

September 2001

Questions and Answers-Copyright Column-When a library creates a Website, is the HTML code protected by copyright?

Laura N. Gasaway

Law Library, University of North Carolina, laura_gasaway@unc.edu

Jack G. Montgomery

Western Kentucky University Libraries, jack.montgomery@wkyu.edu

Bruce Strauch

The Citadel, strauchb@earthlink.net

Bryan M. Carson

Western Kentucky University Libraries, bryan.m.carson@gmail.com

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Recommended Citation

Gasaway, Laura N.; Montgomery, Jack G.; Strauch, Bruce; and Carson, Bryan M. (2001) "Questions and Answers-Copyright Column-When a library creates a Website, is the HTML code protected by copyright?," *Against the Grain*: Vol. 13: Iss. 4, Article 23.

DOI: <https://doi.org/10.7771/2380-176X.3613>

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by students enrolled in that course. The Senate version did not include performances by non-profit libraries. At one point the House version did include performances by non-profit libraries; however, that language was removed from the bill during committee markup. For-profit institutions, even if accredited, must pay royalties for a license.

The TEACH Act also amends section 106 to allow digital transmissions to be made to members of the class. Section 106 states that the author has the exclusive right to control copies of his or her work. However, every time you create a digital version of a document or performance, you are making a copy. The TEACH Act allows educators to make a

copy in order to transmit the work to their distance education students.¹⁵ In order to claim the protections of the TEACH Act, the non-profit accredited educational institution must be distributing the document or performance for educational purposes. The transmission must be only to those students who are enrolled in the class, so Websites should be password protected. Finally, to the extent possible, the institutions should attempt to make sure that the materials are not transmitted any further by the students. This provision would be satisfied by providing the students with Web pages which may be viewed but not printed or downloaded.

If passed, the TEACH Act would allow accredited¹⁶ non-profit educational institutions to do in their distance education programs what they can do in their on-campus

instruction. Rather than being a new type of education, the Internet will indeed be simply a new transmission method for traditional education.

Educators are becoming less bound by distance, and the TEACH Act helps to ease the restrictions. Publishers and authors will know that their work is being distributed only to students in accredited non-profit educational institutions for educational purposes. Educators will be able to transmit some performances for their distance education classes, and students will be able to obtain a quality education via the Internet. By working together on the language of the TEACH Act, everybody wins. And as Ecclesiastes states, there truly is nothing new under the sun.

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Bryan M. Carson.*

Endnotes

1. Ecclesiastes 1:9. King James Bible. **Thomas Nelson**, 1990.
2. In a previous article (December 2000), I stated that the advent of the Internet has created as big a change in society as the invention of the printing press. However, it is not the Internet itself that has created this change, it is the social changes that accompany the use of the Internet.
3. For example, Touro International University, the distance education section of Touro College in New York, provides Ph.D. degrees in Business Administration and Health Sciences which do not require any residency. This program is fully accredited by The Commission on Higher Education of the Middle States Association of Colleges and Schools. See Touro's Website at <http://www.touro.edu/>.
4. 17 U.S.C. §107.
5. 17 U.S.C. §110.
6. 17 U.S.C. §107.
7. **David L. Lange**. "Theory and Practice in Copyright." Presentation at Intellectual Property in the Digital Age, Madison, Wisconsin, May 8, 2001.
8. 17 U.S.C. §110(1).
9. 17 U.S.C. §110(2).
10. *id.*
11. **MaryBeth Peters**. Keynote address at Intellectual Property in the Digital Age, Madison, Wisconsin, May 7, 2001.
12. "Technology, Education and Copyright Harmonization Act of 2001." 107 S. 487.
13. 147 Cong Rec D 688.
14. I attended the conference Intellectual Property in the Digital Age in Madison, Wisconsin, on May 6-9, 2001. The conference began two days after the joint agreement was negotiated. Many of the negotiators were participants at this conference, and the agreement was reported at that time.
15. "Technology, Education and Copyright Harmonization Act of 2001." 107 Markup S. 487.
16. According to the TEACH Act, accreditation for post-secondary institutions "shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures." 107 Markup S. 487.

Questions & Answers — Copyright Column

by **Laura N. Gasaway** (Director of the Law Library & Professor of Law, University of North Carolina, CB #3385, Chapel Hill, NC 27599; Phone: 919-962-1321; Fax: 919-962-1193) <laura_gasaway@unc.edu>
www.unc.edu/~unclng/gasaway.htm



QUESTION: *A special education teacher in my school has asked whether she can audiotape a book being studied in class for a child with learning disabilities. The library wants to purchase the tape, but a thorough search has not revealed any source from which it is available. Since it is unavailable for purchase, may the library and school make its own audiotape for this child?*

ANSWER: Under section 108 (the library section) of the Copyright Act, the answer is no, but under the Americans with Disabilities Act, the answer is yes. In the legislative history that accompanied the Act, specifically in the House Report, in the discussion on fair use under section 107, there is a statement about making copies of works in special forms for blind persons. The House Report mentions the Library of Congress program for making such copies but also states that making a single copy for blind persons would properly be a fair use under section 107. By analogy, making an audiotape for the one child should also be fair use. Such tapes should not then be added to the library collection without permission, however.

QUESTION: *When a library creates a Website, is the HTML code protected by copyright? There appears to be some disagreement among the experts on this matter.*

ANSWER: No, it is not. The underlying work is what is protected, for example,

the literary work, musical work, audiovisual work, etc., but not the HTML code. Section 102(a) of the Copyright Act details the eight categories of works that may be protected by copyright; while it is possible that other types of works might also be protected, a judgment would be made based on the originality/creativity requirement of the Act. Although HTML code is very useful, the code underlying a Webpage is not copyrightable although the page itself is as an audiovisual work if it meets the requirements of originality/creativity, etc.

QUESTION: *As an academic medical library, we are often asked to provide access to full-text journals to other libraries located in federal buildings on our campus. The full-text journals are free to the library with print subscriptions. Would this be a copyright violation?*

ANSWER: Not a copyright violation, but whether there is some type of liability for the library depends on the license. License agreements are contracts governed by state contract law instead of federal copyright. If a license for the online journals says restricted to the school's students, faculty and staff, then it violates the contract to allow the federal employees to use the materials. If not, then it is permissible, but each license agreement would have to be consulted for that title or group of titles.


continued on page 71

QUESTION: *What is the purpose and meaning of the requirement in section 108(a)(2) of the Copyright Act that a library be open to the public in order to enjoy the Library Exemption in section 108?*

ANSWER: The purpose is to exclude libraries in the for-profit sector and nonprofit ones that are exclusive (such as private clubs, etc.) which are not open to the public. It was a recognition of the public good of public libraries and similar libraries that serve the public even if open to nonaffiliated users only by appointment. The House Report indicates that this would prohibit a purely commercial enterprise from calling itself a library. Only libraries that meet the requirement of being open to the public or to researchers doing research in a specialized field may take advantage of the exemptions for preservation, copying for users, interlibrary loan, etc. under the Act. Another common sense reason for the requirement is that an exemption to the rights of the owner is asking the copyright holder to bear the cost for that exemption or to forgo royalties that it would otherwise receive. If a library is not open to the public, why should copyright holders bear the costs for another for-profit entity?

QUESTION: *A staff member wants to know whether the library can use a particular slogan if it is also the title of a book or would this title be protected by copyright? The slogan is "Learn to Earn" which is also a book authored by Peter Lynch.*

ANSWER: Book titles and slogans are not copyrightable. However, some of them are used as trademarks. There is a case right now involving the Harry Potter books, and now Harry Potter has been registered as a trademark because books are just one of the products being sold under that mark.

On "Learn to Earn" — is this just a book title or does the author also have the slogan on T-shirts, mugs, educational materials, programs and the like? If so, then it is likely a trademark or a service mark and the library should ask permission to use it. If the slogan is only a book title, then it may be used as there is no protection available for titles that serve only as a book titles. 

And They Were There — Reports of Meetings

XI. Transborder Library Forum, 2001 and IUG Meets in Santa Clara

Column Editor: Sever Bordeianu <sbordeia@unm.edu>

XI. Transborder Library Forum, 2001
"World Information: knowledge without boundaries"
Hermosillo, Sonora, Mexico, March 15-17.

Report by Elizabeth N. Steinhagen
(University of New Mexico General Library) <ens1@unm.edu>

Titled "*World Information: knowledge without boundaries*," this year's *Transborder Library Forum* was held in Hermosillo, Sonora, Mexico, March 15-17. Hosted jointly by the **Universidad de Sonora (UNISON)**, and the **Food and Development Research Center (CIAD)**, the event again attracted approximately 300 professionals, as in previous years, from mostly border states, with a number of representatives of libraries from other areas of Mexico, the U.S., and Canada. The theme was globalization, a concept that is here to stay and which has had a profound impact on how things are done today. The outcome of newer and better technologies in the realm of information exchange has revolutionized our way of seeking knowledge that may be generated thousands of miles away, anywhere in the world.

For the above reasons, the organizers of this *XI. FORO* envisioned an event that would present more than a physical space where librarians from our two sister countries, the United States and Mexico, could exchange experiences and share ideas about common problems not just relevant to border areas, but where they could also begin to brainstorm on ways to improve on daily tasks for the ultimate benefit of local users as well as those from remote areas.

From its simple beginnings in the late 1980s, when librarians from Arizona and Sonora realized the need to improve communication between libraries in the border states, attendance and scope have increased considerably. Simultaneous interpretation at all *FOROs*



has eliminated language barriers by providing each attendant with the opportunity to participate actively, while at the same time the number of bilingual

librarians able to take part in the discussions regardless of language appears also to have increased. Each *FORO* has been organized by an extraordinary and dedicated team of volunteers from the host site, and so far, the event has remained the sole responsibility — and sometimes headache — of the local hosts. However, while the informality of the group, the lack of structure, of dues, and of membership obligations, remain one of the major attractions, questions arose at the close of the *X. FORO* in 2000, about the continuity of these gatherings. Indeed, after lengthy discussions at the end of the recent *XI. FORO*, those present decided to look into the feasibility of coming up with some sort of structure that would provide the group with at least a semi-formal identity and standing. While all participants continue to cherish the informality and the social interactions, it is hoped that the group they elected to study and proposed new status will arrive at a solution that ensures the ongoing existence of these meetings.

These transborder conferences have been growing in importance and relevance as libraries and their users access information beyond their physical and geographical borders. There was ample evidence for it throughout the 3-day program that brought together practitioners from all areas of librarianship. It was preceded by a number of workshops presented by librarians from Mexico and the United States, which included a session on searching **MEDLINE** and **MEDLINEplus** for biomedical and consumer health information; a workshop on basic serials cataloging, based on the **CONSER Serials Cataloging Cooperative Training Program (SCCTP)**; a session on developing a library accessible to the community through design, attitude and technology; and another one on modern and general archives.

At the close of the opening ceremonies, the two keynote speakers offered interesting views of the present situation. **Estela Morales C.** of the **Universidad Nacional Autónoma de México** spoke about globalization and the importance of making more local information available to all users.

continued on page 72