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Special Issue of ALA Washington Newsletter on the Proposed Copyright Clearance Procedures

Although library users and libraries both have certain rights to make copies of copyrighted material under the new copyright law that takes effect January 1, 1978 (Public Law 94-553), copyright proprietors are now establishing "clearing and licensing mechanisms" to collect royalties from those who make photocopies beyond the limits authorized by the new law. This process has been called "copyright clearance," and most of the information to date on the subject has been written from the perspective of the copyright proprietor. Attached is a statement on proposed copyright clearance procedures from another point of view -- that of librarians whose main goal is to assure ready access to information for educational, scholarly and research use.

Before considering the payment of a royalty for the privilege of copying a copyrighted work, librarians and users of libraries should understand and exercise fully the rights the new law provides them to make copies without permission from or payment to the copyright holder. These rights are discussed in some detail in a number of the articles cited in the bibliography accompanying the attached statement.

You may wish to make copies of this statement and the accompanying bibliography for distribution to your colleagues and other interested persons.

attachment

Proposed Copyright Clearance Procedures for Photocopying
Information for Librarians

Prepared by
Council of National Library Associations
Committee on Copyright Practice and Implementation*

October 1977

What is "Copyright Clearance"?

The term "copyright clearance" refers to the process of requesting and receiving permission from the copyright owner in order to make a copy of a copyrighted work. It may or may not involve the payment of a fee.

Do Libraries Need Copyright Clearance for Photocopying?

Most photocopying done by libraries in the United States today is legal under the new copyright law that takes effect January 1, 1978 (Public Law 94-553). Such copying will require neither permission from the copyright holder nor the payment of license fees or royalties. Under the new copyright law, as under the old law, libraries have certain rights to make photocopies without any sort of clearance from the copyright owner. It is important that libraries understand and exercise fully these rights.

For example, librarians have the right to make single copies of periodical articles for users. Furthermore, photocopies in lieu of interlibrary loans are permitted including repeated requests for copies from the same title, subject to certain guidelines and statutory limitations. Nevertheless, it is conceivable that there will be occasions on which a library will wish to engage in multiple photocopying of a particular title or issue which is of a kind not permitted by the law, and that it will, therefore, wish to obtain copyright clearance for the right to copy. Such clearance could involve permission from the copyright owner to make a specified number of copies for a particular purpose without charge; or, permission might be contingent upon the payment of a royalty or other fee.

How Does a Library Know Whether Clearance is Needed?

In order to determine whether a library must seek copyright clearance, the librarian should explore whether the library's copying is a kind authorized by the law. If it is, no clearance of any sort is needed. The law does not provide quantitative standards for how much copying can lawfully be done without clearance, but there are congressionally-approved guidelines which are helpful. In approaching the law and the guidelines, relentless literalism is no substitute for good judgment and a basic understanding of the law's intent to balance the rights of creators on the one hand and the public's right to information on the other.

The relevant sections of the copyright law are Sections 107 and 108. Section 107 sets forth four general criteria that must be weighed in determining whether the making of a copy for a particular purpose is "fair use" of the copyrighted

*Represented on the committee are: American Association of Law Libraries, American Library Association, Association of Research Libraries, Medical Library Association, Music Library Association, and Special Libraries Association.

material. Section 108 is more specific in the rights it grants libraries, which include the right to make a copy for its own collections and the right to make a copy for a user under certain circumstances. It should be noted that the Section 108 rights apply only to libraries that are open to the public or accessible to outside researchers. Libraries have both "fair use" rights under Section 107, and the specific rights enumerated in Section 108. (See attached bibliography for more information on the rights granted libraries and users of libraries by the copyright law.) Only if the desired copying is outside the bounds of permissible copying in Sections 107 and 108, does copyright clearance become relevant to the library's operations.

If a library finds that the desired copying exceeds what is permitted by the law, at least three courses of action are open for consideration: (1) the library may decide that the excess copying can be avoided (perhaps by careful attention to acquisitions); (2) the library may request permission from the copyright holder to make a specified number of copies with or without payment of a fee; or (3) the library may obtain permission and pay the fee through a centralized copy service.

How Does a Library Obtain Copyright Clearance When Needed?

Libraries wishing to pursue copying that exceeds lawful limits must seek clearance (permission and/or payment of a fee) from the copyright holder. For example, the library may send a letter to the copyright holder asking permission to make a certain number of copies for a specified purpose, or the library may wish to request blanket permission in advance from certain publishers who are willing to have their materials widely accessible for educational purposes.

A library whose users require a large number of photocopies may wish to consider a centralized service for copyright payments. Two such services have recently been proposed, and others may appear in the future. One is the Copyright Clearance Center incorporated by the Association of American Publishers (AAP), and the other is a program for supplying photocopies of journal articles developed by the National Technical Information Service (NTIS).

As AAP and NTIS work out the details on how their respective services will operate, librarians will be able to assess their respective merits. Significant differences between the two have been apparent since they were first proposed, as for example in the setting of fees. NTIS plans to charge a flat fee for a copy of an article regardless of its length. AAP, on the other hand, as a publishers' association, is sensitive to charges of price-fixing in violation of antitrust laws and therefore must allow each individual publisher to set its own copying fees. Another important difference is that NTIS will arrange to supply copies of the requested articles, while the AAP center plans only to collect fees for copies libraries must obtain from other sources.

The few libraries that are involved in photocopying practices beyond the limits authorized by the copyright law should investigate carefully whatever ways may exist for securing copyright clearance once the new law takes effect January 1, 1978. It is premature to make a reasoned comparison of the two services now being established (AAP and NTIS) because all details are not known. The concept of copyright clearance centers for photocopying is new and untried in this country, and many changes are expected to occur as such centers attempt to establish themselves in the months ahead. Libraries are advised to be sure that they are exercising fully the rights granted them by the new copyright law before entering into a fee-paying copyright clearance arrangement. In the vast majority of library photocopying situations, it is simply not necessary to request permission or pay any fee to the copyright holder.

COPYRIGHT LAW AND LIBRARIES: A BRIEF BIBLIOGRAPHY

The Law

Public Law 94-553 completely revises the federal copyright statute, Title 17 of the U.S. Code. Copies of the slip law may be obtained from the Copyright Office, Library of Congress, Washington, D.C. 20559. The new law becomes generally effective on January 1, 1978.

The Guidelines

Guidelines on interlibrary loan (officially called "Guidelines for the Proviso of Subsection 108(g)(2)") are provided in the legislative history of the new copyright act, as are guidelines for classroom and teaching uses, and guidelines for educational uses of music. All three sets of guidelines are listed by their official names below:

"Guidelines on Multiple Copies for Classroom or Teaching Uses"

"Guidelines for Educational Uses of Music"

"Guidelines for the Proviso of Subsection 108(g)(2)"

The first two were included in the House Judiciary Committee report on the copyright bill (House Report 94-1476), and the third was made part of the conference report (House Report 94-1733). Both of these reports are available from the Copyright Office along with an errata sheet. In addition, all three sets of guidelines are reprinted in Librarian's Guide to the New Copyright Law (see below); the interlibrary loan and classroom guidelines are available in American Libraries, 7:610-611 (November 1976).

Additional Information

Cardozo, Michael H. "To Copy or Not to Copy for Teaching and Scholarship: What Shall I Tell My Client?," Journal of College and University Law, 4:59-83 (Winter 1976-1977). While not directed specifically to libraries, this article presents an analysis of "fair use" and considers the question of how the Williams & Wilkins case would have been decided under the new copyright law.

"Copyright: New Law and New Directions," a filmstrip kit developed by the Association for Educational Communications and Technology and the National Audio-visual Association, 1977. The filmstrip, audio cassette, script and information booklet are available for \$18.95 (member), \$22.95 (nonmember) from AECT, 1126 16th Street, N.W., Washington, D.C. 20036.

De Gennaro, Richard. "Copyright, Resource Sharing, and Hard Times: A View from the Field," American Libraries, 8:430-435 (September 1977). This article questions whether libraries will feel much impact at all from the new law, and warns librarians against expecting too much from resource sharing. Concerning Sections 107 and 108 and guidelines, the author says, "I can foresee no real difficulties in complying with them, and I do not believe they will significantly affect the way most libraries serve their readers."

Flacks, Lewis I. "Living in the Gap of Ambiguity; An Attorney's Advice to Librarians on the Copyright Law," American Libraries, 8:252-257 (May 1977). An attorney on the staff of the Copyright Office expresses his personal views in his answers to nine questions frequently asked by librarians. This is a very useful article providing a clear roadmap to Section 108.

Holley, Edward G. "A Librarian Looks at the New Copyright Law," American Libraries, 8:247-251 (May 1977). The author steps back to view the new law in perspective, and then goes on to provide a number of practical pointers and commonsense observations on libraries and copyright. A bibliography is included.

"Interlibrary Loan Form." The text of this form, revised to comply with the new copyright law, is scheduled for publication in several journals including: American Libraries, October 1977; RQ, Fall 1977; Special Libraries, November 1977.

Librarian's Guide to the New Copyright Law. Chicago: American Library Association, 1977. Available from ALA Order Dept. for \$2.00. Reprinted from ALA Washington Newsletter, Vol. 28, No. 13, November 15, 1976. This guide provides substantial excerpts from the copyright law and the accompanying congressional reports. The full text of all three sets of guidelines is included.

Marke, Julius J. "United States Copyright Revision and Its Legislative History," Law Library Journal, 70:121-152 (May 1977). A comprehensive legislative history and summary and analysis of the new copyright law prepared for the guidance of researchers, librarians, teachers and institutional administrators.

The New Copyright Law: Questions Teachers and Librarians Ask, a joint project of American Library Association, National Council of Teachers of English, and National Education Association. Washington: NEA, 1977. A question-and-answer approach to the new law, available in November 1977 for \$2.00 from any one of the associations.

Stedman, John C. "The New Copyright Law: Photocopying for Educational Use," AAUP Bulletin, 63:5-16 (February 1977). A scholarly article by a law professor emeritus at the University of Wisconsin, which presents an analysis of the fair use provisions of the new law as they apply to institutions of higher education. A clear, thoughtful discussion of copyright for educators.

How to Request Permission

Copyright and Educational Media: A Guide to Fair Use and Permissions Procedures. Washington: Association for Educational Communications and Technology and Association of Media Producers, 1977. This pamphlet presents questions and answers on fair use copying of nonprint media, including off-air taping of television programs, public and instructional TV. Also included are the producers' recommendations for how to seek permission for one-time duplication of transmission and licensing agreements.

Explaining the New Copyright Law: A Guide to Legitimate Photocopying of Copyrighted Materials. Washington: Association of American Publishers, June 1977. A revised edition of an earlier booklet of the same title, this pamphlet presents a procedure some publishers recommend for requesting permission.

"Library Requisition for Out-of-Print Copyrighted Music." A form approved by the Music Publishers Association, the National Music Publishers Association and the Music Library Association available from any of the above associations.