Electronic Media Formats and the United States
Copyright Law:
Three Issues

Catherine Edwards-Spratley
and
Susan Hocker
Center for Wetland Resources
Louisiana State University
Baton Rouge, Louisiana

ABSTRACT

Legal issues are a current concern for the library profession. Of particular interest are those areas that depart from traditional library service such as online bibliographic searching. Articles in the library literature cover such topics as confidentiality of online records and the desirability of disclaimers of liability. However, no one has done any research on whether or not recommendations in the literature are being followed in actual library practice.

Many librarians feel that they are not vulnerable to malpractice or liability law suits because of their affiliation with state institutions and the traditional free, service aspect of library activity. This may be true, but many other professionals (teachers and clergy) have felt this way in the past and have attracted law suits. The American Library Association has endorsed an insurance company offering liability insurance which includes malpractice coverage. A law suit, even if won, is a nuisance at best and may be a large expense.

Online bibliographic search services are particularly vulnerable to the possibility of legal action since many libraries accept a fee for this service. Also, as information becomes a more important and valuable commodity, clients will attach more importance to the accuracy and timely delivery of their information.

This paper is designed to survey and examine the policies and practices concerning the use of liability disclaimers and copyright information in conjunction with online bibliographic services in marine science libraries and information centers.

Electronic media formats are the newest generic catch-phrase for the capture, retrieval and display of information on personal computers from databases on main frame and/or optical disk. Within the context of the questions "Who owns a particular piece of information?" "Can a particular format of information be owned?" and "Is it true that information is power?" the marine science librarian is faced with many issues, many more questions, and difficult answers. There are three issues for the marine science librarians, electronic media formats, and the United States Copyright laws. The issues of the legal and ethical responsibilities, technological advances, and the United States Copyright laws (Section 17, U.S. Code) are the focus of this paper.
Here at the start, I wish to point out, that I am not in a position to offer legal counsel nor am I speaking as an attorney. Rather I am facing the questions that perhaps you too face concerning electronic media formats. This paper will point out the need for librarians and other personnel to be proactive and not reactive for the future applications of copyright. Librarians must take roles as counselors and consultants to the patrons using the various electronic media formats.

The 1976 Copyright law states that copyright is a form of protection provided by the laws of the United States to the authors “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works.” “Certain other intellectual works” that is the key phrase for the application of new technology that can be protected by copyright. In the instance of copyright registration for computer programs, it is “a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.” It does not extend protection for ideas, program logic, algorithms, systems, methods, concepts, or layout. Protection is for only the literary or textual expression contained in the computer program. Thus the use of “licensing” instead of copyright for most software. But the various electronic media formats produced by the major online vendors do seek copyright protection for applicable portions of their databases. Dialog Information Services, Inc., Orbit, STN International all include, in their contracts for services, statements restricting copy, transmittal, and retention of data received. It is written in the very tiny print and circulated (and recirculated) annually.

The 1976 Copyright law does not mention the librarian’s role and responsibilities to conscientiously, in the regular course of business, inform the patron of application of the copyright laws for their database search. Nor is the librarian’s responsibility to mention copyright obligations in the case of instructions to the patron for end user-services. The 1976 Copyright laws only set the requirements for display of copyright statements for the electronic format. The statement of copyright restrictions may be permanently displayed at the terminal or placed at the beginning of the online session. With this in mind we ask ourselves, although we as individuals and institutions do not infringe upon the rights of the authors or the copyright holders of the electronic media formats, are we or will we be held party to copyright infringement? The second question to ask is to what degree will we passively sit by? If we do not show reasonable attempts to warn patrons of the copyright protection of the electronic media formats, what are and will be the short term and long term consequences?

If your institution is not particularly worried about copyright infringement then consider, do librarians have an obligation when acting for a client to inform the client of the contractual information between the database owners and/or vendors, the librarian, and the patron? For if you do not, then who holds the legal liability? Can you be held party to your institution’s lack of cooperation when infringement is questioned?

In the copyright issues librarians must assume a double role. When we sign the contracts with the vendor, we are representing the patrons and their rights to the online database vendors. We also represent the vendors and their rights to the patrons. To date, there have not been, and may never be, any actual lawsuits to contest the obligations of the database searchers for informing the patron of the contract obligations and the copyright laws between the patron, the library, and the database vendors. But if we are not concerned with the legal responsibility, we as a profession have an ethical responsibility in this matter. When acting for a client, we should ascertain that they get all available information to the best of our ability. The unwritten motto of the Information age is the right information to the right person at the right time for the right price. Unfortunately, also unwritten is a major policy statement by libraries. A majority of academic and marine science libraries surveyed did not have a formal policy covering copyright and electronic media formats. A policy statement to guide the librarians and the patrons through the muddy waters of responsibilities and obligations. A policy statement for instance that requires that the patron should know what the limitations are on the searcher’s responsibility in the various electronic media formats. This policy statement could also require a written statement for the patron to sign, acknowledging the limited liability of the library. Or it could be as simple as verbal instructions during the reference interview. Or, as with the copyright statement, a sign permanently posted on the terminal. I do believe that we as a profession have an ethical responsibility to inform the patron of his rights and his responsibilities under the copyright laws.
In the technological issue, the lower cost of personal computers is increasing access to the electronic information. Downloading, editing, and repackaging the information is also easier. Our clients are familiar with computers and may ask to receive the information from the database in electronic form. Have you been asked to download a search to the patron's diskette for them to read? Have you been asked to edit and repack the search by the patron? Does your library have a policy on this question of downloading, editing, and repackaging? Consider that the optical disk technology makes it possible for our clients to do their searches as end-users. Portions of the databases on optical disk are copyrighted, but can the patron tell the difference? Whose responsibility will it be to inform the patron of their rights under "fair use?" Whose responsibility is it to inform the patron that only portions of the databases are copyrighted? The new forms of technology - the worm drives, larger microcomputer systems, and text digitizing - make electronic formats much more likely in the future. And the questions continue.

The future ... when the last revision of the 1976 copyright laws appeared; librarians allowed publishers to establish the "fair use" guidelines. The United States Congress has refused to rewrite or revise the current copyright laws to include software or video products. It is unlikely to do so for other electronic information. Congress has simply extended the provisions of the 1976 law to the new formats, formats at the time not known to the general public.

Like it or not, librarians are on the front lines of the issue of copyright and electronic media formats. You as a librarian know what does and does not work with the copyright restrictions and fair use. To quote Robert A. Gormlan, "Although the immediate purpose of copyright is to protect authors, the ultimate purpose is to advance knowledge..." Librarians are in the unique position of supporting both the producer, which provides our information, and the clients who need it. We are in the business of advancing knowledge. We should also be in the business of displaying copyright notices and giving verbal notices to the patrons. We should be in the business of protecting our interest in our contracts with the vendors, so that a well-rounded body of knowledge will continue to be available. If not, we run the risk of having only the information of interest to those who can pay the highest amounts. We should be in the business of making recommendations to the vendors, as to whether to, or consultants. We should be proactive and not reactive in the matter of electronic media formats and the United States copyright laws. There are too many questions to be answered, that should have been answered yesterday, and many more to come. For if not, if librarians are not proactive, the results may be chilling for the patrons.

Finally, I would like to close with the thoughts expressed in a story which could be the relationship between the librarians and the database vendors: There was a family who owned a small store - the store was downstairs - the family lived up. One night when everyone was asleep the owner awoke to realize someone was downstairs. She went to investigate with a shotgun, as a persuasive tool. There she found a potential customer by day and now a potential thief. She called out - exclaiming, "Friend, I don't wish to harm you, but you are standing where I am about to shoot." So too, the librarian must consider, are you a potential customer or a potential thief?
Bibliography

Compiled by
Susan Hocker and Catherine Edwards-Spratley


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