

## Intellectual Property

Many librarians wish that copyright and the transfer or use of intellectual property were far beyond their proper area of concern. Yet, as long as dissemination of information is a primary philosophical underpinning of library service, librarians need both to be aware of the current copyright system and to encourage frequent and informed discussion with their academic colleagues on the ramifications of these public policy concerns.

The purpose of copyright laws is to encourage productivity by rewarding creators for their labor and publishers for their commitment of capital. However, differing cultural values and the assault of new technologies, such as photocopiers and computers, have called the validity and efficacy of existing laws into question. Concomitantly, the ease of copying is allowing pirates of intellectual property to erode author and publisher profits. Publisher losses to pirates last year totalled \$4.24 billion.<sup>1</sup> These losses drive up the costs of materials for legitimate buyers, such as libraries. Financial losses have been greater in popular materials than in scholarly ones, but the magnitude of the losses, and the corresponding impact they have on library buying power, do call for a reexamination of the system.

Cultural views of pirating differ. Jerome Su, a Chinese book pirate in Taiwan, says: "I know I am infringing foreign copyright and denying profits to publishers and authors. But the West imported our intellectual knowledge a thousand years ago, and we never got any royalties for it. Chinese people do not comprehend the copyright idea; it is a Western concept."<sup>2</sup> In the global village, a reconception of the ideas of intellectual property probably needs to occur, and in the United States, alternatives to the copyright system, such as no copyright,

modification of fair use principles, and differential laws, need more discussion.

Mark Twain is said to have observed, "Only one thing is impossible to God: to find any sense in any copyright law on the planet."<sup>3</sup> Twain was not advocating copyright cessation. He believed that creative artists should be rewarded for their labors. But today, as cases work their way through the legal system, the publisher is the injured party and the chief recipient of compensation after a suit. Publishers seem to have far greater resources for protecting their financial interests than do writers for their creative products. But both publishers and authors criticize the multiple uses libraries make of copyrighted materials. The United Kingdom and some other countries have systems in place for ensuring author reimbursement and for encouraging creative welfare without copyright laws. In spite of the entrenched advocates of the current American system, this alternative deserves debate. The idea of fair use only became a part of the law in the Copyright Act of 1976. In *Communicating Ideas*, Irving Louis Horowitz argues that legislators commingled ideas of socialism and capitalism in arriving at the doctrine of fair use. In fair use, the socialistic goal of free use wars with the capitalistic goal of a fair return. Horowitz argues that the cessation of fair use practices, coupled with increases in technological approaches to reporting and compensating for secondary usage, would benefit all sections of the knowledge industry.<sup>4</sup> Leon Seltzer, an early critic of the fair use law, concurs in part and contends that Congress has but two options: either to narrow the author's exclusive rights by permitting the broadest range of photocopying or to require a full and complete

account of photocopying.<sup>5</sup> The latter might be accomplished by having photocopiers record copies against master ISBN and ISSN numbers.

In America, the author's exclusive rights are often ceded to the publisher. In a recent talk about electronic journals and scholarly communications, Ann Oker-son of the Association of Research Libraries encouraged authors not to sign blanket permissions, but to assign rights to their intellectual work more selectively.<sup>6</sup> Agents advise authors of potential best sellers, but scholars often blithely sign almost anything. Best-selling authors do not suffer the same kinds of financial losses from photocopying because paperback pricing makes copying uncompetitive. However, authors of scholarly tracts in academic journals seldom receive direct monetary compensation for their work. They are more frequently compensated indirectly by expansion of their academic reputations; photocopying and distribution of their work is almost a service to them. Yet scholars who author textbooks do suffer financially from piracy of their work, and university presses do report fees for permission to reprint as a significant income source.

Increasing library automation and networking have added to the copying, even though policy guidelines on use have been developed. Yet the convenience of the copying machine has made a fundamental change, and the policies associated with it have not caught up. Librarians have recognized the importance of a fair return for artists and publishers, but the commitment to free access is a powerful elixir for our profession. Librarians and scholars blanch at the suggestion that fair use should be curtailed. Our society needs to determine whether the continuation of fair use serves the underlying principle of encouraging creative work in all areas.

Maybe society needs to recognize that there are differing rewards within the scholarly system, requiring different laws to meet each circumstance. The 1975 National Enquiry into Scholarly Com-

munication classified knowledge as a public good because each person's acquisition of it does not diminish the value of the good for others. The Enquiry notes, "The private marketplace cannot be relied upon to produce the socially optimal amount of such public goods and thus subsidies of one form or another are generally required for their production."<sup>7</sup> The Office of Technology Assessment recommends that the copyright laws be changed to recognize the special needs of education and libraries.<sup>8</sup> Much scholarly material is produced through research done on federally funded grants or at state-funded institutions. This material is ostensibly produced to benefit the public at large. If policies about federal employees' not signing away copyright for their work were extended to investigators on all federally funded projects, then some reforms might occur. The stranglehold held by foreign-produced journals might be eased; resource sharing and fair use might be facilitated. I think the idea of differential laws has great potential for improving dissemination of scholarly information.

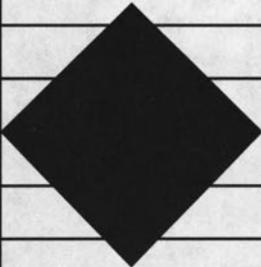
Reports in the regular news media indicate that publishers have been active in improving their legal status in the global village. Other parties in the scholarly communications area have been less active. Only a few scholars in the academic disciplines seem actively engaged. In the academy, serials pricing increases demonstrate the consequences of past decisions. The causes and their solutions are a scholarly community concern. Librarians should engage faculty and administrators in frequent discussions of the larger issues of copyright and transfer of intellectual property.

*The editor explored some of these ideas in a talk entitled "The Future of Copyright: Pirates v. Publishers" at the Amigos Bibliographic Council in November 1990 and at PRLC in June 1991. Further research and discourse occurred during the UCLA Senior Fellows Program, Summer 1991.*

GLORIANA ST. CLAIR

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