Copyright Law—1976

Submitted by
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The Eastern New York Chapter of ACRL held its second conference on May 8 on "Copyright Law—1976" at Russell Sage College in Troy, New York. President Pitkin of Russell Sage welcomed the audience of sixty, who had gathered to hear Representative Edward Pattison of New York's twenty-ninth district and Dr. Richard S. Halsey of the School of Library and Information Science of the State University of New York at Albany.

Mr. Pattison, a member of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary, said that the committee, in trying to rewrite the copyright law, has run into several major problems, not the least of which is the fact that the law has not been rewritten since 1909. Technology not only has changed drastically since then but is still changing so rapidly that trying to deal with it is like "trying to measure a moving snake." Another major problem is the fact that there is no part of the copyright law that does not affect more than one special interest group, be it broadcasters, librarians, performing rights societies, publishers, etc.

According to Mr. Pattison, the purpose of the public law of copyright is not to benefit creators but to benefit the public, i.e., to get the most information to the public in the cheapest and best way possible while damaging as few interests as possible. One result of copyright is the protection of the rights of the creator.

Traditionally, Mr. Pattison said, the U.S. has taken a pragmatic rather than an ideological approach to law, relying on the development of common law case by case rather than operating from an "ideological religion" (e.g., Hammurabi's code). The role of legislators is to define public policy and to explain it as well as possible, recognizing the limits of language, particularly of words like "systematic." In the case of copyright, common law will undoubtedly develop case by case following the enactment of the new law as it did following the 1909 law.

Dr. Halsey, author of *Classical Music Recordings for Home and Library* (to be published this spring), began with a brief historical synopsis of copyright law in the U.S. Legally, the fundamental source for copyright protection in the U.S. is article 1, section 8 of the Constitution: "The Congress shall have the power . . . to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." In 1790, Congress passed the first copyright law. It distinguished between print, reprint, vending, publishing, and copying, thus providing a greater degree of distinction than does the 1909 law.

Turning next to the new copyright law, Dr. Halsey mentioned some arguments presented by librarians in relation to "fair use." Among these arguments are that the rights of the author have to be balanced with those of the user to assure access to information; that the essential change between 1909 and 1976 was in quantity and speed, not in quality; that librarians are agents of researchers rather than principals; that it would be too impractical and expensive to monitor photocopying; that 84 percent of the material photocopied is from journals and only 3 percent is from monographs.

Countering these arguments as an author, Dr. Halsey said that the exclusive rights of the author have been weakened rather than strengthened by the proposed law; that quantity actually does make a difference; that librarians are really double agents, subsidizing the photocopy industry while assisting researchers; that a monitoring system might work since the bill provides for a five-year review; that a small study he had performed showed that 36 percent of photocopying is actually of whole chapters or other significant sections of monographs.

There are two dangers implicit in ignoring the author's position, according to Dr. Halsey.

Undergraduate Librarians Discussion Group Meeting

The ACRL Undergraduate Librarians Discussion Group will meet on Wednesday, July 21, from 2:00 to 4:00 p.m. The discussion topic will be "Collection Development and Undergraduate Libraries." Speakers will be Richard Gardner, editor of *Choice;* Keith Cottam, undergraduate librarian at the University of Tennessee; Elizabeth Ellis, undergraduate librarian at Pennsylvania State University; and Ronald Rucker, undergraduate librarian at Cornell University. For further information, contact Joanne Boelke, Undergraduate Services Librarian, Northwestern University Library, Evanston, IL 60201.

First is the threat of amalgamation of industrial complexes forming vertically integrated monopolies, which would combine the communications and publishing industries. Second is the possibility of a gradual increase of government subsidy of publications and outlets, which might lead to a Solzhenitsyn situation where one can write but not publish.

Dr. Christopher Reaske, dean of the Junior College of Albany, skillfully moderated a discussion which would undoubtedly have been considerably hotter had not the proposed copyright bill been revised recently to specifically allow some "interlibrary arrangements."

In response to a query about his mail from constituents, Mr. Pattison said he has gotten very heavy correspondence on the issue of copyright, including some "illiterate" letters from librarians, some of which indicated that the sender had not read the copyright bill, others being thoughtless copies of form letters. He urged the audience not to use the argument of money when writing to legislators on the copyright issue. Although the financial health of libraries is indeed important, it is not germane to copyright. Another argument he suggested librarians not make is that authors of technical journal articles don't care about copyright, but publish because their jobs demand it. Congress already knows this, but must protect the assignee of copyright, not just the creator. Librarians should recognize, Mr. Pattison said, that they are not on either the creative or the user side of copyright but are right in the middle, between the public and the author, and must think of the long-range implications of their position.

The interlibrary loan section is now "as satisfactory as it is going to be," although Congress realizes that it will be hard to apply. Mr. Pattison said there has never been a problem with "interlibrary loan"; the problems have been with "interlibrary arrangements." Photocopying a single copy is not "systematic." Standing ready to photocopy is not "systematic." This behavior does not affect the amount of subscriptions. However, according to Mr. Pattison, "To say, 'I'll buy x journal. Then if you need it, we'll have it.' This *is* systematic." The alternative probably will be to go through a "technical journal information system." There is no doubt that section 108 will have an effect. New technologies will grow up because of it. Distributors will spring up (there is one already in Chicago) who will deal with copyright holders and be licensed with publishers to provide technical journal articles to libraries. The Commission on New Technologies, created by Congress several years ago, will formulate guidelines for the implementation of section 108. With the help of publishers, authors, and librarians, it will work out sufficient examples to make it possible to apply 108 to particular cases by analogy.

Mr. Pattison could not predict whether the bill would pass this year, since there may be some ideological differences among members of the House Committee on the Judiciary, although there were none in the subcommittee.

In response to a question concerning a corporation library, Mr. Pattison said that, in determining "fair use," a higher standard would be applied to libraries that are not open to the public but are maintained by a corporation for its own research and development needs. These libraries will be expected to purchase enough subscriptions to cover their needs to a greater extent than will libraries which service "anyone who walks in." Whereas the 1909 law started with a not-for-profit distinction, the 1976 law starts without a not-for-profit distinction and adds it where appropriate throughout the bill.

That copyright is a fundamental though complex issue was made abundantly clear by the speakers. Basically, copyright law deals with exceptions to the fundamental right of property. As a group, Dr. Halsey pointed out, Americans tend to be more concerned with equality than with fundamental liberty and justice, occasionally confusing free of charge with free. ■■