

## COPYRIGHT vs. FREE ACCESS?

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**C**HANGING conditions of student bodies, technology, economics, and teaching methods affecting the production, communication, and protection of intellectual property have created a new and challenging dilemma in education. Melting this mist will demand penetrating insight and painstaking scrutiny, yet it must be done. Scholars, publishers, and middle men are inextricably involved in the dilemma which is complicated severely by two new phenomena in education: increased government funding and "burgeoning reprography." Add to these forces the subsequent production of new research-based materials and the copious use of such materials when reproduced easily, quickly, and economically, and the mist thickens. Broadly conceived the problem area can be considered as one in the field of communication.

It all began with the revolution in communications created by Gutenberg's invention of movable type. Long needed copyright revision has been forced into center ring by technology and its implications. Since the principle of copyright as well as the copyright law itself is an integral aspect of communications, broadly defined, it is basically related to individual welfare.

Although the copyright law of 1909 and the principles expressed in it are long overdue for revision, the essence and ethics of it have for many years guided control and protection of informational messages dissemi-

nated in a communications network. The principle is simple. It seeks to promote knowledge by protecting the owner of any such intellectual property.

Changes have brought into conflict with the above principle another principle which promotes full and unlimited legal access, without advantage of economic gain, to new information. With conflict of principle comes conflict of interests. Some publishers have gone so far as to suggest that consumers are becoming publishers in the sense that they seek the privilege of reproducing multiple copies of published works without restriction. For both professional and economic reasons, publishers and authors find themselves in ideological conflict with the consumers who typically are classroom teachers.

Further discussion of the topic will be presented under the headings: (a) new and pending copyright laws; (b) U.S. Office of Education; (c) analysis of the conflict; and (d) views from afar.

### **New and Pending Copyright Laws**

In 1967 the House passed a bill which would revise the copyright law for the first time since 1909. In August of 1968 the

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Senate had not yet acted upon it. A bill designed to form a commission for studying the implications of technology for copyright principles passed the Senate but direct action from the House had not occurred. Recently, deliberations involving publishers, authors, and EDUCOM have been going on for the express purpose of exploring the possibilities for giving computer users access to copyrighted works while at the same time affording protection to authors and publishers.

The revision bill of 1965 (HR 4347) passed by the House, as indicated earlier, provides generous exceptions for education. Actually it nearly eliminates the major problems teachers have long faced in their efforts to use appropriate copyrighted materials for more effective instruction. Although such action does erode the traditional rights of authorship, it also places great emphasis on the principle of maximum availability and dissemination of informational material.

The legality of photocopying copyrighted materials for classroom teachers has been determined by the doctrine of fair use (Section 107). The concept of this doctrine is foggy at best to most laymen. Over the years fair use or its violation has been determined by the courts, which considered such factors as the nature and objects of selections used, the quantity and value of materials used, and the extent to which further use would affect adversely the original works or any profits therefrom. Over the years teachers have enjoyed some freedom in their classroom use of copyrighted materials, although many have expressed displeasure with difficulties encountered in adhering to the intent of the doctrine. Publishers are quick to point out that there is no record of a teacher's having been sued for infringement because of classroom use.

The problem of photocopying as it relates to library policies has been met at least temporarily. The Joint Libraries Committee on Fair Use in Photocopying took the position that the making of one copy by the library is a natural extension of library service and that such service does not seriously violate traditional rights of authorship or inflict significant damage on publishers.

Another significant change is that of the broadened concept of "writings," a word used in the Constitution's statement of principles from which our present copyright law was derived. The current definition of "writings" appears to include any original works "in any tangible medium expression" from which they can later be communicated directly or with the aid of a mechanical device. In the Office of Education *Guidelines*<sup>1</sup> the word "materials" means writings, sound recordings, films, pictorial reproductions, drawings or other graphic representations, computer programs, and works of any other similar nature produced or specified to be delivered under project grants or contracts supported by the Office of Education.

## U.S. Office of Education

Knowledge and information are accumulating at a fantastic rate; government-sponsored research has increased significantly in quantity and perhaps in quality. It was inevitable that these events would complicate the matter of educational use of copyrighted materials. They forced into the forefront the issues of protection and exclusive ownership *vs.* competition and free enterprise; control *vs.* free accessibility; business *vs.* government; and information as a commodity *vs.* free access to public information.

In order to make research findings easily accessible, the U.S. Office of Education established in 1965 a policy which placed all educational materials produced from government-financed research in the public domain. Mixed reactions from persons closely affected greeted the policy. Subsequently, an amending policy statement incorporated the concept that limited copyright protection under certain conditions may be necessary as an incentive to promote the effective dissemination of materials.

Although it does continue to affirm the

<sup>1</sup> Office of Education. *Guidelines on Authorizing Limited Copyright Protection for Materials Developed Under Project Grants and Contracts*, Section II (a). Washington, D.C.: U.S. Office of Education, Department of Health, Education, and Welfare.

public domain policy, the revision is actually a minor concession to grantees so that they might secure wide distribution during the developmental and/or completion stages of their projects. In late June and early July of 1968 the U.S. Office of Education added more muscle to its modified copyright policy by issuing guidelines and appointing a Copyright Program Officer. Copies of the guidelines may be secured from the Division of Information Technology and Dissemination, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

It is somewhat puzzling that such conflicts as those described earlier could exist among authors, publishers, educators, and researchers since they are interdependent, and each is mutually supportive in one way or another of all the others. Concessions and exemptions in the proposed revision of the copyright law appear to be favorable, desirable, and conducive to the free access principle. One cannot help but wonder, however, what effect such generosity will have on the incentive of authors and publishers to continue to produce and publish intellectual material in our free enterprise system.

### **Analysis of the Conflict**

As might be expected, those who favor the freedom in educational activities to use widely and fairly the best materials they can identify are strong spokesmen for drastic change in the copyright law, change which would enhance the principle of maximum communication. Copyright protagonists who cherish the essential principles expressed in the Constitution and in our first copyright laws stand strong for protection of ownership whether educators like it or not.

There are concerns about excessive protection and there are concerns about insufficient protection for creators, producers, and disseminators of intellectual materials. It is not too difficult to identify the sources of these opposing concerns. Copyright owners and publishers fear erosion of their economic benefits and the originality of their works. For users of copyrighted materials, the competitive race for information created

by technology now makes it necessary that they employ whatever legal means are advantageous. Essentially the dilemma is chiefly a conflict of the principles of free access to significant information and the protection of authors and publishers in their endeavors to promote new knowledge.

Because of the nation's great need for improved communications, the first principle contributes much to the national welfare. The second principle likewise supports national purpose through motivating scholars and publishers to produce and disseminate helpful new knowledge.

### **Views From Afar**

The old copyright law is no longer as useful as it once was. It may be fruitless even to revise it if the goal is to have it retain its traditional principles per se. New criteria must be applied which will provide equity between opposing interests, for in resolving a conflict the best solution generally is one which makes positive contributions to all parties in conflict.

Industry and education need to think together and agree on new copyright criteria which will permit legal free access to and use of products of the mind, as well as preserve the principle of compensation for the copyright holder. Easy accessibility to ideas is an appropriate principle in this day of controversy over free expression. Its implementation becomes vital when we consider the increasing possibility that public information and its dissemination will be restricted to fewer and fewer agencies and individuals.

Computers may never replace books, but it appears that a proportionately larger share of information will be transmitted in the future by whatever kinds of electronic devices our scientific minds can contrive. If the ideal of service is to be honored and promoted, technology must make its contribution, the concept of fair use must be stretched, and teachers must retain reasonable freedom to apply with legal and ethical support the best available resources and materials to the improvement of their chosen profession. □

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