

Book Reviews

Patterson, L. Ray, and Stanley W. Lindberg. *The Nature of Copyright: A Law of Users' Rights.* Athens, Ga.: University of Georgia Pr., 1991. 274p. acid free, \$30 (ISBN 0-8203-1347-5). LC 90-28430.

It has long been clear to publishers that copyright is the foundation of their industry. Although publishing is a disorganized, diverse, and competitive community, publishers of all types—for-profit and not-for-profit, trade and scholarly, print and electronic, indeed, almost every purveyor of any protected work—tend to hold basically similar views of copyright, at least vis-à-vis users' rights. This consistency derives from what is essentially economic self-interest, even for nonprofit publishers, and it has energized a sustained and effective lobbying effort to influence statutory law, the guidelines for its application, and its interpretation in the courts. The publishers' view of copyright as a private property right has also been imprinted on the public consciousness through highly assertive labeling and well-publicized litigation. As a result, copyright as a law of users' rights, along with the deeper implications of copyright for the control of information and knowledge, receive little attention and are generally unfamiliar concepts.

The mission of libraries is to provide access to information for the public, in large part through the use of copyrighted works. For that reason copyright must be considered as fundamental to the function of libraries as it is to that of publishers. Librarians have, quite naturally, resisted overzealous restrictions on use. This resistance has been disorganized, inconsistent, and sometimes timid, but its most glaring weakness is the failure to develop a fully coherent and

systematic interpretation of copyright as a law of users' rights. If producers' interests are to be prevented from controlling access to information even more tightly in the future, librarians and others concerned for the promotion of learning and the public right to information must work to promote a more balanced view of copyright, one that recognizes the legitimate interests and legal rights of users.

Patterson and Lindberg's *The Nature of Copyright: A Law of Users' Rights* is a most timely and useful work that provides a legal and historical interpretation supporting many of the views of copyright held by librarians. Patterson is Pope Brock Professor of Law at the University of Georgia, where Lindberg is Professor of English and editor of the *Georgia Review*. An earlier work by Patterson, *Copyright in Historical Perspective*, was cited six times in a recent opinion by Justice Sandra Day O'Connor. Although Patterson and Lindberg's opinions are certain to be controversial, they unquestionably present an informed challenge to prevailing perceptions of copyright that merits attention from legislators, judges, and copyright lawyers.

Although *The Nature of Copyright* is a work of legal scholarship, it is fully accessible to the layperson. It is not an in-depth treatment of case precedent nor a manual of copyright law, but an explanation of the underlying constitutional premises of copyright. It presents with sound scholarship and argument a persuasive case that copyright exists principally for the benefit of the public. Patterson and Lindberg's provocative perspective simultaneously preserves the integrity of copyright law and interprets it in a way that insures the free flow of information. It provides, according to Robert W. Kastenmeir in his foreword, a

necessary "framework of fundamentals to serve as a basis both for drafting and for interpreting copyright legislation."

Patterson and Lindberg's concern is for the "correct premises" or underlying principles of copyright, not with copyright rules emanating from litigation. Central to their case is the assertion that copyright is not a "natural property right" of the author by reason of creation but a "statutory grant of a limited monopoly" by reason of legislation. They feel that the 1976 Copyright Act clearly expresses the intent of Congress to establish copyright on the statutory-grant theory, but that copyright owners and the courts have continued to view copyright as a property right rather than a limited monopoly. A second principle of Patterson and Lindberg's position is that the copyright of a work is distinct and separate from the work itself, a principle underlying the critical distinction between competitors and consumers. Much of *The Nature of Copyright* explores the implications of these two basic principles for practical copyright problems, including the scope of the right to copy under *fair use*. It is through this analysis that a law of users' rights emerges, an idea that is highly unusual if not unique among legal scholars.

In general, Patterson and Lindberg advocate the interpretation of copyright in light of the Copyright Clause of the Constitution and existing copyright statutes, including the legislative intent of the 1976 Act. They contend that excessive reliance on case precedent often substitutes for analysis and reason, and that narrow rulings resulting from the adjudication of fact-bound controversies constitute a poor basis for applying the law in a changing social and technological context. Perhaps the most critical point made in this work for librarians is that copyright law deals, in essence, with the control of information and knowledge. In facing future challenges resulting from the development of technology, copyright law must be continually interpreted in the light of basic principles as embodied in the Copyright Clause.

The Nature of Copyright is highly recommended to librarians. Along with another

excellent recent work, Kenneth Crews' 1990 UCLA dissertation *Copyright Policies at American Universities: Balancing Information Needs and Legal Limits*, it should be brought to the attention of legal counsel and academic administrators in our institutions.—Joe A. Hewitt, University of North Carolina, Chapel Hill.

Bolter, Jay David. *Writing Space: The Computer, Hypertext, and the History of Writing*. Hillsdale, N.J.: Lawrence Erlbaum Associates, 1991. 258p. \$45 (ISBN 0-8058-0427-7); paper, \$22.50 (0-8058-028-5); supplementary 3.5" Macintosh diskette, \$8.95 (ISBN 1-56321-067-3). LC 90-46380.

Jay David Bolter is a classicist who has written extensively on the cultural implications of technology, notably in his 1984 work, *Turing's Man*. His new work pulls together research on the history of writing and printing, on contemporary literary theory, and on information theory to examine "the late age of print" and make some guesses about what will follow it.

As his title suggests, Bolter is primarily interested in the technology of writing, the way in which the tools, particularly the writing surface, influence the author and the reader. The papyrus roll forced the author and the reader to move in a linear fashion through the text as the scroll was unrolled. The paged book, or codex, allowed browsing and introduced the page as an aesthetic unit and as a unit of information. The printed book further refined the concept of the page as a unit and added such devices as tables of contents and indexes to enable nonlinear access to the text.

The marginal gloss in a codex or the note in a book interrupts the linear structure of the text, but remains subordinate to it. The reader turns to it briefly and then returns to following the plot or argument. Bolter contends that hypertext frees the text from this hierarchy and can blur the distinctions between author, text, and reader. A gloss may be subordinate to the main argument, or it may lead to other arguments that the reader follows in preference to the main argument. Since the electronic text is not confined to a specific printed format, the reader