

LAB NOTES

SUMMARY OF GARY BECKER'S IALL '93 COPYRIGHT WORKSHOP, PART II

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This article completes the summary of the morning workshop, "Copyright and Multimedia," presented at the IALL '93 conference by Gary Becker.

Part II of the workshop summary covers registering copyrighted materials, off-air video recording, using copyrighted videotapes in the classroom, and computer software copyright. Becker's publication "Copyright: A Guide to Information and Resources," and Library of Congress circulars 1, 21, 22, 92, 118 and FLR102 were used as references in preparing this summary. The workshop session did not allow sufficient time to cover all educational exemptions; in particular, the important area of fair use was alluded to but not covered in depth.

Mr. Becker reminded the audience throughout his presentation that copyright laws pertaining to video use in the classroom refer to *instructional use only*; not to

extracurricular work, motivation, filler, or entertainment. Pre-discussion, post-discussion, and integration of video materials into a lesson plan are ways to indicate instructional use. The educational exemption for video in the classroom is based on Section 110, Part 1 of the Copyright Law, in which Congress gave educators considerable leeway in the instructional zone but not for rationales that deviate from instruction. Becker also repeatedly emphasized the need to obtain written permission for desired exceptions to the law.

REGISTERING CREATIVE WORKS

The "new" Copyright Law of 1978 provides that anything fixed in a medium is automatically copyrighted even if the creator does not add the commonly used notice: <copyright date name>. However, one achieves greater protection by paying the \$20 fee to formally register the work with the Copyright Office: registration "date stamps" one's creation. The Copyright Office does not search out or identify duplications as part of the registration process but issues dated certificates. If a

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law suit arises, the copyright owner with the earlier certificate prevails. Moreover, when the owner of a *registered* work wins a case, the losing party automatically pays all court costs. The winner of a suit involving a *non-registered* work, however, must subsequently sue the loser for court costs.

Under the revised law, publishers of a work do not own the copyright to it unless the author signs a release. Authors who sign a standard release may be signing away their rights to such an extent that they are unable to legally permit even their colleagues to use their work. A solution is to develop a licensing agreement giving the author rights to the basic content, research, and any other format in which the material might be presented, so that only the particular format belongs to the publisher.

OFF-AIR VIDEO RECORDING BY INSTITUTIONS

The following off-air recording guidelines for educational use are only "quasi-legal"—they were never formally voted into law. They were developed and recommended by Congressman Kastenmeir's Congressional committee on Copyright and read into the Congressional Record in 1981. These off-air taping guidelines have come to be accepted and no institution or educator has been sued for implementing them. (On an historical note, Mr. Becker mentioned that he testified before this subcommittee on behalf of educators and that the case for off-air usage was partly inspired by the desire to access the many materials available during the celebration of the United States Bicentennial.)

The educational privilege is for non-profit educational institutions only—not the military, religious groups, Boy Scouts, or public libraries. The guidelines apply only to over-the-air broadcasts in the general receiving area of an institution; not to cable

(except when the open-air broadcasts have poor signal quality) or to satellite transmissions. (Examples of exceptions: National Geographic offers life-of-tape, off-air taping rights for many of their specials during the year, including some carried only on cable. C-Span can be copied for instructional purposes. Programs are occasionally promoted to educators especially for recording. Examples of this are PBS programs funded under special grants.)

The guidelines are as follows:

- Programs may be held for a total of 45 calendar days and then must be erased. Their use with students is allowed on a limited basis (shown once, repeated once) during the first ten consecutive instructional days following taping. The extra 35 days are intended only for review and evaluation.
- An instructor *must request* that media staff make the off-air recording although media staff can notify instructors about upcoming programs.
- Programs can be recorded only once for the same instructor—they should be purchased if the instructor decides to use them often. However, if several instructors request the same program, copies may be made for them (for logistic purposes), but the other guidelines still apply.
- The programs cannot be altered during recording or collected into compilations without permission. (Captioned versions may be made for the hearing impaired.) However, an entire program need not be shown to students.
- Appropriate control procedures should be set up to administer these guidelines.

OFF-AIR TAPING AT HOME

Although not specifically addressed in the guidelines, legal opinions indicate that home taping for instructional use is possible as long as the teacher's institution approves and the institutional off-air guidelines are followed. However, this has not been tested in court.

The North Carolina Department of Education offers an example of appropriate guidelines. Instructors check out a blank, serial-numbered video from their resource/media center and sign a compliance agreement. After the tape is recorded in a home setting and returned to the resource center, it is handled like an institutional recording. Staff liability is diminished by having such institutional procedures and by providing copyright information to instructors.

MEDIA CENTER LIABILITY

Mr. Becker asserted that a media person is the equivalent of a "drug addict's pusher" in that media centers provide patrons with the equipment and support system to do something illegal. The following are steps that can diminish the institution's vulnerability and liability:

- Hold official copyright information sessions regularly.
- Demonstrate that instructors have been informed, by requiring them to sign that they understand their obligation to comply with copyright.
- Put stickers on check-out equipment stating that "use of this equipment with copyrighted material may be in violation of copyright laws."

Working with vendors to receive needed permissions can be worthwhile. As in buying a car, the opportune time to negotiate is

before purchase. Mr. Becker recommends that one ignore standard boiler plate purchasing contracts. Use your institution's power in negotiating. Even after the fact, although in a weaker position, it is still possible to return to the original source to ask for permissions. However, vendors may not be in a position to give permission in writing. If they do so illegally, they may also be subject to suits and penalties.

Multi-standard conversions provide an example of the confusion that exists regarding copyright. According to Mr. Becker, multi-standard copying changes the format, thus creating a derivative work (based on the author's original), without permission. However, playing the tape on a multi-standard machine is acceptable since this does not render the tape into another format. If the materials are sufficiently worthwhile, purchasing special multi-standard equipment to utilize them is the legal solution. To comply with copyright, educators' actions should not affect the sale of existing materials or those that might be developed if the copyright holder decides, for example, to sell an NTSC version in the U. S. at a later date.

CLOSED CIRCUIT TV TRANSMISSIONS

Transmissions potentially violate copyright holders' right to publicly perform their work. Videotapes and live programs for instructional use may be transmitted through a single building under the classroom exemption for face-to-face instruction. However, there is no provision for transmission to multiple buildings. The guideline here is that faculty and students must be simultaneously present in the same building but they are not required to see each other.

Possible protection is provided by stating on purchase orders that "we wish to purchase videos and we may use these on a closed circuit system for instructional purposes only." If the order is filled, the purchase order would support one's defense against a suit charging infringement. It is important to read the fine print in catalogs for statements such as "this may not be used on a closed circuit system" or "this may be used on a closed circuit system; please write company for fees."

Licensing is becoming more prevalent as vendors discover that this type of contract protects them more than copyright. Media staff should consider asking for modifications in a license to include such rights as having a back-up master for the purpose of regenerating copies when a tape is destroyed. One must ask for this type of permission; it won't be offered. Or one might ask for replacement of damaged components of a major set—this may not be a big issue with the copyright holder.

"HOME USE ONLY" VIDEOS

Educators may legally perform videos produced for the home market in face-to-face instructional situations [Section 110(1) of the Copyright Law], provided there is no contract prohibiting it, such as a rental contract. Public performance rights for video presentations in dorms or social halls must be purchased as they are not included in Section 110(1).

The "Redd Horne, Inc." decision set a precedent. In this case, customers rented videos and viewed them at the video store. Producers sued the store for allowing public performances. The store argued that individuals were viewing. The case was settled against the store because in the aggregate, multiple people saw the videos over time and this constituted a public performance.

The decision relates to libraries and resource centers. According to the "Redd Horne" decision, students can't browse the collection and view their selection because walk-up stations for student viewing are equivalent to a public performance. (An exception is that video viewing in prison libraries is legal.) Loaning tapes to students to take home is not prohibited by the law—libraries traditionally loan all sorts of copyrighted materials. Multiple sections of a course can view a film simultaneously but inviting a broader audience to a class showing constitutes a public performance. However, an instructor may assign resource center viewing of specific videos as part of a course, outside of class time, if directives are given. This refers to direct assignment to view certain titles or portions thereof, rather than a generic assignment to simply view any material of the student's choice. Showing a videotape attached to an electronic video digitizing device, such as Video Toaster, is legal usage. It is fair use to demonstrate to the class the effect on information; it is illegal to digitally modify a commercially copyrighted segment, thereby creating a derivative work.

Mr. Becker emphasized that contract law supersedes copyright. One signs a contract when joining a video store. If the form or membership card says "I agree that all use is for home use only," that is a binding contractual statement. Blockbuster Video Stores in some areas will not rent to educators since the stores are not licensed to make agreements with educators.

COMPUTER SOFTWARE

Mr. Becker began this section of the workshop by considering traditional media practices which do not translate well to software and current ones that lull educators into a trap. Slides or film strips were viewed by one student or many, making it customary to buy one kit or film strip for all users.

This procedure doesn't work for the computer, which is a one-on-one machine that requires one-on-one software, not one copy for many machines or users. Initially, this wasn't a problem because computers did not come with software but needed to be programmed.

Current software practices are an outgrowth of the Software Act, Public Law 96 – 517, which amended section 117 of the Copyright Law as of December 12, 1980. The first requirement in acquiring duplication rights is that one must be *the legitimate owner of a legitimate copy of the software* (not an illegitimate owner of a legitimate copy nor a legitimate owner of an illegitimate copy). The first privilege granted is that one is allowed to make minor adaptations in the program (such as a printer driver) in order to run it on user equipment, and to make a copy of that adaptation. However, one can't adapt software from DOS to Mac, or vice versa, without permission, as that would create a derivative work based on the author's original work.

The second and most misunderstood privilege is that one archival copy of purchased software can be made for *protection*, not for *use*. Both copies cannot be used simultaneously. When an original copy crashes, the archival copy can be used. However, permission to generate another working copy is not included. The archival copy is not a backup master unless one has negotiated the right to generate additional copies as needed. If one sells an old computer loaded with software, one cannot keep the archival copies for oneself. This would put two copies into operation simultaneously. In providing software for a network, note that every piece of software must be network licensed. It's the software, not the network, that is licensed.

In referring to CD-ROM, Mr. Becker commented that he considers this a temporary medium, not the ultimate medium of the future. In using CD-ROM disks as reference materials, general guidelines for photocopying should be followed. (See *House Report No. 94 – 1476*, pp. 68 – 70, or *Becker's book*, pp. 6 – 13. *Ordering information is given at the end of this article.*) For laserdiscs, a program such as HyperCard can be used to provide remote control in accessing the laserdisc in a more organized fashion.

Scanners and digitizers are devices that are conceptually parallel to photocopiers. Even though the final copy may be in a different format, this does not change the limitations on the number of reproductions. For example, if one wants to capture and print pictures from a computer software program, the maximum allowed by precedent is historically set at a "10 – 10" guideline. That means it *might* be considered fair use if: a) one takes ten percent or less of someone's copyrighted work, b) this makes up ten percent or less of a new work, and c) the part that is removed from that author's work wasn't the most creative or unique. Thus, if the original piece of software contains 100 images, ten percent would be ten pictures—far too many to use in a finished program of eleven, or even twenty, pictures. Copying of QuickTime movies is subject to similar limitations.

CONCLUSION

One of Becker's last comments considered another limitation, that of plagiarism. Copyright aside, instructors, especially in the social sciences and literature, are beginning to find that student work may be based too heavily on creative editing. Had the same contents been written on paper, an alert instructor might well have recognized pages lifted from published documents.

The Copyright Law provides for the protection of the authors of creative works, while at the same time providing a number of specific exemptions for educators and libraries. The more one becomes knowledgeable concerning these rights and exemptions, and pursues additional rights by negotiation, the less will be the frustration over Copyright Law issues.

The assistance of Gary Becker in the preparation of this article is gratefully acknowledged.

Becker is a nationally recognized expert, published author, consultant, and video producer in the field of copyright and its impact on the educational community. In addition to his copyright work, he holds a full-time position as Director of Instructional Media and Technology 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 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 29550, 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.