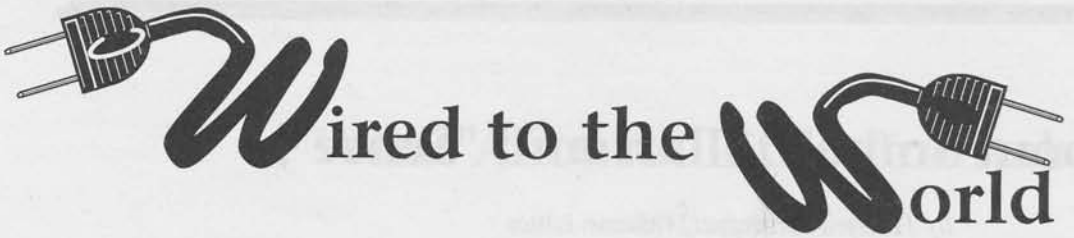

— by Ralph Lee Scott

Internet access provides a wide range of electronic information for the librarian to investigate. Having access to all this international information in libraries at public work stations provides some interesting copyright issues. How much material can you copy and download? What responsibilities do librarians have for unsupervised patron downloading? To what extent can the librarian or patron use downloaded documents? A search of library literature has revealed little copyright information specific to the downloading of electronic texts from the Internet.[1] Some general guidelines can however be gleaned from general copyright and recent case law.

Copyright owners are given a "bundle of rights," by the Copyright Act of 1976 (17 US Code 106). These rights include the right to reproduce the copyrighted item, to adapt the work into future new works, to continue publication, to sanction public performances of the work, and to display the item for public view. This protection is given to both "published" and "unpublished" works. In general, fair use is determined by: the purpose and character of the "use" (Is it produced at cost, without cost, or for a profit?); the type of work in question (drawing, book, record, computer file); the amount of material copied; and the effect of "fair use" on the potential market for the holder's work. While these general rules concerning fair use have been given, individual instances of "fair use" are almost always determined by the courts. The guidelines give general principles, but specific applications may prove to be more difficult to determine. Such is the case with material downloaded over the Internet.[2]

In addition to the above fair use rules, special guidelines apply for classroom copying of books and periodicals in the not-for-profit educational institutions. These guidelines vary with the number of copies made (single or multiple) and with the type of material (special rules pertain to the educational use of music). Classroom copying specifically prohibits the compilation of anthologies, workbooks, and consumables (tests, outline maps etc.) In addition, classroom copying cannot substitute for purchase of a work, cost more than the "actual cost for a copy," or be directed by someone (principal, department head, etc.)

Unsupervised reproduction on library premises is permitted without liability for copyright infringement provided that the "equipment displays a notice that the making of a copy may be subject to the copyright law." It has recently been suggested by librarians that specialize in copyright law that this includes computer equipment that permits copying of disks or downloading. In short, if you permit downloading of material from the Internet, you need to have a notice posted on the machine similar to the familiar notice found on library photocopy machines (the text for which is spelled out in the copyright guidelines). In addition, the copy must become the property of the user (the library cannot keep the material on the disk), and such unsupervised reproduction does not excuse a person from liability for copyright infringement.[3]

Some general guidelines also apply to Internet downloading. Most computer databases are "literary works" and thus subject to copyright. Most computer software downloaded from the Internet is copyrighted by someone, even if it is so-called shareware. Just because it is shareware, you do not have the unlimited right to reproduce the software for your profit. (Again this comes from the general "bundle of rights" the creator of a work has.) Multimedia (text, artwork, JPEG movies, sounds, photography, music, etc.) is subject to copyright. The sound elements accompanying an audiovisual or motion picture are not defined in the copyright law as a "sound recording" (and thus are not subject to special rules for sound recordings). In general, any visual art work (pictorial, graphic, or sculptural) is protected. This is rather broad and would cover almost all computer art, games, etc.[4]

Two recent court cases have changed somewhat the definition of "fair use" with regard to digital data.[5] In the first case, Universal City vs. Sony, the courts held that "the application of copyright law had been rendered uncertain because of a new technology."[6] This case attempts to provide a balance among the interests of the public and the copyright owners. Basically, Universal City sued Sony over the copyright infringement of Sony's Beta Video Tape copying system because it would allow consumers to make unauthorized copies of TV programs. (Remember the owners' "bundle of rights" includes reproduction). Sony countered that the use of their machines was "fair use." The court upheld Sony, holding that the primary use of the machines was private and noncommercial. (Remember the "fair use" purpose of the work.) What does this mean for Internet copying? To some degree there is an analogy between the Sony copy machine and the downloading of information to disk. You are storing digital data that you have a right to view, only to look at it again at a later time. This is somewhat similar to making notes in the library about a reference book that does not circulate. As long as your use is private and not for profit, the Sony case would appear to support the downloaders' contention that they did not violate the copyright owners' basic "bundle of rights."

Another recent case is that of Nintendo vs. Lewis Galoob Toys.[7] In this case Nintendo sued Galoob over copyright infringement because Galoob had changed the way in which the copyrighted Nintendo game worked, thereby creating an unauthorized adaptation (which is one of the basic rights of the holder under copyright). The court held that the use Galoob placed on the Nintendo signals

was within the realm of fair use. Again, the user had purchased the Nintendo games and intended the Galoob adaptation to be private and noncommercial. These two decisions thus appear to allow the downloader of information from the Internet the same rights of "fair use" to material copied as copiers of paper information have.

As you can see, the copyright law on the downloading of material from the Internet generally follows the guidelines given owners in their "bundle of rights." Additional information can be obtained from the Library of Congress Copyright Office.[8] While the case law literature on this subject is still somewhat small, it is growing. Sony and Galoob are examples of the type of impact on copyright law one might expect case law to have on copyright issues relating to downloading of electronic texts either from in-house CD-ROM databases or via the Internet. Librarians need to be aware of these issues and pay attention to posting the required notices on their computer "copying" machines as well as their paper photocopy machines.

References

[1] Mary Kary Duggan, "The Liner File — Copyright and Downloading From CD-ROMs," *Database*, February 1988, 7-9. (An informative, but dated article on downloading written prior to Sony and Galoob.)

[2] U.S. Library of Congress. Copyright Office. *Copyright Basics*. (Washington, Government Printing Office, 1992).

[3] U.S. Library of Congress. Copyright Office. *Reproduction of Copyrighted Works by Educators and Librarians*. (Washington, Government Printing Office, 1992).

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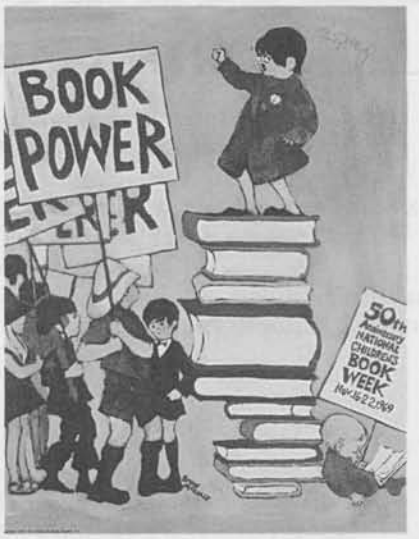
[5] Pamela Samuelson, "Copyright's Fair Use Doctrine and Digital Data," Association for Computing Machinery. *Communications of the ACM*, 37, 1 (January 1994): 21-27.

[6] *Universal City Studies Inc. vs. Sony Corporation of America, Inc.*, 104 SCt 774.

[7] *Nintendo of America, Inc., vs. Lewis Galoob Toys Inc.*, 16 F.3d. 1032.

[8] U.S. Library of Congress. Copyright Office. *Publications on Copyright*. (Washington, Government Printing Office, 1993).



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