

Copyright and Academic Library Photocopying

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on Copyright

January 1, 1982, marked the fourth anniversary of the enactment of the New Copyright Law (NCL). During the past four years, librarians have sought guidance on a number of issues for which there are no easy answers. Questions about fair use and library photocopying practices continue to be asked because the law leaves much room for interpretation.

ALA and ACRL have been quick to respond to the need for information and have defended the ideals of access to information and the practices of library photocopying. Robert Wedgeworth summarized ALA's position on the NCL and library photocopying practices in his testimony before the Copyright Office on January 28, 1981, in New York City in which he stated:

1. There is no evidence that the law, in most cases, is failing adequately to balance the interests of creators and users of copyrighted materials.

2. Most photocopying done by or in libraries falls within the protections of fair use and of Section 108 of the law.

3. There is no evidence of a causal link between any reductions in library periodical subscriptions and library photocopying practices.

4. Libraries may utilize rights under Sections 107 and 108 to contribute to the widest possible dissemination of information to the public and to fulfill their traditional role in society as lenders and facilitators of such information.

Through its Ad Hoc Committee on Copyright and other interested groups and individuals, ACRL has maintained an active copyright liaison and information exchange. This activity has been particularly important during the past four years because the effectiveness of the present law and its ability to balance the rights of the creators and the needs of users has been under review by the U. S. Copyright Office.

Awarded a contract by the Copyright Office to conduct a survey on the above topic, King Research, Inc., has now completed its nationwide study of 500 libraries, 150 publishers, and 1,250 library users and the results will form the basis for the Register's report to Congress in 1983.

The Association of American Publishers (AAP) has continued to campaign for restrictions on library photocopying and narrow definitions of "fair use" rights for libraries and individuals.

In spring of 1981, the AAP issued a working

document entitled "Draft College and University Policy Statement Concerning Photocopying by Faculty and Staff" to be distributed to university legal counsels throughout the United States. A copy of the policy and the academic library community's response was published in *C&RL News*, September 1981, pp. 286-288.

ALA has also prepared its own Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use as guidance to the academic community (see pp. 127-31).

The model policy was prepared by ALA legal counsel Mary Hutchings, with advice and assistance from copyright lawyers and academic librarians, and outlines fair use rights in the academic context, i.e. for classroom teaching, research activities, and library services. It is hoped that librarians and university administrators will use this statement as a model for their own copyright photocopying policy.

While the model policy was being developed and the King Research Survey was proceeding, ACRL decided to do a small survey of its own to identify current policies and photocopying practices in selected academic libraries. "The ACRL 100 Library Survey on Photocopying" consisted of an actual sample of 140 selected junior college, college, and university libraries who were sent a questionnaire prepared by the ACRL Ad Hoc Committee on Copyright and the editor of *C&RL News*.

Survey participants were asked 14 questions about the impact of the NCL on services, current practices, and problem areas. Respondents were requested to include examples of their library's copyright policy if they had a written one, and many libraries complied with that request.

The following is a summary of findings of the ACRL 100 Libraries Survey on Photocopying.

The 140 libraries in the ACRL survey were chosen for their representativeness of the larger population of academic libraries. A 74% response rate on the questionnaire (104 of the 140 libraries selected) assures that the answers are illustrative of the opinions and attitudes of academic libraries and reflect their continued interest in the topic, in spite of, as one library complained, "being surveyed to death."

1. Seventy-five (72%) of the respondents stated that the NCL had caused them to make policy changes to comply with the letter and spirit of the law. The most affected areas were reserve services (mentioned by 66% of the respondents), interlibrary loan services (mentioned by 61%),

and determining "fair use" for service in general (mentioned by 47%).

The most frequently mentioned change was the practice of writing to publishers for permission to make multiple photocopies. Many libraries provide this service for faculty and users, while others advise faculty on how to obtain permission and provide a model letter. Other changes involved additional record keeping in ILL and audiovisual services.

When asked whether their library was in full compliance with the Guidelines for Classroom Copying, 98% of the respondents who answered this question (N=94) believed their library to be in full compliance.

Ninety-eight of 100 libraries who answered also believed their library to be in full compliance with CONTU Guidelines for ILL.

The costs in staff time, supplies, increased acquisitions, and borrower's fees to respond to the NCL has been a matter of concern to many libraries.

When asked to state if there were additional costs incurred by their library to establish policies and procedures to bring them in compliance with the NCL, respondents identified several added costs: student hours (15% of the respondents mentioned this), clerical staff hours (43%), professional staff hours (31%), postage (10%), telephone (6%), and miscellaneous costs such as CCC fees or supplies (6%).

Very few responding libraries kept accurate records of costs incurred and the most frequent response was "some." Clerical staff time was identified as a significant cost, but there was no agreement on whether costs incurred were ongoing or one-time only. It is unfortunate that more specific data on costs were not identified; however, the more extensive King Research Survey may provide some reliable data on this important topic.

Significantly, 43 libraries (43% of those who answered this question) had found it necessary to refuse ILL photocopy requests because the requests exceeded recommended fair use limits of the CONTU Guidelines. Fifteen libraries had refused 1-5 requests from users; thirteen libraries had refused 6-10 requests from users; four libraries had refused 11-20 requests from users; eleven libraries had refused more than 21 requests in a given year; and thirty-eight of these libraries suggested other options to the user whose request was refused. Most often the user was encouraged to travel to a library who owned the desired material and borrow it there. Users were frequently assisted in locating alternative materials which would satisfy their needs. Less frequently they were advised of copying fees or asked to contact a commercial copying service.

Interlibrary Loan requests were also used as a journal subscription selection tool by 58 (56%) of the responding libraries. Thirty-seven of these li-

braries have purchased additional journal subscriptions to be in compliance with the CONTU Guidelines.

Twenty-one libraries added 1-5 new journal subscriptions; nine libraries added 6-10 new journal subscriptions; five libraries added 11-20 new journal subscriptions; and two libraries added more than 20 new journal subscriptions. Certainly the above statistics indicate the commitment of academic libraries to comply with the spirit and letter of the law, at some considerable expense to both themselves and the users they serve.

Of the responding libraries, 35 (35%) had exceeded, during the past four years, the minimum number of interlibrary loan photocopying requests suggested in the CONTU Guidelines: thirteen libraries had exceeded it for between 1 and 5 journal titles; sixteen libraries had exceeded it for between 6 and 15 journal titles; and five libraries had exceeded it for more than 15 journal titles.

Respondents felt that individual judgments for photocopying requests beyond the CONTU Guidelines minimum were necessary and appropriate under provisions of fair use.

Sixty-six libraries indicated that it was necessary for them to alter or create new forms in order to be in compliance with the NCL. The three areas most affected were interlibrary loan, reserve services, and photocopying services.

Restrictive copyright statements that some publishers have added to their materials and that imply no fair use photocopying rights exist for a particular published item have been a subject of concern to many academic libraries. Forty-two libraries (41%) were aware of restrictive copyright statements, and four of these libraries had refused to make a photocopy for an interlibrary loan request because of such a restrictive notice. Sixty-eight libraries were aware of liberal copyright statements provided by some educational/scholarly publishers who have not limited photocopying of their items for educational purposes. Forty libraries stated that they had made use of this extended liberal permission to photocopy.

Academic libraries have found their campus administrations to be supportive of their efforts to comply with the NCL. More than 80% of the responding libraries received assistance and support and 70 libraries reported that their institution established a local copyright policy which included library copyright concerns. Although library administrators were most frequently mentioned as those most involved in copyright policy formulation, respondents made it clear that copyright policy decisions were group processes which encompassed every service area in the library, student and faculty users, college and university administrators, and the institutions' legal counsel.

How do these libraries feel about the informa-

tion and assistance they have received on copyright issues from their professional organizations? Sixty-four libraries wanted ACRL to provide additional, basic information with a focus on academic libraries.

In spite of the large number of libraries who have a printed copyright policy in effect (25 libraries supplied a copy of their policy and permission to reproduce it), 49 libraries want ACRL to take an active role in clarifying or responding to public statements concerning copyright and libraries. A fair number of comments highlighted a continuing uncertainty about library reserve operations and photocopying and asked for more guidance on these issues.

Thirty-eight libraries felt that ALA and ACRL had done a good job of keeping librarians informed through published materials and conference programs. Some made the point that we are an information hungry profession with new librarians coming into the profession all the time and, therefore, our educational efforts must be ongoing and continuous.

In summary, survey results show that academic libraries have made a serious and continuing effort to comply with the spirit and the letter of the New Copyright Law. Contrary to often repeated claims made by the Association of American Publishers, many academic libraries have increased their journal holdings to comply with the law and some have refused requests from users which went beyond the limits suggested by the CONTU Guidelines. Although they have some uneasiness about copyright issues which remain unresolved, academic librarians have found their academic institutions and their professional organizations ready and willing to offer guidance and support. Although no longer the "burning issue" it once was in 1978, copyright is a topic of extreme importance to the library community and librarians want to be informed about copyright issues on a continuing basis.

A review of the 27 copyright policies submitted by various colleges and universities points out once again the need to remind librarians to exercise their full rights of "fair use" under the law. For the most part, the policies did a good job of informing constituencies of the basic requirements of the New Copyright Law and various guidelines, and stayed away from interpretation. However, in nearly every policy, the most conservative interpretation of photocopying possibilities was offered, often in a cautionary or foreboding tone. Very few policies encouraged library users to exercise their full fair use rights and very few policies gave evidence that librarians were exercising their fair use rights to the fullest extent. The ALA model policy printed in this issue offers a more generous interpretation of rights and responsibilities, one which librarians would do well to adopt. ■■

Think Tank

To the Editor:

As a librarian currently engaged in bibliographic instruction, I found the article "Think Tank Recommendations for Bibliographic Instruction" in the December issue quite stimulating. Surely, however, there is a misprint in one of its statements. On page 397, under Section V, Subsection C, the text reads: "Effective bibliographic instruction contributes to students' misunderstanding of the nature of learning and scholarship..." And all this time I thought we were trying to remove their misunderstanding!—*Marie E. Devine, Instructional Services Librarian, University of North Carolina at Asheville.*

Editor's Note: Thank you for pointing out this typographic error. How it got past my proofreading, I just don't misunderstand. ■■



More Fallacies of Librarianship

ACRL has received suggestions for a few more fallacies to be added to the list appearing in *C&RL News*, January 1982, p.13:

21. The computer and data bases will solve all information problems.
22. The computer and data bases can solve none of our information problems.
23. Grants are free.
24. Shelf browsing is unimportant for the serious scholar.
25. Users bring their reference questions to the Reference Desk.
26. Directional questions are not reference questions.
27. The system used before was preferable to the one recently adopted.
28. The quality of the bibliographic record is more important than its production.
29. Centralized processing is always cheaper than decentralized operations.
30. Data base services will be abused by users if charges are not affixed.

The contributors of these suggestions are: William Brace, Rosary College; Alice F. Dalbey, Dominican College of San Rafael; Justine Roberts, University of California, San Francisco; and L. Yvonne Wulff, University of Michigan.