

Chapter IX

Copyright Implications for Electronic Resources

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ABSTRACT

The chapter begins with an examination of the sections of copyright law that impact electronic resource management, and reviews the various laws that have been enacted in recent years to attempt to delineate appropriate uses of information in the electronic environment. In section two, the impact of copyright is discussed in relation to particular types of electronic resources. The unique characteristics and challenges inherent in both access and format are discussed. Section three reports on responses to a series of interview questions the authors posed to librarians working in a wide variety and type of libraries. The goal was to elicit information about how librarians are managing to implement copyright law in the daily reality of their increasingly electronic environments.

INTRODUCTION AND BACKGROUND: COPYRIGHT AND THE LAW

An understanding of the nuances of copyright law and its relationship with other areas of library law is critical for anyone whose responsibilities include electronic resource management, which today encompasses almost everyone. There are basic elements of copyright that apply to all

information resources, regardless of format, but the emergence of electronic resources and their characteristics have brought particular concerns into bold view. New laws have subsequently been enacted to try to deal with these concerns and the cycle continues as new concerns arise and new bills are introduced to deal with them.

For a long time, people knew that copyright existed. If they were employed in the library, they took certain steps to inform the public of various

limitations, for example, by posting official notices on copying machines (U.S. Copyright Office, Circular 21, 1998) or by using the guidelines set forth in such documents as the revised *Guidelines for Classroom Copying of Books and Periodicals* (2001), agreed to by the Association of American Publishers and the Author's League of America. However, copyright was, in large measure, disconnected from the daily work or something that was dealt with if a problem occasionally arose. Now that various types of electronic resources are becoming a primary method of delivering information, copyright is becoming an integral part of daily work and the "gray" areas that were laid aside for so long are now being considered. In some ways, these laws have been with us and are just now coming under intense scrutiny. In other ways, there are new considerations to incorporate.

A Review of the Basics

Copyright law is about balance. It weighs the public's right to use copyrighted works with the rights of the copyright holder (not necessarily the author). United States copyright law is based on English copyright law, as first enacted by the British Parliament in the Statute of Anne in 1710. The Statute provided copyright protection for authors for 14 years and was renewable for another 14 years if the author was still alive. This new law was in response to a monopoly by publishers, in particular the Crown of England, which was very restrictive in what could be published. Authors wanted more control over their works and the Statute theoretically provided that. However, in reality, the authors needed the publishers to print their works, so there remained an unequal balance of power. Nonetheless, the principle of balance was established and remains a fundamental goal to this day.

Our forefathers recognized the importance of copyright to the future success of our new country, believing that the dissemination of knowledge was

the key to an informed democracy. When they drafted the constitution, they created copyright law and gave authority over that law to Congress through the Constitution:

Congress shall have the power ... to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries. (United States, 1787)

The founding fathers wanted to encourage citizens to create new works and the incentive was to give them control over their work for a limited period of time, but not so long as to create a sinecure. This was the beginning of the struggle to balance the rights of users and authors (or owners) of copyrighted works, a struggle that is increasingly raging today.

Within the federal government, the three major players who have a role in different aspects of copyright are Congress, the federal courts, and the United States Copyright Office.

Congress is responsible for drafting legislation for new laws and amending existing laws. The first copyright law was enacted by Congress in 1790. Since then, the most comprehensive updates to the law were enacted in 1909 and 1976, the latter being our current fundamental law. There have been many amendments to the law over the years, but there is only one copyright law—Title 17 of the United States code. The amendments are merely changes to different sections within that law.

To handle the functions associated with copyright law, the United States Copyright Office was founded and eventually became a separate department within the Library of Congress. Its role is to administer and sustain the national copyright system.

As copyright is a federal law, disputes are settled in federal courts, which interpret the law. Trials are held in federal district courts. If the parties are dissatisfied with the outcome of the

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