The technology of today is changing the laws of yesterday. Now in addition to “copy rights” we have what is called “electronic rights.” These issues arose because the contracts by which publishers acquired print rights were either silent or vague and uncertain on rights for new electronic publications. Publishers argued that electronic databases used online were covered under the “collective works” section of the United States Copyright Act. The courts rejected the arguments, saying that use was separate and not contemplated by the foregoing provisions. (For more detailed information on this topic, see Electronic Rights: The Supreme Court’s “Tasini” Ruling at http://www.ivanhoffman.com/tasini.html.) So the electronic age forced us to negotiate a whole new set of rights.

To understand some of these laws and to find out more about them, please join me on this adventure through the jungle of copyright laws. For those of you who are like me, just an everyday librarian, let me take you on the adventure I had when I decided to explore and understand copyright laws. I’m not claiming to be an expert. I chose to write on this topic to learn more about it.

In the 11 years I have worked for the Public Library of Des Moines as a reference librarian, I have never personally known any librarian who does not adhere to the copyright laws. It seems that most librarians tend to be more cautious than ignorant when it comes to claiming we know what the copyright laws are.

My own journey began with the need to define what copyright means. That may sound like a simple task; however, in the process I discovered there was more to it than just simply stating a definition. Since I’m writing about copyright laws and libraries adhering to them, I wanted to make sure I was not breaking any laws myself.

In reality, there are not many librarians sitting behind bars for not adhering to the copyright laws. Perhaps just the mere thought of that possibility is what triggers an initial reaction in my mind when I get a reference question regarding copyright laws. It reminds me to be cautious and not to interpret the law. What I recall from library school and a copyright workshop is not so much what the laws are, but that we should not attempt to interpret what we read. That’s easier said than done when it comes to citing the law and having someone ask you what that means. So we inform the patron that we can only read what the law states. That explains why librarians don’t memorize everything we learn, especially when it comes to the laws. These visions of going to jail for “practicing law without a license” encourage us to look up the laws rather than rely on our memories and risk interpreting them.

Defining Copyright Law: Welcome to the Jungle

In my research I came across many sources that gave definitions of copyright. My next question was, “How do I define this law without interpreting what I have read in my own words?” I was curious as to the difference between defining the copyright law and interpreting what I read in my research. It was this curiosity that led me to want to know the difference between defining something and interpreting it. So the first thing I needed to do was look up the words “define” and “interpret.” After seeing the word “authority” in the definition of “define,” my next step was to find two sources that we librarians might turn to when looking for more than just a traditional dictionary definition of the word “copyright.” I chose the World Book Encyclopedia and Black’s Law Dictionary. I was curious to see the difference between these two sources. What I found was a simple straightforward explanation in the World Book Encyclopedia and an interesting choice of words in Black’s Law Dictionary.
Many Web Sites Offer Good Copyright Information

It’s amazing how many useful Web sites contain that guide us through the process of locating specific copyright information.

I think of these links as my machete to clear the pathway to the answers I am seeking.“

I couldn’t help but chuckle when seeing the words “positive law” and “intangible, incorporeal” in the next sentence. By definition, “intangible” means “incapable of being defined or determined with certainty or precision: vague, elusive.”

Apparently these contracts by which publishers acquired print rights weren’t the only things that were vague and uncertain. The word “incorporeal” pertains to something existing only in contemplation of the law.

Therefore, my interpretation of that would be that even the law is incapable of defining with certainty the definition of copyright, yet it exists in contemplation of the law. Of course I wouldn’t say that if you were a patron asking me to define the copyright law. That was just my interpretation of what I read from a librarian’s point of view. So you see, we librarians aren’t the only ones who have difficulty defining today’s copyright laws, especially in the electronic era.

That was an adventure in itself! There were many options to choose from. I chose the second one. I was given a message to call back. The message states it is best to call between 9 a.m. and noon, Tuesday through Thursday. However, the office is open from 8:30 a.m. to 5 p.m., Monday through Friday. The direct number the message gave was 202/707-5959.

I was able to speak with an information specialist the next day. She provided a wealth of information when I simply explained to her that sometimes we get questions regarding music being in public domain and we aren’t sure how to answer that. She explained that music published before 1923 is public domain. Anything after that may not be. However, arrangements are copyrighted. For additional information pertaining to this, look for the information circular #22 (on how to investigate the status of a work) on the copyright office’s Web site. If you want to find out how much is charged for royalties on copyrighted music, circular #73 contains information on the mechanical license.

For additional information on copyright and fair use regarding libraries, see the Copyright & Fair Use page from Stanford University Libraries at http://fairuse.stanford.edu/library and ALA’s Conference on Fair Use Joint Statement Released May 1998, also known as “CONFU,” at http://www.ala.org/washoff/confu.html. If you’re like I was and need a crash course in copyright laws, see Georgia Harper’s Copyright Crash Course at http://www.utsystem.edu/oeg/intelectualProperty/cprindx.htm.

The course gave me a better understanding of the various issues involved in copyright laws. It’s amazing how many useful Web sites these Web sites contain that guide us through the process of locating specific copyright information. I think of these links as my machete to clear the pathway to the answers I am seeking. The search engines (I used Google) are the vehicles to get me out of the jungle.

Tasini, Fair Use, Trademarks:

More Things to Trip You Up

It was through a Google search that I was able to obtain information regarding a Supreme Court ruling that affects publishers, freelance writers, and libraries. It is the much-talked-about Tasini ruling. Because of this ruling, Gannett Co., Inc., the publisher of our local newspaper, The Des Moines Register, is not releasing any of its copy for retrieval on our electronic databases. This ruling not only affects the parties involved, it also affects service to our patrons. It is especially difficult to locate and retrieve past articles without this service.

What I found interesting in researching the history of the copyright laws is that even before the electronic issues came into existence there were always issues involving copyright. Fair use seems to be one of those issues. The Web site I found most useful was the aforementioned Copyright Crash Course. This site includes many useful tips for libraries and faculty, and it is easy to understand. I encourage all of you to at least look at it. For those of you who barely have time to look at anything, I have listed some links from the Web site Fair Use of Copyrighted Materials and paraphrased what they cover.
Ignorance of the law is no excuse.

In my adventure through this tangled jungle of copyright law I learned that there are a number of things to be considered when someone is seeking permission. This information is particularly useful for those of you who may want to use a work without being able to answer directly. The wonderful thing about this Web site is the ability to click on a list to get the specific information you are seeking. The following is the list quoted from the Copyright Crash Course, “Copyright Law in the Electronic Environment” section, at http://www.utsystem.edu/ogc/intellectualProperty/faculty.htm:

- Why Copyright?
- When Does Copyright Become an Issue?
- Who Owns What?
- How Does Analog Fair Use Apply to the Multimedia World?
- Specific Copyright Issues
  - The archival collection
  - I found it on the Internet
  - Digitizing analog images
  - Incorporating others’ works into new works
- Supplemental course materials (coursepacks and reserves)

Research copies
- Licensing access to materials
- Scholarly Electronic Communication

Beware Individual Liability and Infringement Danger

The next time someone inquires about copyright laws, consider your own liability for copyright infringement. Copyright owners have sued and will most likely continue to sue individuals. Remember that individuals are liable for their own actions. The penalties for infringement can be very harsh, especially for willful infringement. For more details on penalties for infringement see the Legal Information Institute “US Code Collection” at http://www4.law.cornell.edu/uscode/17/504.html. This will take you to Title 17, Chapter 5, Sec. 504, which covers Remedies for Infringement: Damage and Profits.

Willful infringement means that you knew you were infringing and you did it anyway. However, even if you didn’t know you were infringing, you might still be liable for damages. Ignorance of the law is no excuse. The good-faith fair use defense is a special provision of the law that may apply even if the copying at issue was not a fair use. If only applies if the person who copied the material reasonably believed that what he or she did was fair use. Although this defense does not make a likely prospect for a lawsuit, if we disregard sound advice about fair use, a court could be free to award the highest level of damages available.

Evading the Wild Animals

There are so many things to take into consideration when it comes to finding our way through this dangerous jungle of copyright laws that you may wonder if you will ever see the light of day. What I discovered from writing this article is that we do not have to be experts at these laws to be able to find information that is useful. The laws will change as technology changes. It is our responsibility to adhere to the laws and to become aware of the changes. It may not be as troublesome as you imagine. For example, I found it interesting how easy it was to obtain permission to use some of the information from Georgia Harper’s Copyright Crash Course by simply e-mailing her and asking. Imagine how many more people are going to benefit from her efforts by simply knowing this Web site exists.

It seems that even law dictionaries are incapable of defining copyright with any certainty! So we librarians aren’t the only ones having difficulty with it.

I hope that after reading this article you will be more aware of what the copyright laws are and where you can learn more about them. Don’t be afraid to explore those Web sites and to find your way through the wild territory of U.S. copyright laws. Learning about the laws even a little at a time is better than being confused by them forever.

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References

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