



MINITEX M MESSENGER

Vol. 3, No. 3, December 1977

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SPECIAL ISSUE ON COPYRIGHT

The new U.S. Copyright Law (Public Law 94-553) was a major topic of the MINITEX regional meetings convened this fall.

These provided a general introduction to the law, the guidelines associated with it, the warnings and notices required by it, and the record keeping involved.

Throughout the past year much information about the law has been appearing in the professional literature. Gradually we as librarians are coming to comprehend, and to organize our thoughts about libraries, society, and the new law.

The long-promised ALA packet, "The Librarian's Copyright Kit," will be available sometime in January. MINITEX will send a packet to each participating library as soon as possible after we receive shipment from ALA. This is a fairly comprehensive packet, concerned both with helping librarians to understand the new law and know the mechanics of complying with it. As the mechanics of compliance are very much on everyone's minds, we'll try here to highlight aspects which relate to the interlibrary loan of photocopied material. This includes procedures now required by the MINITEX document delivery service.

There is no substitute for reading the law, and the reader of this newsletter will be referred to sections of the law on many occasions. Libraries have both "fair use" rights under Section 107, and the specific rights enumerated in Section 108. Further clarification of the limits on interlibrary arrangements for photocopying as stated in Section 108(g)(2) is given by the CONTU Guidelines.

The rights granted to libraries by the new law are substantial. In the vast majority of library photocopying situations, reproduction will be within the law. If a library finds that needed copying exceeds what is permitted by the law, at least three courses of action are open for consideration: (1) the library may decide that the excess copying can be avoided (perhaps by careful attention to acquisitions); (2) the library may request permission from the copyright holder to make a specified number of copies with or without payment of a royalty; or (3) the library may obtain permission and pay the royalty through a centralized copy service.

NOTICES AND WARNINGS

1. Unsupervised copy machines must display the following notice of copyright:

NOTICE: The copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.

The requirement to display the notice of copyright on unsupervised reproducing equipment is given in subsection 108(f)(1). The language is suggested by the American Library Association, Reference and Adult Services Division, Interlibrary Loan Committee. Gummed labels stamped or printed with the notice may be attached to the copying equipment, or a sign placed on the machine.

2. At the desk where orders or requests for photocopies are taken, a Display Warning of Copyright must be displayed prominently, in such a manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity. The warning must be printed on heavy paper or other durable material in type at least 18 points in size. The wording is specified:

NOTICE

WARNING CONCERNING COPYRIGHT
RESTRICTIONS

The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

The requirement to display the Display Warning of Copyright appears in subsections 108(d)(2) and 108(e)(2). The text and means of display are prescribed in the November 16, 1977 Federal Register.

3. The photocopy order or request form itself must display the Order Warning of Copyright. The warning is identical to the Display Warning which appears in 2 above.

The warning must be printed within a box located prominently on the order form, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. It must be printed in type of a size no smaller than that used predominantly throughout the form and may not be smaller than 8 points. It must be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a cas-

ual reader of the form. These requirements appear in the November 16, 1977 Federal Register.

4. The interlibrary loan request form used for requesting photocopies must include a representation of copyright. The designation CCG (Conforms to Copyright Guidelines) or CCL (Conforms to Copyright Law) must appear on every request transmitted from one library to another. This requirement is discussed in detail in the next two sections.

5. An item photocopied by library staff must display the following warning:

NOTICE: This material may be protected by copyright law (Title 17 U.S. Code).

The requirement for a notice of copyright to appear on the reproduction of a work appears in subsection 108(a)(3). The language of the notice is suggested by the American Library Association, Reference and Adult Services Division, Interlibrary Loan Committee. A library may choose to stamp this notice on the first piece of each item photocopied, to attach it to the glass on the photocopying equipment so that it is automatically transferred to each sheet, to attach a sticker bearing this notice to each item photocopied, or to use some other method whereby the message is affixed to all reproductions.

COPYRIGHT REPRESENTATION ON THE
INTERLIBRARY LOAN REQUEST FORM

The requesting library is responsible for making sure that the request conforms to the copyright law and the accompanying guidelines. To assure the supplying library that the request does conform, the requesting library must indicate on the request either CCG (Conforms to Copyright Guidelines) or CCL (Conforms to Copyright Law).

CCG will indicate that the request is in conformity to the "Guidelines for the Proviso of Subsection 108(g)(2)." These guidelines were developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU) and relate directly to interlibrary loan. Use of

the code CCL will mean that the request is legitimate because it is authorized elsewhere in the copyright law.

Interlibrary loan forms have been revised to facilitate conformity with the law. Manual forms offer check-off boxes as the means of assuring the supplying library of compliance. Formats for requests transmitted electronically have been modified to include a standard location for the copyright designation.

108(g) (2) Guidelines

This box is checked, or the code "CCG" transmitted when the request is in conformity with the CONTU Guidelines. Keep in mind that these Guidelines apply only to the kind of material described in Section 108(d) of the Law, i.e. an article or other contribution to a copyrighted collection or periodical issue or small part of any other copyrighted work. "CCG" indicates that:

1. The request is within the quantitative restrictions set forth in the CONTU Guidelines (for example: you have not received more than five articles from the current five years of a particular periodical title (Guideline #1), or
2. The requesting library has the title on order in which case quantitative restrictions do not apply (Guideline #2B), or
3. The requesting library owns the item but for some reason cannot make the particular portion requested available, in which case quantitative restrictions do not apply. (Guideline #2B)

Other Provisions of Copyright Law

This box is checked, or the code CCL transmitted, when the request is legitimate because it is authorized by parts of the Copyright Law other than the CONTU Guidelines. "CCL" is transmitted under the following circumstances:

A. When the copy requested becomes the property of the user:

1. If the request is for an entire work or substantial part of a work where the requesting library has determined that a copy cannot be obtained at a fair price (See Subsection 108(e));

2. If the request is for a copy of book or periodical material made for a teacher in conformity with the "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions" or for copying of music under the "Guidelines for Educational Uses of Music";

3. When the requesting library believes, because of the circumstances of the request, that the reproduction and distribution of the copy is a "fair use" (See Section 107 for statutory tests to determine whether a given reproduction is or is not a "fair use");

4. When the requested photocopy is a copy of the kind of material described in 108(d) but published earlier than five years prior to the date of the request and, therefore, not covered by the "Guidelines";

5. When the requested material is not subject to the reproduction rights granted by Section 108, (i.e. it is a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news) but the requesting library believes that, because of the circumstances of the request, the reproduction and distribution of the copy would be a "fair use" (See Subsection 108(d) for limitation of Section 108. See Section 107 for four statutory tests to determine whether a given reproduction is or is not a "fair use.")

B. When the requested copy becomes a part of the collection of the requesting library

1. If the request is for a facsimile copy of a published work requested solely for replacement of a damaged, deteriorating, lost or stolen copy of a work and the requesting library has determined, after reasonable investigation, that an unused replacement is unavailable at a fair price (See Section 108(c));

2. Where, because of the circumstances of the request, the requesting library believes that the reproduction and distribution of the copy would be "fair use" (See Section 107 for four statutory tests to determine whether a given reproduction is or is not a "fair use".)

MINITEX DOCUMENT DELIVERY

As of January 1, all requests for photocopies sent to MINITEX must include an indication that the request conforms to the Copyright Law. Libraries communicating with MINITEX electronically are asked to enter the code "CCG" or "CCL" near the end of the request. Enter the code as a separate line after the type of request and before the end of ILLRQ # statement. Libraries communicating with MINITEX by mail and using the 4-part ILLRQ form are asked to manually enter the CCG or CCL at the bottom of the form, under the verification information. We're revising the 4-part form, and check-off boxes will appear when the form is next printed.

MINITEX participants routinely provide their patrons with MINITEX Library Materials Request cards. It is these forms which now must display the three paragraph Order Warning of Copyright described earlier in this newsletter. As there are substantial quantities of the form still in existence, we are adding the required statement and accompanying signature line to the back of the form.

In the past, some libraries which access MINITEX document delivery services by mail may have given the 4-part interlibrary loan request form directly to the patron. The requirement that the warning appear on the form completed by the patron means that patrons must now be given only the Material Request card. The request data and copyright representation are then entered on the 4-part form and the first two parts forwarded to MINITEX.

When MINITEX refers a request for photocopy to you so that you become the providing library, please be sure that the warning "Notice: This material may be protected by copyright law (Title 17 U.S. Code)" appears on the item you send us.

NATIONAL ALA INTERLIBRARY LOAN

The American Library Association has revised its interlibrary loan form, providing check-off boxes for making the copyright representation. These forms are now available from library supply houses (see later section).

ALA advises that old forms may continue to be used. The Copyright Law does not affect requests for loans, so the old forms may be used for loans with no change. The old forms may also be used for photocopy requests if the appropriate code, CCG or CCL, is added. The code should be entered on the form following the signature of the person who authorizes the request.

RECORDS RETENTION GUIDELINES

In response to the Copyright Law, the Interlibrary Loan Committee of ALA/RASD has supplied recommended guidelines for record maintenance and retention. These were distributed at the MINITEX regional meetings. You are free to derive your own method or approach to this problem if the suggested form is unsuitable for your operation.

Basically, the Committee suggests that a separate file be created and arranged by title for all requests for copies of articles from copyrighted periodicals published within five years prior to the date of the request.

The Committee suggests two possible types of records:

1. A copy of the interlibrary loan request itself, filed by title;
- OR
2. An index card created for each title the first time it is requested, with whatever information is required to link the card to the original request. All subsequent requests for that title should be recorded on the card in like manner.

Among other things, this method will allow you to check each time you send an interlibrary loan request and make a determination as to which copyright representation code you should transmit. In addition, keeping a separate file will provide information for future review of the guidelines.

SUPPLIES

Three library supply firms were asked what was available from them to facilitate conformance to the copyright law requirements. Here's a report from Josten's, Demco, Brodart and MINITEX.

Notice of Copyright for Unsupervised Photocopy Machines

Although an adhesive label seems most convenient, none of the firms sell one as of now. Demco and Jostens both sell a card (10"x10") which stands alone on the copy machine. At Jostens it is Cat.No. 80-813, \$3.65 each, 6 or more \$3.50 each. Demco Cat.No. 128-1500, \$1.95 each.

Display Warning of Copyright for Desks Where Orders are Taken

These signs are the same size and price as the previous ones. Jostens Cat.No. 80-813, Demco Cat.No. 128-1700.

Notice of Copyright to Appear on Reproduction of a Work

Josten's has both a rubber stamp, Cat. No. 80-225, \$3.50 each and stick-on labels, Cat.No. 70-670, \$3.50 for 240. This same choice is offered by Demco. Their stamp is Cat.No. 128-15500, \$4.59 each, and stick-on labels Cat.No. 128-1600, \$2.90 for 500.

MINITEX is planning to initially use overhead projector transparencies as overlays on the first page of every item photocopied.

Photocopy Order or Request Form Completed by Library Patron

The lengthy Order Warning of Copyright must appear on this form. MINITEX has modified its Library Materials Request Cards so that our present supply can be used. When this supply is exhausted, we will print new forms. These are being distributed now. Please return old forms to us so that we can stamp the warning and signature line on them. If it is convenient, the old forms can still be used for loan requests, as these are not affected by the copyright law.

ALA Interlibrary Loan Forms

Brodart and Jostens have these in stock now, offering it plain, or imprinted with the library's address. Jostens plain is Cat.No. 30-488, \$22.25 for 500, imprinted is Cat.No. 90-488, \$30.95 for 500. Brodart plain is Cat.No. 23228001, \$24.05 for 500, imprinted is Cat.No. 23228002, \$67.60 for 1,000, the minimum order. Both companies have price breaks for larger quantities. Demco expects to have the form in stock early in January.

The old form can continue to be used, both for loan and photocopy requests. Instructions appear earlier in the newsletter.

MINITEX Interlibrary Loan Request Forms

Instructions for use of the old 4-part forms appear earlier in this newsletter. When the present supply is exhausted, we will print a new form which includes check-off boxes for copyright representation.

COPYRIGHT PAYMENT MECHANISMS

The Copyright Clearance Center, One Park Avenue, New York, NY 10016 is offering a document, "Permissions to Photocopy," containing a list of the 75 publishers, 900 journal titles, and photocopy fees as currently serviced by the Center. This document is free to CCC members/users, \$1 to others.

The Journal Article Copying Service, NTIS, 5285 Port Royal Road, Springfield, VA 22161 sells photocopies of articles, but will also handle royalty fees. It has license agreements with 100 publishers for 1000 journal titles, and access to more. To use JACS services, a library must become an account customer. Write to NTIS for information.

More complete information about royalty payment mechanisms will probably be available soon. We will publish further news in future issues.

COPYRIGHT LAW AND LIBRARIES: A BRIEF
BIBLIOGRAPHY

The Law

Public Law 94-553 completely revises the federal copyright statute, Title 17 of the U.S. Code. Copies of the slip law may be obtained from the Copyright Office, Library of Congress, Washington, DC 20559. The new law becomes generally effective on January 1, 1978.

The Guidelines

Guidelines on interlibrary loan (officially called "Guidelines for the Proviso of Subsection 108(g)(2)") are provided in the legislative history of the new copyright act, as are guidelines for classroom and teaching uses, and guidelines for educational uses of music.

The classroom and music guidelines were included in the House Judiciary Committee report on the copyright bill (House Report 94-1476), and the interlibrary loan guidelines were made part of the conference report (House Report 94-1733). Both reports are available from the Copyright Office along with an errata sheet. In addition, all three sets of guidelines are reprinted in the Librarian's Guide to the New Copyright Law (see below); the interlibrary loan and classroom guidelines are available in American Libraries, November 1976, pp. 610-611.

Additional Information

Cardozo, Michael H. "To Copy or Not to Copy for Teaching and Scholarship: What Shall I Tell My Client?," Journal of College and University Law, vol. 7, Winter 1976-77, pp. 59-83. Not directed to librarians, but presents an analysis of "fair use."

"Copyright: New Law and New Directions," a filmstrip kit developed by the Association for Educational Communications and Technology and the National Audiovisual Association, 1977. The filmstrip, audio cassette, script and information booklet are available for \$18.95 (member), \$22.95 (non-member) from AECT, 1126-16th Street, N.W., Washington, DC 20036

DeGennaro, Richard. "Copyright, Resource Sharing, and Hard Times: A View from the Field," American Libraries, 8:430-435 (September 1977). This article questions whether libraries will feel much impact at all from the new law, and warns librarians against expecting too much from resource sharing. Concerning Sections 107 and 108 and guidelines, the author says, "I can foresee no real difficulties in complying with them, and I do not believe they will significantly affect the way most libraries serve their readers."

* Flacks, Lewis I. "Living in the Gap of Ambiguity; An Attorney's Advice to Librarians on the Copyright Law," American Libraries, 8:252-257 (May 1977). An attorney on the staff of the Copyright Office expresses his personal views in his answers to nine questions frequently asked by librarians. This is a very useful article providing a clear roadmap to Section 108.

* Holley, Edward G. "A Librarian Looks at the New Copyright Law," American Libraries, 8:247-251 (May 1977). The author steps back to view the new law in perspective, and then goes on to provide a number of practical pointers and common sense observations on libraries and copyright. A bibliography is included.

"How to Investigate the Copyright Status of a Work." U.S. Copyright Office. Circular R22. April 1977.

"International Copyright Conventions." U.S. Copyright Office. Circular 38C. May 1977.

"International Copyright Relations of the United States." U.S. Copyright Office. Circular R38a. 1977.

* Librarian's Guide to the New Copyright Law. Chicago: American Library Association, 1977. Available from ALA Order Dept. for \$2.00. Reprinted from ALA Washington Newsletter, Vol. 28, No. 13, November 15, 1976. This guide provides substantial excerpts from the copyright law and the accompanying congressional reports. The full text of all three sets of guidelines is included.

Marke, Julius J. "United States Copyright Revision and Its Legislative History," Law Library Journal, 70:121-152 (May 1977). A comprehensive legislative history and summary and analysis of the new copyright law prepared for the guidance of researchers, librarians, teachers and institutional administrators.

* The New Copyright Law: Questions Teachers and Librarians Ask, a joint project of American Library Association, National Council of Teachers of English, and National Education Association. Washington: NEA, 1977. A question-and-answer approach to the new law. Available for \$2.00 from any one of the associations.

Stedman, John C. "The New Copyright Law: Photocopying for Educational Use," AAUP Bulletin, 63:5-16 (February 1977). A scholarly article by a law professor emeritus at the University of Wisconsin, which presents an analysis of the fair use provisions of the new law as they apply to institutions of higher education. A clear, thoughtful discussion of copyright for educators.

U.S. Copyright Office. General Guide to the Copyright Act of 1976. Washington, DC, 1977.

"Copyright and the Librarian." U.S. Copyright Office. Circular R21. 1977.

How to Request Permission

Copyright and Educational Media: A Guide to Fair Use and Permissions Procedures. Washington: Association for Educational Communications and Technology and Association of Media Producers, 1977. This pamphlet presents questions and answers on fair use copying of nonprint media, including off-air taping of television programs, public and instructional TV. Also included are the producers' recommendations for how to seek permission for one-time duplication of transmission and licensing agreements.

Copyright Clearance Center, Inc. Handbook for Libraries and Other Organizational Users Which Copy from Serials and Separates: Procedures for Using the Programs of the Copyright Clearance Center, Inc. New York, 1977.

Explaining the New Copyright Law: A Guide to Legitimate Photocopying of Copyrighted Materials. Washington: Association of American Publishers, June 1977. A revised edition of an earlier booklet of the same title, this pamphlet presents a procedure some publishers recommend for requesting permission.

* Items marked with the * are included in the American Library Association's Librarian's Copyright Kit. Chicago, 1978.

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