolated with their local hardware and data base developments.

I. The use of large numbers of records from existing bibliographic utilities to provide services in competition with those utilities potentially puts the utilities at an economic disadvantage because they may be locked-in to older, higher-cost hardware while, simultaneously, the competition may tend to reduce both the enhancement of the data base and the number of unique records added.

J. Bibliographic utilities, having diversified and broadened their services and functions, have assumed many of the characteristics of enterprises in the private sector.

IV. Issues of Concern to ALA and the Library Community

A. Minimizing Restrictions on Members' Records: The description and definition of the rights of ownership of contributed bibliographic records within a compilation are of serious concern to the library community. Local, state and federal governments have financed development of bibliographic records and data bases. This was done in part to ensure sharing among a wide variety of agencies and potential jurisdictions, including those which may not have adequate resources to independently belong to a cooperative online organization. This was also done to ensure access to bibliographic records. Restrictions, current or retrospective, on the use of records may negate the purpose of the original investment and thwart the implementation of public policy. There are three major facets to this issue:

1) Ownership of the intellectual content of the individual records.

This issue is addressed by these questions: To what extent is an individual institution inhibited in the use of its own contributed data? Can it reuse the bibliographic information only with the permission of the compiler? Can it reuse the bibliographic information only for its internal uses? Can it share the information only with other contributors to the compilation? Can it share the information only for non-commercial purposes? Can it share the information with whomever it desires and for whatever purposes?

2) Access to and/or use of the bibliographic data. This issue is addressed by these questions: Does the compiler have the right to inhibit access to an institution's bibliographic data for use by that institution in any way? For use by that institution outside its internal uses? For use among co-contributors? For use for non-commercial purposes? For use for any purpose decided upon by the contributor?

3) Agreements with bibliographic utilities or other libraries.

This issue is addressed by these questions: Might an agreement or contract limit a library's flexibility to reuse records in other applications? With other participants? In a cooperatively created data base do libraries have ownership rights in some records by virtue of having created them while not having ownership rights in others? In practical terms, would it be possible or economical to sort these two types of records for reuse? If not, could use or reuse of mingled records in the data base, therefore, violate the terms of contracts or other agreements?

B. Ownership of Bibliographic Records Through Copyright: Copyright registration of an online data base compilation is one mechanism for bibliographic utilities and their members to assert ownership and protect their inter-

ests in the data base. Based on 1984 actions of the U.S. Copyright Office, it appears that copyright claims to various elements of a data base may be separately registered by multiple individuals and/or agencies. Copyright registration as it relates to online data bases, particularly cooperatively created ones, raises a number of difficult issues for the library community:

- 1) Is an assertion of ownership in a cooperatively developed bibliographic data base in conflict with the American Library Associations' position advocating broad sharing of resources?

- 2) Is copyright a useful mechanism for protecting the interests of some or all of the stakeholders in a cooperatively developed online data base?

- 3) Who will obtain the benefits of copyright? In other words, will a particular copyright registration of an online data base claimed on behalf of all members provide benefits to the members and the utility equally, or to one or the other exclusively?

- 4) Who should obtain the benefits? Are there stakeholders with interests in the online data base in addition to the utilities and their members, including public funding agencies and taxpayers?

- 5) If some libraries wish to have their records in the public domain to facilitate sharing, does copyright registration affect this capability?

- 6) Should publicly-funded records residing in an online data base be protected differently from other records?

- 7) What are the implications of copyright registration sought ex post facto by individual stakeholders in a cooperatively developed data base?

- 8) How do the stakeholders in a cooperatively developed data base reconcile responsibilities to other stakeholders when such responsibilities may be in conflict with their own needs?

- 9) Do the copyright law's provisions for fair use apply to online data bases? If so, is the principle of fair use adequate to allow libraries reasonable use of records obtained from a bibliographic utility?

- 10) What is the copyright protection status of offline products which have been derived from use of records in an online data base for which a compilation copyright has been registered?

C. The Increasing Costs to Libraries and Barriers to Obtaining, Using and Sharing Machine-Readable Records:

- 1) In the current climate, greater time and resources may be expended in contract negotiations resulting in increased costs for both the data base provider and the libraries.

- 2) Clarification of the ownership and fair use of bibliographic records is placed in the courts instead of within the library community. Mutually agreed upon contracts, however, can supercede copyright provisions.

3) Policies which restrict sharing of records by members of bibliographic organizations with non-members may curtail or hamper additional cooperative efforts and may increase the total costs of processing.

4) Since the issue of copyright of a bibliographic data base is new, and its legal implications virtually unknown, fear of these unknown legal ramifications may cause libraries to be overly cautious in their sharing of bibliographic information.

5) Since ownership claims in the form of copyright registration can be made retroactively, cooperative efforts may be inhibited out of mistrust of some future action by other members of the cooperative.

V. Principles for the Use, Sharing and Protection of Cooperatively Produced Bibliographic Records.

A. The availability of machine-readable records contributed to or derived from cooperative data bases has potential to enhance resource sharing at local, regional, national, and international levels.

B. Information has value beyond that which can be measured financially. For that reason it cannot be viewed solely as a priceable commodity and care should be taken that monetary value not become the sole basis upon which it is delivered or withdrawn.

C. Each member of a cooperative bibliographic utility has rights, obligations and responsibilities to local clientele, to other members, to regional networks and cooperatives, and to the utility itself. Among member responsibilities is the obligation to avoid using records obtained from the cooperative in such a way as to weaken or damage the data base upon which all the members and the utility depend.

D. A bibliographic utility has obligations and responsibilities to its members, most important of which is the obligation to support each member library's primary role and function. Bibliographic utilities were created to assist libraries in carrying out their mission. Therefore, bibliographic utilities should avoid any action that would undercut or make impossible that fundamental mission.

E. Protection of cooperatively-built data bases for the present and future benefit of the library community and other stakeholders is essential.

F. Use, sharing and protection of cooperative bibliographic data bases should be tempered with goodwill, judicious reason and concern for balance among economic, intellectual and social values.

VI. Recommendations to ALA Council I

In light of the charge to the Task Force, the environment which it has described, the relevant issues, concerns and principles it has identified, we make the following recommendations to the American Library Association.

A. That ALA continue to support open access to information, including the information contained in online data bases, and encourage data base providers and other organizations to minimize restrictions placed on their members' use of bibliographic records maintained in their online data bases.

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B. That ALA recognize the legitimate need to protect cooperatively built online data bases from unauthorized use since such use may endanger the viability of a resource developed and maintained for the common good.

~~recognize copyright only~~
C. That ALA recognize copyright, contractual obligation and/or clear member guidelines as mechanisms by which managers and members of cooperative data bases may seek to protect the resource in which all have a common interest.

D. That ALA encourage programs and developments that facilitate access to bibliographic records by all members of the library community.

E. That ALA encourage the continued development of resource sharing by supporting the inclusion, in cooperatively produced online data bases, of holdings and bibliographic records for all members of such cooperative efforts.

F. That ALA encourage the bibliographic utilities:

--to develop, with their memberships' involvement, guidelines for the use and sharing of machine-readable bibliographic records aimed at maximizing the benefit to the entire library community of resource sharing efforts which depend upon records from the utilities.

--to take advantage of new technology to reduce the costs for their services and to further support cost effective resource sharing.

--to actively participate in projects and programs designed to reduce technological barriers to the sharing of machine readable records across telecommunications media.

--to develop strategies for sharing machine readable bibliographic records throughout the library community in a manner which will not economically disadvantage the utility.

--to develop strategies for optimizing the benefits to taxpayers of the public funds invested in cooperative data base development.

--to review the current use restrictions on records in the cooperatively developed data bases of the utilities with all users of the utility to improve the users' understanding of these and obtain their input for potential changes.

--to review with all users of the utilities any future use restrictions on records in the cooperatively developed data bases in advance of action by the utilities to implement such restrictions.

G. That ALA encourage all parties involved in cooperative bibliographic efforts to seek competent legal advice before signing any contract, operating agreement or other document which spells out rights and responsibilities of the parties involved.

H. That ALA urge, as a means of encouraging resource sharing, funding agencies to assist in the development of data bases at the national, state and local level, which include the holdings of all types and sizes of libraries, including those which may not be able to afford such development.

I. That ALA request the Copyright Subcommittee of the Legislation Committee to develop for members, legal advisory materials and guidelines in the area of copyright of bibliographic data bases and records.

J. That ALA take immediate steps to help educate and inform librarians about the legal aspects of the copyright of bibliographic data. The Task Force suggests such things as 1) division and roundtable workshops, 2) creation and distribution of printed guidelines, 3) creation and distribution of

model contracts, 4) an article on this issue in *American Libraries* by the ALA attorney, 5) establishment of a permanent committee on bibliographic data bases, and similar initiatives.

Respectfully submitted by the Task Force on Bibliographic Data Bases,

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