



Access

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Copyright in the Electronic Age

by Maureen Gleason

Interpreting copyright has never been easy, as faculty members faced with understanding its application to reserves, coursepacks or publishing, know. Now a new issue faces the academic world since digital technologies are eliminating the physical barriers which supplemented the legal ones of the existing copyright law. On the one hand, doing nothing may discourage the development of valuable electronic resources; on the other, overly restrictive laws may prevent the use of those resources by all but a few.

A number of efforts have been made to deal with this problem. In 1994, the Conference on Fair Use (CONFU) was convened, facilitated by the U.S. Patent and Trademark Office. It brought together over 100 organizations and institutions, both copyright holders and users of copyrighted materials, in order to develop guidelines for fair uses of copyrighted works by and in libraries and educational settings. Five areas received attention: 1) interlibrary loan; 2) electronic reserves; 3) distance learning; 4) digital images; and 5) educational multi-media. CONFU has a complicated and conflict-filled history which resulted in its giving up efforts to reach any sort of agreement on interlibrary loan and electronic reserves. Final proposals on the other areas were produced in the spring of 1997, but the circulation of those proposals to the constituencies of the participants revealed widespread disagreement. Libraries objected because the proposed guidelines would restrict the fair use provisions of the 1976 Copyright Act, and were so rigid and specific that the requirements for researching copyright status, applying for permission and keeping extensive records would be "technically and administratively" burdensome. In the case of distance learning, the guidelines would allow only one transmission of an item, and that only to a classroom or other institutionally controlled site. The guidelines also include severe limitations on the portions of audio or visual media used in educational presentations. Electronic reserves would be limited to the students in the class (and then only from dedicated workstations in the library) and would prohibit the inclusion of required (as opposed to supplementary) readings. This sampling of points of conflict *continued on page 2*

Libraries Welcome Jane Devine

by Joanne Bessler

After a year-long search, the University Libraries welcomed Jane Devine as the architecture/art librarian on August 1, 1997. The wait was well worthwhile. Jane is a knowledgeable and enthusiastic professional, who delights in working with faculty and students in both fields.

Jane's professional experience includes reference and collection development responsibilities in academic, public and special library settings. At McGill University's Blackader-Lauterman Library of Architecture and Art, she coordinated the publication of the first two guides to over 60 architects' archives, developed indexing policies for the architectural drawings and designed a dBASE III database to manage the inventory and index of over 25,000 drawings and projects.

As the information services and systems librarian at the National Film Board of Canada in Montreal, Jane managed electronic access to the FORMAT Canadian film and video database, offered bilingual reference service to a broad clientele including film makers, researchers, students, educators and broadcasters, and participated in systems planning and development. She also contributed to several films as a freelance researcher. From 1994 until the summer of 1997, Jane worked at the Vancouver Public Library Fine Arts and Music Division, *continued on page 3*

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reveals some of the major issues of copyright in the electronic era as they affect academic institutions.

Such issues have been taken up internationally as well. In December 1996 the World Intellectual Property Organization (WIPO) met in Geneva to consider changes in the copyright law. Three treaties were proposed to the conference: one on copyright for works delivered in digital form; one on protection for performers and producers of sound recordings; and one on database protection (consideration of this was postponed). In the case of works in digital form, the original treaty as presented required permission for all temporary copies, including those captured in a computer's random access memory, and made service providers (including libraries) liable for infringement by their users. In place of these provisions WIPO finally adopted an "agreed upon statement" to make it clear that the two adopted treaties "will permit application of fair use in the digital environment." Further, the preamble recognizes the "need to maintain a balance between the rights of authors and the larger public interest, particularly education, research, and access to information." The final treaty also included the change from "a general *obligation*" to protect technologies against the act of circumvention for unlawful purposes to a *liability* for manufacture, distribution and possession of any devices having the primary purpose or effect of circumventing any technology used to protect copyrighted works. Such liability was objected to since it could prevent the development of devices necessary to make possible lawful copies for archival purposes.

The scene now shifts to the United States where legislation to implement the WIPO treaties is pending. In the view of many defenders of fair use, bills S. 1121 and H.R. 2281 upset the balance in favor of copyright holders. Another bill has been introduced by Representative Howard Coble of North Carolina. H.R. 2180 attempts to mitigate online service provider liability, but it does not correct the implementation bills' failure to reassert fair use and first sale (the right of the purchaser of a copy to sell, give or lend it); does not provide for library preservation or distance education needs; and does not address non-negotiated license terms (whereby opening the wrapping or clicking on the site automatically implies agreement to the terms). Senator John Ashcroft of Missouri has introduced a bill (S. 1146 -- Digital Copyright Clarification and Technology Act of 1997) which supports fair use and establishes liability based on individual conduct, not on a standard that restrains technological development beneficial to education and scholarship. For information on the progress of these bills and other developments, see the Web site: http://www-ninch.cni.org/News/CurrentAnnounce/Balanced_Copyright_Bill.html.

There is no obvious and immediate solution to this dilemma, but all interested parties must keep trying to find one if the original purpose of copyright, "to promote the Progress of Science and the useful Arts" is to be achieved. Clearly, balancing rights in the electronic environment may require adjustments to what has served in the print environment. In an effort to "build consensus within the

educational community on the uses of copyrighted works in the digital environment" the Committee on Libraries and Intellectual Property of the National Humanities Alliance (a group of professional associations, institutes and organizations) has developed basic principles for managing intellectual property in the digital environment. These have been endorsed by a number of other organizations, among them the Association of Research Libraries, the American Council of Learned Societies, the Modern Language Association, the American Historical Association, the Society of American Archivists and the Getty Information Institute.

BASIC PRINCIPLES

1. *Copyright law provisions for digital works should maintain a balance between the interests of creators and copyright owners and the public that is equivalent to that embodied in current statute...*
2. *Copyright law should foster the maintenance of a viable economic framework of relations between owners and users of copyrighted works.*
3. *Copyright laws should encourage enhanced ease of compliance rather than increasingly punitive enforcement measures.*
4. *Copyright law should promote the maintenance of a robust public domain for intellectual properties as a necessary condition for maintaining our intellectual and cultural heritage.*
5. *Facts should be treated as belonging to the public domain as they are under current law.*
6. *Copyright law should assure that respect for personal privacy is incorporated into access and rights management systems.*
7. *Copyright law should uphold the principle that liability for infringing activity rests with the infringing party rather than with third parties. Institutions should accept responsibility for acts undertaken at their behest by individuals but should not be held liable for the acts of individuals...*
8. *Educational institutions should foster a climate of institutional respect for intellectual property rights by providing appropriate information to all members of the community and assuring that appropriate resources are available for clearing rights attached to materials to be used by the institution, e.g., in support of distance learning.*
9. *New rights and protections should be created cautiously and only so far as experience proves necessary to meet the Constitutional provision for a limited monopoly to promote the "Progress of Science and useful Arts."*
10. *Copyright enforcement provisions should not hinder research simply because the products of a line of inquiry might be used in support of infringing activity.*

Explication of each of these principles may be found on the web site: http://www-ninch.cni.org/ISSUES/COPYRIGHT/PRINCIPLES/NHA_Complete.html. We encourage you to consider these principles thoughtfully and to participate in the ongoing debate on legislation that will affect the manner in which you conduct your teaching and research for years to come.



Notre Dame Photographic

Jane Devine

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selecting books on architecture, urban planning and interior design; offering research assistance and Internet instruction; and designing a Web page for patrons and staff.

Attracted to the University Libraries of Notre Dame by this position's dual responsibilities, Jane has found her first months both hectic and satisfying. Her initial tasks have been to meet the faculty and students in both academic areas, to understand the goals of these areas and to identify ways in which to shape the Libraries' resources and services to best meet these goals.

Jane has been particularly gratified by the response and interest of the faculty and students. Members of the faculty have been quick to welcome her to campus, to express their collection and program needs and to discuss ways of integrating library resources into class assignments. Jane's early collaborations with teaching/research faculty have helped alert students in the master of fine arts program to library research techniques and have encouraged students in architecture to consider rare books as part of their educational resources.

Whether she is using a 16th-century tome or a computer-based index of Frank Lloyd Wright's work, Jane relishes research. For her, one of her position's perks is that it "allows her to be a perpetual student." Her formal degrees are from McGill University, where she earned a bachelor of arts in history (1982), a master's degree in library science (1985) and a certificate of proficiency in Italian (1994). An active professional, Jane regularly attends meetings of the Art Libraries Society of North America (ARLIS/NA) and served on this association's board. She is also a member of the editorial advisory board of *Art and Architecture in Canada: A Bibliography and Guide to the Literature*, funded by the Social Sciences and Humanities Research Council of Canada and published by the University of Toronto Press.

Jane's office is located in the Architecture Library in the recently renovated Bond Hall. She can be reached there, by phone (631-9401), by e-mail (devine.6@nd.edu) or via the Web pages for art (<http://www.nd.edu/~colldev/subjects/art/art.htm>) and architecture (<http://www.nd.edu/~archlib/>).

Infrastructure for an Electronic-Based 21st Century

by James R. Wruck

The debate is everywhere. Books will never be entirely replaced by electronic media. Print resources will be here for a long time. No, they won't. Yes, they will. Whichever side of that debate you wish to defend--if you wish to line up on either side at all--one thing that cannot be denied is that access to information in electronic form is now a substantial part of our current lives. Whether it is the latest CD, e-mail, the Web or some yet-to-be introduced technology, useful information which is packaged in a computer-oriented form is upon us, and libraries need to operate effectively in a world that is heavily influenced by access to electronic information.

In 1995, as the Libraries began a six-year cycle of increased University funding which had followed from the recommendations of the *Colloquy 2000* report, it was clear that they were in a lagging position with respect to infrastructure and in no position to cope effectively with the electronic age. Many of the services, as well as the staff, were confined by a text-oriented timesharing or transaction processing system. Terminals were a significant part of the environment, and while personal computers were fairly prevalent among the staff, they tended to support a hodgepodge of DOS-based and Windows-based individual efforts rather than common network-centric applications. Staff and faculty struggled with equipment that was cranky, clunky and limiting. The technological infrastructure was a barrier to efficient and effective work, not to mention imaginative efforts.

Additional funding, of course, was needed. But funding for equipment alone would not be sufficient. Great things evolve from a solid base, and the base at the time was shaky at best. We needed a dependable infrastructure, commonality of core abilities and applications, and a whole new approach. Our goal was to establish an environment in which technology was no longer a barrier to work and imagination. It took effort on three fronts: hardware, innovation with systems technology and a more extensive support mechanism.

Our beginnings with hardware were modest. In 1995 we replaced the "UNLOC only" terminals in the first-floor reference area with used 33-MHz 486s running Windows. At the same time we acquired new 66-MHz 486s

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for the dozen faculty who weren't yet on Windows. In 1996 we delivered 35 133-MHz Pentiums to areas of technical services which would focus on new access methods to OCLC. This year we spread 60 200-MHz Pentium Pro systems running Windows NT throughout the organization and redistributed Windows-based 486s. In early 1998 we will deploy another batch of even faster Pentium II machines internally and in summer the majority of the public access points will be replaced with then current technology. All of the new computers have been quality, mainline products from a common vendor, and maintainable under a multi-year warranty.

More significant than the hardware flux, however, were the technology leaps we took in systems. One of the issues that we faced was achieving a common set of applications throughout the Libraries and a mechanism to share information widely. We had people running different versions of word processing software and operating systems. Transfer of information was by "sneaker-net" using floppy disk. In conjunction with the Office of Information Technology, Bill Sill of the Libraries' systems office developed a library interface to AFS, a file system designed originally at Carnegie Mellon University. Using AFS space we were able to deliver an authenticated set of applications uniformly to Windows-based users throughout the Libraries. Bill also worked with the OIT development team which produced NT@ND, an innovative project based on Windows NT and AFS, which not only allowed the Libraries' staff to select from a richer set of updated applications, but to tailor their own personal environment and replicate that same environment by logging on at any NT@ND system on campus. The Libraries are one of the pioneer groups on campus to massively adopt NT@ND, and by the end of this academic year we will be almost exclusively on that base.

None of this would have been successful without the enthusiasm and patience of the entire staff, but especially of the LCSAs, Library Computer Support Associates. This group of regular departmental staff mastered the interfaces to the common applications, the setup and workings of AFS and became adept at teaching, troubleshooting and consulting as change seemed to descend constantly on their departmental colleagues.

With the introduction of this sweeping change in infrastructure, the Libraries have moved from a position of "one step behind" to "cutting edge" in a very short period of time. As we start the 1998 academic year we will have a solid, pervasive and current technological infrastructure on which to build.

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