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Libraries and the Tasini Case

On June 25, 2001, the U.S. Supreme Court issued its decision in the case of *The New York Times v. Tasini*. In a decisive 7-2 ruling, the Justices upheld an appeals court ruling that the reuse of a freelance author's work on CD-ROMs and in commercial electronic databases without the author's permission constituted copyright infringement.

What are the Key Issues for Libraries?

The *Tasini* case involved questions of fairness, equity, and a recognition of an author's rights to retain, modify, or assign copyright on a work he or she has created. At the same time, ARL and ALA represent institutions and professionals responsible for collecting and preserving historical, scholarly, and other records, including periodicals and other collective works. A significant part of the mission of these institutions and individuals is to make available to researchers and the public at large reliable, accessible, comprehensive repositories of back issues of newspapers, magazines, journals, and other periodicals. Many ALA and ARL members subscribe to the very commercial electronic databases and CD-ROM products that are at issue in the *Tasini* case. Libraries were concerned, therefore, in this case with balancing the needs of long-term preservation, the nature and cost of access to information in commercial electronic databases, and the fairness of compensating an author for his or her work.

Why Did ALA and ARL Decide to Support the Freelance Authors?

During the years the *Tasini* case was heard in the lower courts, ARL and ALA considered carefully what position each association should take. Having interests on both sides of the case, and having been approached by the lawyers of each side, ALA and ARL chose to remain neutral. However, when the Supreme Court decided to hear the case, ARL and ALA were once again approached by lawyers from both sides to file in support of their respective positions.

Having read several of the filings before the Court, it became clear to the boards of directors of both associations that an *amicus* brief was necessary to address the key library issues in the case and to correct inaccurate information. After much discussion, both boards decided that support for the freelance writers was consonant with association principles and positions.

The library community believes that copyright exists for the public good. Its fundamental purpose, according to the ARL Statement of Principles on Intellectual Property, "is to serve the public interest by encouraging the advancement of knowledge through a system of exclusive but limited rights for authors and copyright owners." ARL and ALA support the right of an author to decide whether to retain, modify, or assign copyright on a piece that he or she has created. Libraries also recognize and respect the public interest in having access to the work produced by the freelancers.

In February 2001, ALA and ARL filed a "friend of the court" brief to present the library perspective to the U.S. Supreme Court concerning the practical effects of the issues at stake in the case. The brief refuted a number of inaccurate claims and offered constructive ways to balance the rights of freelance authors, commercial electronic database producers, publishers, and the public.

What are the Implications of the Court's Decision for Libraries?

The Supreme Court rejected the publishers' argument that a ruling for the authors would have "devastating" consequences. In arguing the case, the publishers claimed that they would be forced to delete articles by freelance writers in their databases, and that it would not be feasible to remunerate the authors due to the large number of works involved as well as the expense of locating these contributors. Unfortunately, some of the publishers are continuing to take this position in the wake of the Court's decision. It should be noted, however, that there are financial implications for the publishers regardless of whether they choose to track and delete articles by freelancers or if they decide to locate and reimburse these authors.

The Supreme Court explicitly noted in its opinion that deletion of the freelance writers' articles was not necessarily the only outcome and that publishers could explore other alternatives. The Justices pointed out that there are "numerous models for distributing copyrighted works and remunerating authors for their distribution" such as the system of blanket performance licenses for musical compositions.

The impact of the Court's ruling will be primarily on older works that currently reside in commercial electronic databases such as Lexis-Nexis. Publications like *The New York Times* now require permission for electronic republication of works by freelance authors, but this was not standard industry practice until fairly recently.

Equally important, implicit in the Supreme Court's decision was the recognition that the nation's libraries and archives continue to provide access to the historical record of periodicals and newspapers. In addition, the Court's ruling recognized that certain archival media, such as microfilm and microfiche, do not infringe freelance authors' copyrights. Thus, the historical record will continue to be available to researchers and the public.

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Both ALA and ARL continue to monitor the effects of the Supreme Court's ruling in the Tasini case and its impact on libraries. For further information, please see http://www.arl.org/info/frn/copy/tasini_final.html, <http://www.ala.org/washoff/copyright.html>, <http://www.nwu.org/>, and <http://www.nytc.com/pressroom/freelance/index.html>.

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