LEGAL ISSUES

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Legally Speaking — Drama in the Library: Always Seek Permission to Publicly Perform Scripts, Even when the Library Owns Them

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__Agnes__ is the theater director at __East Bumkis University__. She wants to perform the play "Death of a Salesman" by __Arthur Miller__. She has not yet decided whether to charge admission to the play. __Agnes__ calls __George__, the drama librarian, and asks him to make ten copies of the script for the cast and crew. What should __George__ advise __Agnes__?

Librarians are often asked to help provide scripts or music to other departments on campus. They are also asked for guidance. Often librarians are the best copyright experts on their college campuses, so it is important for us to know how the copyright law affects scripts and music, and what to say when we are asked for advice.

The scenario above indicates two types of rights that are exclusively reserved for the copyright holder, namely the right of reproduction and the right of public performance.[1] Section 106 of the Copyright Act provides the following rights for copyright owners (subject to exceptions such as Fair Use, education, and library use):

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.[2]

There is an exception for libraries to make copies listed in § 108 of the Copyright Act. However, this exception only releases libraries and library workers from liability under certain circumstances. (For more information on the library exceptions, please see chapter 5, "Copyright and Education," of my book *The Law of Libraries and Archives*[3] or my "Legally Speaking" column from April 2000, "What is Intellectual Property."[4]) The library exception in § 108 allows library clients or library workers to make or distribute one (and only one) copy of a work.[5] The reproduction must be made for a non-commercial purpose such as research, learning, etc. In addition, the copy must include any notice of copyright that appears on the original. If there is no notice of copyright on the original, the reproduction must include a legend stating that the work may be protected by copyright.

In our scenario, the library would be prohibited from making multiple copies of a script for use by the whole cast. This would fall outside of the library exception and would constitute a violation of the right of reproduction, since the library may only make (or allow to be made) one copy of the script. The librarian should explain to the faculty member why she can't make multiple copies.

The library would also be subject to liability if the worker had actual knowledge that the client intended to use the material in an infringing fashion or for commercial gain. If there is actual knowledge on the part of library workers, the library exception in § 108 does not apply, and the library would be liable for violation of copyright.[6]

Suppose that **George** only made one copy, but he knew that **Agnes** was planning to make more copies for the cast. **George**'s actual knowledge that **Agnes** was planning to infringe copyright law would subject him and the library to liability along with **Agnes** for violating the right of reproduction.

Another requirement for the § 108 copyright exception is that the use of the item be non-commercial.[7] Because **Agnes** was considering charging admission, her use would in fact be commercial. Therefore, if **George** knew that **Agnes** was considering charging admission, he would not be able to claim the protection of § 108. As a result, **George** should advise **Agnes** not to make a photocopy of the script.

The second right of the author that would be violated is the right of public performance. The copyright holder can control who performs his or her material publicly, and has the right to charge licensing fees. It does not matter whether or not the person who puts on the performance charges admission; either way, the public performance rights still need to be obtained. Therefore **Agnes** must obtain permission in order to publicly perform the play. The fee for the license will probably be higher if she charges admission than if she doesn't.

Similar public performance rights also apply to films. If you show the film for non-educational use, you must obtain permission. Similarly, both recorded music and musical scores require permission in order to be performed publicly. There is a limited educational exception in § 110 of the copyright act;[8] for more information, see my "Legally Speaking" column in the November 2003 issue of ***Against the Grain***.[9] However, this exception does not apply if the performance is open to the public.

Many small schools, community orchestras, and community theater groups mistakenly assume that no one will know if they put on a play without asking for permission. What they don't realize is that the agencies that handle performance rights employ people whose job is to go through the local newspapers of every city in the United States and see if someone is putting on a play, concert, etc. In the old days, groups such as **ASCAP**, **SESAC**, and **Samuel French** subscribed to every newspaper in the U.S. Their research has become even easier with the introduction of online databases, Web searching, and blogs. It is pretty hard to hide

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a public performance these days, so it is better to ask for permission than to be sued for copyright violation.

How to Obtain a License for Public Performance

Many libraries and bookstores are familiar with the **Copyright Clearance Center (CCC)**[10] because of reserves and course packs. The **CCC** also deals with requests to include copyrighted material in other published works. However, the **CCC** does not deal with public performance rights. Their sole interest is the right of reproduction. If you are interested in public performance, however, you would need to contact one of the performance rights agencies that specialize in this area. Some of the major agencies include:

- **The American Society of Composers, Authors, and Publishers (ASCAP)**.[11] **ASCAP** handles the rights to music from over 200,000 U.S. composers, songwriters, lyricists, and music publishers. In addition, **ASCAP** can help obtain the rights to music from other countries through agreements with other agencies.
- **Broadcast Music International (BMI)**.[12] **BMI** represents over 300,000 songwriters, composers and music pub-

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Social Dancing in America: a History and Reference consists of 2 volumes. Volume 1 covers developments during the 17th, 18th, and the 19th Centuries while Volume 2 focused on the 20th century. The volumes are arranged in chapters following a chronological order. There is no alphabetical arrangement of articles so a solid general index is a necessity and fortunately both volumes have their own useful index. In fact, each volume is self contained and can stand by itself, however for reference purposes they work best as a set. Written in a straightforward and reader friendly style, **Giordano**'s work is nonetheless based on serious scholarship. His bibliographies are rich and varied including both primary and secondary sources, and as with the indexes, each volume has its own list of resources. Volume 1 also has a bibliography of dance instruction manuals available from the Library of Congress and Volume 2 has select list of Hollywood movies by type of dance.

This work is one of those reference titles that will be at home on the circulation shelf, as well as in a reference collection. Some readers will want to check it out for extended use while other will want to cherry pick for helpful facts. Either way, both academic and public libraries will want to give it serious consideration for addition to their collections.

The Devil Is In The Details
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problems and my eyes are strained after long times spent online. **Isadore Rosenfeld, M.D.**, the renowned cardiologist, advised recently about the importance of getting up from one's computer every half hour or so to stretch one's legs and move about in order to prevent the formation of embolisms, which can be life threatening. When I sit before a computer screen, I may rarely move anything but my fingers for hours.

Print and online publications serve different purpose. One does not necessary obfuscate the need for the other.

I worry about the zealous drive to think digital all the time.

The quest for knowledge will best be served by both print and online publications. To believe that one will replace the other is unwise as well as unrealistic.

Academic librarians have to think more about balance over bias, take a deep breath, and step away from the Online-Only bully pulpit. Take some time away from the computer and pick up a good magazine. Maybe we'll see one another at a **Borders Café**.

lishers. Like the **ASCAP**, **BMI** also has reciprocal arrangements with agencies in other countries. **BMI** collects license fees for the public performance of music, particularly for music that is going to be broadcast, used in restaurants and stores, etc.

- **Society of European Stage Authors and Composers (SESAC)**.[13] Like **ASCAP** and **BMI**, **SESAC** represents songwriters and publishers. **SESAC** is a much smaller organization than the other two organizations.
- **The Harry Fox Agency**.[14] This agency also represents the music industry. **Fox**'s list includes the largest concentration of digital music of any agency.
- **Motion Picture Licensing Corporation (MPLC)**. According to its Website, **MPLC** is "an independent copyright licensing service exclusively authorized by major Hollywood motion picture studios and independent producers to grant Umbrella Licenses to non-profit groups, businesses and government organizations for the public performances of home videocassettes and DVDs ('Videos')."[15]
- **Movie Licensing USA**.[16] This organization serves public libraries and schools by providing public performance rights for movies.
- The **American Association of Community Theatre**.[17] This organization helps community theatre groups obtain necessary permissions, as well as providing other types of resources and information. According to its Website, "**AACT** is the central resource for theatre information and resources, connecting not only members in an information network, but providing data and information to non-members, businesses, other arts and not-for-profit organizations, and the media, as well as to members of local, state and federal governments."[18]
- **Dramatists Play Service, Inc.**[19] This organization has the largest catalog of plays in the English language, and helps to provide performance rights in the U.S.
- **Baker's Plays**.[20] This organization provides performance rights for plays in the Eastern U.S.
- **Samuel French, Inc.**[21] This agency provides performance rights for plays in the Western U.S.

So now we return to the question of **George** and his advice to **Agnes**. **George** should not make copies of the script for **Agnes**, and should advise her to seek a license for public performance from the appropriate rights agency. The license will include also the number of copies she is entitled to make. As part of the agreement, **Agnes** will need to indicate whether she will charge admission, as the licensing fee will probably be higher for a commercial use of the play. (By the way, it doesn't matter that **Agnes** works for a university. If she charges admission, it will be a commercial use.)

Similar rules apply to the public performance of films or music (recorded or printed) that the library owns. Because librarians are often consulted for copyright advice, it is very important to understand when to counsel library clients that they need to seek formal permission. I always adhere to the rule that "if in doubt, seek permission." That will not only help us to provide better service to our library clients, but will also help to keep the library (and the library workers) from getting sued.

Endnotes

1. The rights of the copyright holder are outlined in 17 U.S.C. § 106.
2. *id*.
3. The information for my book is as follows: **Carson, Bryan M.** *The Law of Libraries and Archives*. Scarecrow Press, 2007. ISBN-10: 0-8108-5189-X; ISBN-13: 978-0-8108-5189-4.
4. **Bryan M. Carson.** What is Intellectual Property? 12-2 ***Against the Grain*** p. 52-54 (April 2000).
5. 17 U.S.C. § 108(a).
6. 17 U.S.C. § 108(g).
7. 17 U.S.C. 108(a).
8. 17 U.S.C. § 110.
9. **Bryan M. Carson.** "Legally Speaking." TEACHing Online: An Update on the TEACH Act, 15-6 ***Against the Grain*** pp. 34, 36, 40 (November 2003)
10. The **Copyright Clearance Center**'s Website is *http://www.copyright.com*. To contact the **CCC**, use the following address: **Copyright Clearance Center**, 222 Rosewood Drive, Danvers, MA 01923; Phone: 978-750-8400; Fax: 978-646-8600; Email: info@copyright.com.
11. **ASCAP**'s Website is at *http://www.ascap.com*. **ASCAP** has offices in New York, Los Angeles, London, Nashville, Miami, Chicago, Atlanta, and Hato Rey, Puerto Rico.
12. The **BMI** Website is at *http://www.bmi.com*. They have offices in New York, Nashville, Los Angeles, Atlanta, London, Miami, and Hato Rey, Puerto Rico.
13. The **SESAC** Website is at *http://www.sesac.com*. Their headquarters are in Nashville, with offices in New York, Santa Monica, and London.
14. The Website for the **Harry Fox Agency** is at *http://www.harryfox.com*. Their office is located at: 711 Third Ave, New York, NY 10017; Telephone: (212) 370-5330; Fax: (646) 487-6779.
15. The **Motion Picture Licensing Corporation** Website is at *http://www.mplc.com*. Their offices are located at 5455 Centinela Avenue, Los Angeles, CA 90066-6970; Telephone: (800) 462-8855, (310) 822-8855; Fax: (310) 822-4440; info@mplc.com.
16. The **Movie Licensing USA** Website is at *http://www.movlic.com*. You may contact them at: **Movie Licensing USA**, 201 South Jefferson Avenue, St. Louis, MO 63103-2579; Fax: 1-877-876-9873; mail@movlic.com. For K-12 schools, call toll-free 877-321-1300; for public libraries, call toll-free 888-267-2658.
17. Their Website is at *http://www.aact.org*. You can contact **AACT** at: 8402 Briarwood Cr., Lago Vista, TX 78645; Telephone: 512-267-0711; Toll-Free: 866-687-2228; Fax: 512-267-0712.
18. *id*.
19. Visit their Website at *http://www.dramatists.com*. You may contact the **Dramatists Play Service** at: 440 Park Avenue South, New York, NY 10016; Telephone: 212-683-8960; Fax: 212-213-1539.
20. **Baker**'s Website is at *http://www.bakersplays.com*. **Baker**'s mailing address is: P.O. Box 699222, Quincy, MA 02269-9222; Telephone: 617-745-0805; Fax: 617-745-9891. They also maintain a reading room and store that is open to the public at 1445 Hancock Street, Quincy, MA.
21. Their Website is at *http://www.samuelfrench.com*. Contact: **Samuel French, Inc.**, 7623 Sunset Blvd. Hollywood, CA 90046-2795; Telephone: 323-876-0570; Fax: 323-876-6822; info@samuelfrench.com.

Questions & Answers — Copyright Column

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QUESTION: May a university library provide temporary access to the University's online databases to individuals who are not enrolled students?

ANSWER: Only if the library's licenses to those databases permit such access. The question does not indicate who these individuals might be. Are they faculty and staff or are they totally unaffiliated with the institution?

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