



Satellite Teleconference on Digital Millennium Copyright Act

Answers to Faxed Questions

From A Faculty Member, Ohio State University at LIMA:

If a faculty has a paper published and the publisher holds the copyright, can the faculty put the text on his web site?

Georgia Harper, University of Texas, responds:

Not unless he reserved the right to do so in his contract with the publisher.

From Greta Lowe, Hampton University:

What is the most important thing that a University needs to be aware of when faculty members provide copyrighted course related materials over the Internet?

Georgia Harper, University of Texas, responds:

That fair use only goes so far - figure out its scope and educate your faculty and students about it.

From Duke Medical Center Library:

How can an OSP be held responsible for an "offending" document channeled through the OSP to email recipients (or to listserv subscribers) as an attachment to an email message, especially if the email correspondence is regarded by agreement (or conventional practice) as a private communication not addressed to the OSP?

Georgia Harper, University of Texas, responds:

As a practical matter, if it is not on the servers (stored somewhere) it's not likely to be considered the OSP's problem.

Duke Medical Center Library:

More to the point, what can, or should the OSP do preemptively to detect and/or prevent distribution of

protected material within email or as attachments to email handled by the OSP.

Georgia Harper, University of Texas, responds:

Absolutely nothing. The whole idea of DMCA ISP is that you only have to act when someone brings something to your attention.

From Tom Deardorff, University of Washington Libraries:

What experience have Universities had to date with registering as Online Service Providers? You mentioned Lucas's notice--are there patterns emerging?

Georgia Harper, University of Texas, responds:

Less than 10% (2-300 out of 3,000) have registered. I don't know anything else about their experiences.

From Priscilla D'Annibale, Carbon Lehigh Intermediate Unit:

Who owns the copyright of a student production (e.g. literary magazine-in written form) then if placed on a school website which is stored on the server of the ISP?

Georgia Harper, University of Texas, responds:

The student owns their work. Where it is posted or stored is irrelevant to ownership. See ["Who Owns What"](#)

From Andrew C. Morton, Virginia Commonwealth University:

Can you comment on electronic reserves and electronic document delivery? Thank you.

Georgia Harper, University of Texas, responds:

See www.utsystem.edu/ogc/intellectualproperty/l-resele.htm for information on electronic reserves. In terms of document delivery, in the context of DMCA, there's nothing to say because they are entirely outside the realm. See www.utsystem.edu/ogc/intellectualproperty/l-108g.htm for general information on document delivery.

From Lois Kuyper-Rushing, LSU Libraries:

Can you speak to the legal issues concerning a digital audio library in which music from LPs and CDs is made available on the web only within the library. These have not been archived for preservation but for classroom support.

Georgia Harper, University of Texas, responds:

This is not extensively analyzed by anyone yet, but Indiana University (IUPUI) is looking at the issues and should have something to say about fair use in this context soon. Until then, I would be wary.

From Lisa Walters, Library Media & Technology Consultant:

Can an educator use software such as Web Whacker (software that allows you to download & "can" an entire website) to capture and store an entire site to use with a class?

Georgia Harper, University of Texas, responds:

I consider Web Whacker to be controversial because it "freezes" a whole site at one point in time, as well as that it copies an entire site and distributes it.

From Region 10 Educational Service Center, Richardson, TX:

In a video-conference classroom setting, a student's project which contains various types of copyright materials will be viewed and discussed at multiple sites. What steps might the instructor take to not be responsible for copyright violations?

Georgia Harper, University of Texas, responds:

1. Teach students about copyright and the reasonable scope of fair use.
 2. Do not permit the use of materials that go beyond the scope of fair use.
 3. Unfortunately, faculty members that knowingly permit student works that infringe to be transmitted over university infrastructure endanger themselves, the university, and the students.
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From Ken Berger, Duke University:

It would be a great help to all libraries if ALA could provide model programs and approved literature for us to distribute to our users-as we attempt to comply with the educational responsibility.

Rick Weingarten, American Library Association, responds:

The American Library Association's Office for Information Technology Policy has hired a Copyright Specialist to develop a copyright education program for librarians to aid them in coping with the implications of copyright law. The program will help librarians understand the legitimate needs for protecting intellectual property while exercising their rights under fair use and other exceptions to the law intended to further public access. The educational program will include: authoritative print materials including fact sheets and brochures that can be distributed to users, an ALA Copyright Web Site, and conference presentations and workshops for librarians. The Copyright Specialist is Carrie Russell. Please contact her if you require additional information about the copyright education program or if you have ideas to share. E-mail: cr@alawash.org. Phone: (202)628-8421.

From Ammerman Campus:

Can you give us an example of a situation where certain unauthorized use is legal, yet unauthorized circumvention is not?

Rick Weingarten, American Library Association, responds:

A good and fairly typical example of a situation where unauthorized use is legal is a use based on the Doctrine of Fair Use. In these instances, users of copyrighted materials are not seeking permission from copyright holders, yet they believe their use is lawful based on the four fair use factors. For example, faculty and students exercise fair use when they make a photocopy of a

journal article from the library for their own personal use. Citing a small portion of a copyrighted work in one's own essay, paper, or book is also a very typical fair use situation.

"Unauthorized circumvention" is a new aspect of the Copyright Law with the enactment of the Digital Millennium Copyright Act (DMCA). In the DMCA, circumvention of copyright protection systems - descrambling a scrambled work, bypassing a password, decrypting an encrypted work - without the consent of the copyright holder is prohibited. A "rulemaking" proceeding initiated by the Librarian of Congress will take place in the next several months to determine if users of copyrighted works are or will be "adversely affected" by the anti-circumvention prohibition.

From Christie Vernon, Saint Leo College:

Since creators of works do not have to register, how can anyone do research at the copyright office to find out what the term is and who the owner is?

Rick Weingarten, American Library Association, responds:

We would recommend that a few search strategies be pursued when trying to identify a copyright holder.

- 1) Contact the publisher of the work. Often, copyright is not held by the author of the work but by the publisher of the work. The publisher can let you know if they hold copyright or not. Many publishers have "permissions departments" that can give you the necessary copyright information. If they hold the copyright, you may be charged a fee for using the work.
- 2). Go ahead and contact the Copyright Office. The holder of the copyright may well have registered the work. The copyright holder benefits from formally registering their work with the Copyright Office. By registering, the holder is allowed to collect statutory awards and attorney's fees if they bring suit and win a copyright infringement case.
- 3) Send a letter to the author's last known address. If one pursues these three avenues, a good faith effort has been made to identify the copyright holder. Keep a record of your attempts and any correspondence you receive.

Individuals may wish to dig even deeper to try to identify a copyright holder. The WATCH web site lists several more ways one can try to identify a copyright holder. See <http://www.hrc.utexas.edu/watch/watch.html>

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