

SWIMMING UPSTREAM: CLARIFYING THE MURKY WATERS OF COPYRIGHT [copy2]

by

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Nearly three hundred years ago, the first copyright law was drafted to create an open market for intellectual property. Today, although the new technologies of information and publishing are vastly different, the challenge remains the same--balancing public access and interests with those of private interests in intellectual property governed by the copyright law. Librarians have a crucial role in bringing this balance about, due to the way libraries fundamentally deploy information and knowledge--for the public good. Yet, because of a lack of understanding and fear of the copyright law, many librarians and educators, professionals and paraprofessionals, have avoided exercising "fair use" and other limitations on the statutory monopoly granted to copyright owners. The purpose in this overview is to perform a brief exploration of the status of the current copyright law with respect to these limitations and the impact on electronic information sources and multimedia. Our focus is the role of libraries and library media specialists.

Despite the broad and often vague nature of the current copyright law, there is a consensus among experts, including the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Bruce Lehman, that with only a few minor adjustments the present version of the U.S. copyright law is workable and relevant in this digital age. His view coincides with that of the Working Group on Intellectual Property Rights of the Clinton Administration's National Information Infrastructure (NII) Task Force. Their draft report, or "green paper," issued July 7, 1994, states, "The Working Group concludes that, with the following limited amendments and clarifications, the Copyright Act will provide the necessary protection of rights in copyrighted works--and appropriate limitations on those right" (Anonymous, August 1994, p. 2).

A major strength of the NII is the content moving through it, and this report recommends some modest changes to clarify its applicability in this digital age. Implications are numerous for librarians and information professionals. The specific parts of the copyright law applying directly to librarians and educators are Sections 107 (fair use), 108 (library exemptions) and 110 (1) and (2) (educational uses). These sections provide the public with adequate access to copyrighted works, including information in digital form. "Fair use" is defined as public use of the copyrighted materials without compensation to the owner because of the minimal use of the material in the public interest. Special guidelines stipulated in Section 107 state fair use is determined by three major factors; (1) Brevity--the amount to be copied should be minimal, only 10% of an article, for example, (2) Spontaneity--the classroom need must be immediate, and (3) Cumulative Effect--"small uses" should not accumulate to the point where they threaten the potential market for the work. Materials excluded from fair use are standardized tests, workbooks and manuals (Bothel, December 1993, p. 70). Congress intended in Section 107 to grant the public and individual readers substantial advantage in the fair use of copyrighted works, whether those works are privately owned or publicly available in libraries.

The amount of electronic information and multimedia available today is growing at a rapid pace and the current copyright law is a concern of many. It does not specifically cover copyrighted

material online. An ever-present potential for copyright violations can have a detrimental effect on electronic information in the future. If copyright owners do not feel their material and profits are protected on the information superhighway, they will not want to participate in the development of its infrastructure. This concern is addressed by the NII and their plan is to change the Copyright Act to include digital information and transmissions. Online distribution rights held by copyright owners of digital information are the same as those held by copyright owners of printed material.

Proposed in the NII's plan is the unique concept of making it a crime for users to disable any technology used as an anti-copying device; a possible solution to online copyright infringement. Several companies, copyright owners and publishers are trying to address this on-going debate of how to best protect intellectual property in electronic format. Clinton's NII Task Force green paper may be one solution. Another solution proposed for digital copyright is encryption. Electronic information is specially coded and users must purchase a "key" to correctly unscramble the copyrighted information. "A cypher would be hidden somewhere in the document, identifying owner and buyer. If the information should leak onto a bulletin board, it would be possible to nail the offending party" (Port, October 1994, p. 212).

Educational institutions and libraries are finding themselves major players in obeying copyright law. What can library media specialist do to assure compliance with the law and at the same time, provide access to copyrighted materials for the public? At the heart of the matter, is the extent to which readers, libraries and library media specialists imaginatively and aggressively pursue the rights granted to them by the copyright law. There is substantial growth in the number of schools, colleges and libraries that have developed copyright policies unique to their respective institutions. In approaching the preparation of copyright policy, three major factors should be considered; (1) the policy should be prepared by those familiar with the law and those having access to sources of information--library media specialists are essential to this task, (2) the policy should be reasonable detailed and unique to the institution, and (3) the policy should be endorsed by those in the highest position of authority (Bender, June 1993, p. 47).

Compliance can also be maintained with the purchase of site licenses. A library would purchase a site license for a set period of time and the database or software would be available to users. Combining the copyright policy and the purchase of a site license, by an institution, would certainly benefit the users. This would provide current materials and protect the library. These are just a few ways librarians can keep the balance between the public interest and private intellectual property rights.

The laws governing copyright (Copyright Act of 1976) can be obtained at the Copyright Office by calling their hotline number: 202/707-3000. The following bibliography also provides specific, helpful information relevant to school library media specialists. The electronic listserv, LM_NET, is quite helpful in providing answers.

Application of the Copyright Law

Baker, Nicholson. "Infohighwaymen." **The New York Times**. Final Edition. [CD-ROM] (October 18, 1994): 25.

Data base companies are protecting themselves from the legalities faced by the remainder of the publishing industry for hundreds of years. Should a writer's work be published electronically for easy access by the rest of the world? If this is done, how are the authors going to be

compensated for their work? Will there be assurance that the text will remain factual? These are questions submitted in this article. One possible suggestion is a royalty-sharing plan where the fees, charged by a magazine data base, would trickle down through the system to the author of the piece. Baker has strong feelings toward allowing the author to say who will sell his or her words, in what format, and at what price.

Becker, Gary H. *Copyright: A Guide To Information and Resources*. 1st ed. P.O. Box 951870, Lake Mary, FL 32795-1870 (407) 333-2037.

Provided inside this guide book are day-to-day copyright references for educators, trainers, librarians and media staffs. At the conclusion of the book, there are reference citations to assist the reader in learning more in-depth knowledge about the copyright law or the reasons for some of the guidelines in this manual. To develop a guide like this one, Becker did extensive research into the current law as well as looking at court cases and respected legal opinions. He is not giving legal advice; he is providing the user some guidelines to be aware of and his bibliography is a wonderful source for additional readings on the topic. Chapters included in the guide are "Items Protected/Not Protected," "Fair Use," "Photocopying," "Music," "Video," "Computer Software and Applications," "Obtaining Copyright Permission," "International Copyright," and others. Sample permission forms and sample licensing agreements are included. A viable work to use for reference when in question as to copyright rights.

Bender, Ivan R. "Copyright Law and the Newer Technologies." **Wilson Library Bulletin** (June 1993): 44-47.

Bender is an attorney in private practice in Chicago specializing in the application of copyright to the educational and library use of copyrighted works. His article addresses the issues relevant to schools and libraries, with respect to fair use in Section 107 and the library exemptions in Section 108. The rights of copyright owners are explained in a clear and concise manner, and this information is quite useful in establishing the context of the exemptions available to those working in educational and library surroundings. Off-air taping, face-to-face performance, and other multimedia and electronic formats are discussed as they apply to fair use and Section 108. He stresses the importance of copyright policies within each institution and outlines some basic steps in setting up a copyright policy. A good presentation of one of the more complex areas with which librarians must often deal.

Bennett, Scott. "The Copyright Challenge: Strengthening the Public Interest in the Digital Age." **Library Journal** 119 (November 15, 1994): 34-37.

By fully exercising their fair use rights and by creating digital libraries, traditional libraries can ensure public access to vast amounts of intellectual property. Scott Bennett is the Director of the Yale University Library and feels computer technology is equally capable of advancing the goals of both copyright owners and users. This informative article explains his concept of libraries as managers of copyrighted property provided in sections 107 and 108 of the 1976 copyright law. He stresses that the future effectiveness of libraries lies in the ways they use the statutory limits on copyright monopolies to serve readers' needs, advance education and promote science and the arts. By taking a business/corporate slant, he describes the impact of technology on this mission. Some helpful comments are included in a separate section where three scenarios are presented by expanding on the example he uses in the main body of the article. The importance for library media specialists is the view of the future for libraries, with the respect to electronic information and copyright.

Bothel, Richard T. "Copyright or Copywrong?" **Education Digest** 59 (December 1993): 69-72.

More questions and interpretations are needed today, than in the past, for copyright restrictions pertaining to new media devices. Educators and librarians need to take accountability for correct uses of all types of media in the classroom and libraries. This brief, readable piece covers topics of copyright law encountered within the academic setting. Mr. Richard Bothel is the former Director of Educational Technology, West Virginia Northern Community College and he states how copyright applies to different types of media. He recommends a good general guide published by EDUCOM entitled, "Using Software: A Guide to the Ethical and Legal use of Software for Members of the Academic Community," (202/872-4200), for media and software use in regards to current copyright law. Much of his article is taken from this pamphlet. The materials not governed by copyright are stated clearly, and he stresses that copyright should not create fear and confusion for faculty. There are many helpful suggestions in this work for educators and library media specialists.

Hafrey, Leigh. "University Presses; At Cyberspace University Press, Paperless Publishing Looks Good." **The New York Times**. Final Edition. [CD-ROM] (October 30, 1994): 32.

Provides solutions for electronic information access, and one suggestion is to purchase a site license. Libraries would pay a fee for a period of time. The data base could be used only by those individuals with proper identification. Licenses could be purchased for access only or for accessing and downloading and printing information. Electronic journals would cost 20 percent less than the paper version and be available one month before the paper version.

Kinnaman, Daniel E. "New Guide Helps Schools Stay Legal." **Technology & Learning** 14 (October 1993): 34.

Describes the Software Publishers Association guide to help schools and media centers comply with software copyright laws. "Education Software Management: K-12 Guide to Legal Software Use" offers an overview of copyright laws and issues. Practical suggestions and model policy statements are included in this multimedia kit aimed at elementary and middle schools. It suggests procedures for monitoring acquisition and use, staff development and contains sample lesson plans. There is a 9 minute rap music video in the kit and it can be obtained by schools for \$35.00. For an information brochure and order form, contact the Software Publishers Association, 1730 M Street N.W., Suite 700, Washington, D.C. 20026 (202/452-1600, ext. 341).

LISTSERV@SUVN.SYR.EDU (LM_NET)

LM_NET is a high volume, informative listserv available on the internet. It has a great ability to bring together the library media profession, and reduces the sense of isolation experienced by some library media specialists. The wide variety of locations and participants, including library and education students, gives this listserv its expertise. LM_NET offers a mentoring program and a digest format for easy access to all messages. Discussions have a diverse range and copyright concerns are often addressed. In the recent past, there have been questions asked about video, CD and other software. It is a good forum in providing suggestions and workable solutions to this complicated issue of copyright. To subscribe to LM_NET, send an e-mail request to: LISTSERV@SUVN.SYR.EDU or LISTSERV@SUVN for Bitnet users. In the body of

the message, state "subscribe LM_NET firstname, lastname" excluding the quotation marks. To activate the digest feature, send an e-mail request to the above address and in the body of the message state: set LM_NET digest.

Murray, Kenneth T. "Copyright and the Educator." **Phi Delta Kappan** 75 (March 1994): 552-555.

Current copyright law and its relationship to the educator is the focus of this writing. Discussed are potential copyright infringements as well as allowances. Vicarious liability circumstances are highlighted. The differences between copyright restrictions and public domain are touched upon. Mention of the "Fair Use" doctrine, its applications, and its restrictions is made. The library's role in the applicability of responsibilities of copyright law is discussed as well as, software and video tape copying, as they relate to the educator and the library.

Port, Otis. "Halting Highway Robbery on the Internet." **Business Week** 3394 (October 17, 1994): 212.

The Internet, its accessibility, and its effect on current copyright laws are referred to along with possible efforts to curb copyright violations. Digital copyright systems, some using encryption techniques, are explored. Listed are some possible ways to entrap copyright violators on the Internet and how to restrict access to only those individuals who can afford to pay a fee for information. One solution, providing a small description of an article without actually printing the article, is offered.

Reid, Calvin. "Writers Forum Looks at New Media, Internet, Copyright." **Publishers Weekly** 46 (November 15, 1993): 25.

Highlights of a forum meeting of the Writer's Rights Coalition that took place on November 9, 1993 are given. The meeting focused on multimedia products, information networks and writers' rights. John Perry Barlow, spokesman at the conference, discusses current copyright law and how it will ultimately fail in the new electronic age. He focuses on how writers can produce information products; these products would be so appealing that the consumer would want to have the remainder of the program and therefore would be willing to purchase the entire package.

Comprehension and Analysis of the Copyright Law

Anonymous. "NII Task Force Issues Preliminary Report." **Bulletin of the American Society For Information Science** 20 (August/September 1994): 2-4.

An executive summary of a preliminary report of the National Information Infrastructure (NII) Task Force's Working Group on Intellectual Property is presented. This report addresses each of the major areas of intellectual property, focusing primarily on copyright law and its implication on the NII. It provides a short background on the NII, the formation of the Task Force and stresses the internationality of the risks facing owners of intellectual property rights. A clear and well-written overview of the NII Task Force "green paper" is contained in this brief article, and a "must read" for library media specialists. Proposed changes in regards to fair use and educational exemptions are informative and address electronic formats. The NII held a series of conferences last year on this report and solicited public response.

Berry, John N. "Keep That Information on the Move." **Library Journal** 119 (October 1, 1994): 6.

The Economy of Ideas: A Framework for Rethinking Patents and Copyrights in the Digital Age by John Perry Barlow is reviewed in this editorial book review. The review of this new book states current copyright laws are inadequate. Barlow suggests a new view of information that will include ease of access, speed of access, and user interaction, as well as facts and ideas. John N. Barry's favorable review analyzes the relationship of intellectual property protection and libraries.

DiMattia, Susan. "Librarians Foresee Threat to Copyright." **Library Journal** 119 (January 1994): 36.

Testimony presented to the Working Group on Intellectual Property by Robert Oakley, a Washington representative for the American Association of Law Libraries is reported in this writing. DiMattia defines the basic purposes of copyright law, intellectual property rights, fair use and other limitations in the electronic environment, needs of users, and compensation systems for copyright owners. Briefly touched on are the library and education community's roles in helping to determine what changes will be needed in order to strengthen current copyright laws.

Elmer-Dewitt, Philip. "Nabbing the Pirates of Cyberspace." **Time** 143 (June 13, 1994): 62-63.

Illegal software duplication is a global problem that Elmer-Dewitt addresses. He analyzes the problems of government intervention and the possibility of censorship clouding the real issues of software piracy. Possibilities and problems of encryption as a means of safeguarding software are listed. Highlighted is the David LaMacchia software piracy case. The issue of added value to a program by means of ancillary services such as printed manuals, upgrades, and telephone support is examined.

Gasaway, Laura N. and Wiant, Sarah K. **Libraries and Copyright: A Guide to Copyright Law in the 1990s**. Washington, D.C.: Special Libraries Association, 1994. 272p. Paper \$50.00. LC 94-8694 ISBN 0-87111-407-0.

Librarians who are looking for a one-stop guide on copyright law should consider this a definitive work. Gasaway and Wiant's book goes beyond print sources and interprets copyright law for electronic networks (LAN's and WAN's included) and other technologies. They explore the international copyright laws and give us an overview of some well-known copyright cases. Both authors are law library directors and frequent lecturers on this subject of current copyright law and practical application. A well developed index, an extensive bibliography and appendices that answer the more difficult questions are found at the end of this useful book. These authors have written an informative and readable source on a confusing topic. The price, even for paperback, is expensive, but the content makes it a worthwhile purchase and should be included in library collections.

Goldstein, Paul. **Copyright's Highway**. New York: Hill and Wang, 1994. 261p. LC 94-10831.

The evolution of copyright is the general topic of **Copyright's Highway**. Information access in our constantly changing world along with the developments in technology alter our environment

dramatically. Not only will the U.S. need to adapt but internationally, there will need to be an acceptance to the new environment if this quickly changing society is to grow and prosper. Questions are posed to ask what steps are necessary to ensure the new era of information and entertainment will survive copyright legislation.

Kantrowitz, Barbara. "My Info is not Your Info." **Newsweek** 124 (July 18, 1994): 54.

Discusses how the world of cyberspace is clashing with the world of business. Copyright laws are confronting the concept of free access to all information. There is a lack of copyright law applicability in this digitized world in which we are living. A proposal by the Clinton administration has defined a plan to rewrite copyright laws to fit the new electronic media world. Highlights of the David LaMacchia software piracy case and its implications on future electronic copyright legislation are addressed.

Risher, Carol A., and Gasaway, Laura N. "The Great Copyright Debate." **Library Journal** 119 (September 15, 1994): 34-37.

Again, the copyright issue is a topic of concern. It is fueled, this time, by the new technologies which copy and transmit information, the evolution of commercial and non-profit delivery services, and a fundamental change in the way librarians view the job of libraries. The arrival of the digital revolution has brought amazing access to information and many librarians are struggling to define the concept of fair use and copyright laws applicability to digital information. Is the current law adequate to cover the newer formats? Carol A. Risher (Vice-President for Copyright and new technology, American Association of Publishers) and Laura N. Gasaway (Director of Law Library, University of North Carolina--Chapel Hill and Law professor) square off on how to deal with intellectual property rights in this digital age. This article describes their viewpoints and shows that they are both in agreement on the fact that with only minor adjustments, the copyright law will provide protection. A clear and well-written article on the current status and applicability of copyright law, it has many useful pieces of information for library media specialists.

Strong, William S. **The Copyright Book; a Practical Guide**. 4th ed. Cambridge, MA: MIT Press, 1993. 288p. \$22.50 LC 92-16371 ISBN 0-262-19330-2.

This fourth edition chronicles the legislation passed by Congress with regard to copyright law since the third edition was published in 1990. William S. Strong's (a lawyer) purpose in writing this book has been to make available to people, including librarians in all fields, an understanding of their rights and responsibilities. He addresses amendments to the law, among which is the prohibition of the unauthorized rental of computer software. Several other aspects of electronic formats are also analyzed with respect to copyright. The topics of fair use and multimedia are also addressed. A chapter focuses on works published before 1978--works that are governed by different copyright rules. International copyright law is dealt with in the last chapter, and it discusses the roles of both the Berne Convention and the Universal Copyright Convention. This is a well written, interesting and informative source for currency and copyright law. It also contains helpful appendices and a good index.

Talab, R. S. **Commonsense Copyright; a Guide to the New Technologies**. Jefferson, NC: MacFarland & Company, Inc. Publishers, 1986. 162p. LC 85-43593 ISBN 0-89950-224-5.

The intention of this book is to clarify statutory law, related court cases and legal opinion on common copyright and legal aspects of print and non-print acquisition and use. The value of this

handy, slim volume is as a reference book. Charts are provided for various types of media and appropriately placed within the text that address most usage questions. The main focus of the book is the explanation of the 1976 (enacted in 1978) copyright law and recent developments with respect to technology. the copyright law is presented in clear and understandable language and includes guidelines for libraries in the areas of "fair use," public domain, photocopying, computer databases and software. A useful bibliography, appendices and index are located in the back; also included are guidelines for library personnel.