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by Joan H. Robinson

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I began my career as a Media Specialist in the public schools. When a filmstrip was damaged, it was common practice to send it back to the company from which it was purchased, and for a nominal fee, a new replacement copy was delivered.

For the past two years, I have been the Director of Audio Visual Services and Language Lab at a college that has a small collection of films. When it came to my attention that a particular print was badly damaged, I contacted the current distributor and naively asked for the replacement price for the film. To my surprise, the replacement cost was the same as it would be if we never owned that title before! After explaining my experience with the filmstrips, the company did take \$50 dollars off the \$675 purchase price, and begged me not to return the damaged print.

This incident led me to question what are the rights and responsibilities associated with the replacement of films and video tapes. Clearly, only the copyright holder owns the intellectual property, but what exactly do *we* own? Is it merely the right to

show the intellectual property in a face-to-face teaching situation for the life of the film/video? How do we protect our collection in terms of ability to meet the needs of the institution?

To address some of my concerns, I called the sales representatives of three different film distributors. The following is a summary of their thoughts on this subject.

On the Cost of Replacements

- The distributor has only the right to distribute, not to negotiate on replacement.
- If the film distributor has to pay full price for the replacement, they will have to pass the cost on to the purchaser.
- Sometimes the original copyright holder will be able to offer you a break on the replacement, if the copyright holder can be located.
- If the distributor has access to the film negative, you will be charged the

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associated lab costs for reproduction, which can be high.

On the Confusion that Exists

- As film companies are changing hands, policies are changing. The customer has to be understanding.
- Try to anticipate not only current needs but also any future needs when negotiating for the purchase of video. Even though you do not currently have a video network, for example, you may in the future.
- When you are purchasing your film/video make replacement costs, as well as use, an issue. Get your agreement in writing and attach it to your purchase order.
- For video tapes, consider purchasing duplication rights, so you will be able to have a back-up copy. One company suggested that a typical fee schedule for a \$59.95 film would be:

1 – 5 copies: 2½ times the purchase price

unlimited copies: 10 times the purchase price
- Producers of feature films typically do not grant duplication rights to distributors.

I also discussed this issue with the acquisitions people in our library. They pointed out that it is customary for a library to budget for replacements of titles that are lost or damaged. In setting up the budget you would anticipate that the replacements would cost more than the original copy due to inflation. This is regarded as a cost of doing business.

I would be interested in the experience of others in replacing film/video. Are some companies more sympathetic to the needs of higher education than others? Please let me know and I will pass the information on for the good of the group.

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This column is a forum for discussion and information on copyright concerns of the profession. While individual questions may be addressed, nothing written here is intended to serve as professional legal advice for a particular situation.

*Members of the IALL Copyright Committee are: Irene Starr, Chair, Robert Davis (Smith College), Marta Lipski (Brandeis University), Bob Muttart (Wheaton College), Joan Robinson (Wellesley College Library) and Steven Smolnik (Connecticut College). The Committee urges you to send copies of permission/request correspondence between you and copyright holders, whether given or denied, so that we may report on what is and is not possible. Contributions/suggestions/questions for the "Copyright Corner" column may be sent directly to Irene Starr. Mailing address: UMass Foreign Language Resource Center, Herter 19, University of Massachusetts, Amherst, MA 01003; phone: (413) 545-0950
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