

## LAB NOTES

### SUMMARY OF THE IALL '93 COPYRIGHT WORKSHOP, Part I

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The response to the copyright sessions at IALL '93 indicates that copyright issues cause concern for many people. For those who missed or would like to review Gary Becker's excellent half-day workshop entitled "Copyright and Multimedia", this article summarizes parts of his session (with his generous permission). A continuation, covering such areas as off-air video recording, the use of copyrighted videotapes in the classroom, and computer software, will appear in a future *IALL Journal*. Special thanks to those who helped me prepare this column.

Mr. Becker is a nationally recognized expert, published author, consultant, and video producer in the field of copyright law and its impact on the educational community. In addition to his copyright work, he holds a full-time position as Director of Media Services for the Seminole County Public Schools in Sanford, FL. As an educator, he clearly understands the need for

concise, understandable information related to the copyright law.

To obtain a list of publications and ordering information, write to Gary H. Becker, 164 Lake Breeze Circle, Lake Mary, FL 32746-6038. Government documents on copyright can be requested by writing to Copyright Office, Library of Congress, Washington, DC 20550, or by calling the order hotline at (202) 707-9100 or the pre-recorded infoline at (202) 707-3000. Of special interest are Circulars 1, 21, 22, and 92; General Information Package 118; and Fair Use Info Kit, FL 102.

#### HISTORY

Stating that copyright law makes more sense when you understand what its purpose is and who is protected, Mr. Becker explained its unique status as a federally mandated statute that covers only a specialized segment of the population. In England, before the American Revolution, the rights to all creative work belonged not to the creators, but to the patrons who supported them; after the patrons' death, ownership

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then transferred to their heirs. Neither the creators nor society at large ever obtained any rights to the work. When the Revolution began, England cut off any transfer of information to the colonies which could have aided their survival. Thus, the writers of the Constitution created a provision within the law with the purpose of stimulating creativity in the Colonies by protecting the creators' rights to their own work.

### **AUTHOR'S RIGHTS**

The law grants each author of any creative work five main rights:

- 1) the sole right of reproduction;
- 2) the right to prepare a derivative work based upon the copyrighted material;
- 3) the right to distribute the work by public sale, transfer of ownership, or by rental, lease or lending;
- 4) the right to perform the work publicly; and
- 5) the right to display the work publicly.

A public display or performance is anything which occurs outside the boundaries of the immediate family. Therefore, it is not true, as many believe, that a violation of the law occurs only when material is improperly copied or sold. The public performance or display itself is prohibited—even for non-profit, altruistic use (see educational exception below). Note that one "performs" a running film but "displays" a single frame; a computer program is displayed on a computer screen but performed on an LCD panel. Mr. Becker emphasized that oral permissions offer inadequate protection for the copying, display or performance of a copyrighted work.

### **LENGTH OF PROTECTION**

Copyrighted material is protected for a limited time before it becomes part of the public domain—thus stimulating creativity while eventually giving society a right to the information. Under the 1909 law (which covers material with a copyright date through 1977), a work could be protected for 28 years, with a one-time renewal of 47 years. At the end of this period, the work would become part of the public domain. The 1978 law provides coverage for works for the life of the author (or surviving author) plus fifty years, and this protection is non-renewable. Once a work is in the public domain, anyone may perform it, modify it, and copyright the new version; e.g., materials copyrighted before 1902, such as Mark Twain's and John Phillip Sousa's original works.

### **WHAT IS ELIGIBLE FOR PROTECTION**

The 1978 copyright law, which incorporated earlier precedents, was passed to rectify the problems caused by technological advances. The new definition of a work eligible for copyright protection is:

"any tangible medium of expression, now known or later developed, which can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device."

In adding the clause, "now known or later developed", the law-makers were anticipating that new technologies and equipment would arise, and the materials used with these technologies would automatically be protected.

Eight categories are eligible for copyright protection, each with its own application form:

- 1) literary works;
- 2) musical works including accompanying words;
- 3) dramatic works including accompanying music;
- 4) pantomime and choreographic works;
- 5) pictorial, graphic and sculptural works;
- 6) motion pictures and other audio-visual works;
- 7) sound recordings; and
- 8) architectural works including drawings and blueprints. (Also—on a trial basis, from 1990 to 1995—the building itself may be copyrighted.)

There is something obviously missing from the eight categories; namely, computer software. An amendment, the Software Copyright Act of 1980, addresses this omission. The amendment defines a program as "a set of directions telling the computer what to do", and places software within the literary category. For a program to be considered different from those copyrighted, its code must differ as well as its "look and feel" (e.g., pull-down menus, menu locations, shortcut codes from the keyboard).

#### WHAT IS NOT ELIGIBLE

1) Ideas are not protected, but rather the format in which an idea is expressed. For example, if the "love triangle" idea could be copyrighted, then only one book with that idea in its plot could exist. Also, maps, street names and locations, and geographical features cannot be copyrighted; but the scale of maps along with symbols, folds, and colors used representationally can be protected.

2) Procedures, methods, systems, processes, concepts, principles, discoveries, and devices are not eligible for copyright; but some are protected by patent law. (Patent protection lasts for 17 years, non-renewable—enough time for companies to recoup their investment.)

3) Any work presented in an intangible medium (i.e., not recorded or annotated) cannot be covered by copyright. Once the work has been fixed in any medium, however, it is automatically protected regardless of whether the author has filed for protection or not.

4) Names, short phrases, slogans, and familiar symbols or designs are not eligible for copyright protection. However, symbols and designs that identify goods and services are covered under trademark protection. (This protection lasts for ten years, renewable forever. For example, Disney has copyright and trademark on Mickey Mouse.)

5) Standard calendars, height and weight charts, tape measures, lists or tables taken from public documents, forms such as time cards, graph paper, account books, diaries and address books, are considered to be part of the public domain, and cannot be protected by copyright.

#### EDUCATIONAL EXEMPTION

Section 110, Subsection 1 of the copyright law states:

"Educators may publicly perform copyrighted material for the purpose of face-to-face instruction."

The key word in this clause is "instruction". Any use of copyrighted materials, even in the classroom, for any other purpose (entertainment, reward, filler, motivation) is considered to be on "shaky ground".

## THE COPYRIGHT DILEMMA

When the new law was passed, Mr. Becker expected to see a decrease in the number of questions and lawsuits regarding copyright. The exact opposite, however, has occurred. He attributes these increases to the advent of new technologies and to a basic psychological dilemma. Consumers of the new technologies now ask themselves, "If God gave us the ability to create a VCR with a record button, how come we can't use it?" Vendors market potential illegality; they need to make clear that digitizing and modifying works, for example, are likely violations.

Mr. Becker asserted, however, that it is important to remember the main goal of the law—to stimulate and protect creativity. When educators abuse or ignore copyright regulations, some publishers begin to package less creative materials which are less expensive for the company to produce. Educators must also consider the moral implications of infringing upon copyright. By utilizing what Mr. Becker refers to as the "Robin Hood approach" (breaking the law in the name of education), educators are teaching their students that stealing other people's materials is acceptable, as long as the motives are pure.

## WHO IS LIABLE FOR COPYRIGHT INFRINGEMENTS

Mr. Becker used a hypothetical scenario in which a professor pressures a minimum-wage student employee into reproducing material with an obvious copyright notice. Under the old 1909 law, generally only the institution's board of trustees was held liable and could be sued. According to the 1978 law, however, all of the following are

eligible to be sued: the student employee, the professor, the dean over that professor, the provost, the vice-president and the president of the institution, the board of trustees, and the director of the learning resources center. Directors of learning resources centers are eligible because they are seen as responsible for overseeing all instructional material on campus. Some states are mandating compliance by all institutions of higher education with directives that will affect funding if copyright procedures are not in place.

## PENALTIES FOR COPYRIGHT INFRINGEMENT

Federal statutes stipulate a basic fine of \$500 to \$20,000 per infringement. If the infringement is proved to be willful, the fine increases up to \$100,000 per infringement; if copyrighted material is sold for private or commercial gain, the fine goes up to \$250,000 per infringement and a prison term of one to five years is added. On top of this, one can also be sued in civil court.

Many educators ask, "So who's gonna catch me?" Mr. Becker stated that, because there are no paid "copyright police" (with the exception of ASCAP and BMI for the music industry), the majority of cases are brought to the attention of the authorities by disgruntled employees, or by the institution's students. He also cited cases in which three religious institutions were successfully sued for duplicating the lyrics from sheet music and handing it out to their congregations.

*Remember, coming soon: off-air video recording, the use of copyrighted videotapes in the classroom, and computer programs!*