

Copyright Impacts of and on Government Programs†

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Except for library photocopying, presently pending copyright revision will have relatively little impact on federal information-dissemination activities. However, other policy, economic, and technological developments conceivably will cause profound changes in practices.

THE CURRENT SCENE

How will revision in copyright legislation affect information dissemination activities supported directly or indirectly by federal agencies? To answer this question we need to look at current federal activities and then to speculate on impacts of copyright changes.

Five main types of activities are involved:¹

- Dissemination, through agency auspices, of federally generated or supported materials. Prime examples are the sale of reports through the National Technical Information Service (NTIS) of the Department of Commerce and the Government Printing Office, or their free distribution by various agencies.

- Dissemination of articles based on federally supported research in copyrighted journals, as in those of the ACS and numerous other societies.

- Dissemination of copyrighted educational materials developed under federal grants by professional societies or commercial publishers. Usually these materials are in multi-media form, although monographs and reference works are sometimes treated this way as well.

- Copyrighted distribution of the results of data analysis, as represented by the National Standard Reference Data System of the National Bureau of Standards, presently in cooperation with the ACS and AIP.

- Reproduction of copyrighted materials under the so-called "fair use" privilege by federal libraries and information centers.

With the exception of library photocopying of copyrighted materials, proposed changes in copyright legislation should have little effect on present practices of federal information-dissemination operations. Policies and practices of federal agencies, however, could be altered by other sets of circumstances. Some of the latter are treated as well in the following discussion of each type of activity.

DIRECT FEDERAL DISSEMINATION

Activities in this instance include publication of magazines, journals, reports, reference materials, and abstracting and indexing periodicals. For copyright purposes, these are known as "works of the United States Government". As now, these materials will remain uncopyrighted and will continue to be available in the public domain.

During the House and Senate hearings on the revision bills, there were efforts to change this arrangement. The Department of Commerce urged an amendment that would allow copyrighting of NTIS publications. With copyright, it was argued that NTIS could better combat extensive photocopying both here and abroad. Presumably, reduced copying would boost initial sales of documents and contribute to the economic solvency NTIS has been directed to achieve. NASA also recommended that copyright in government works be per-

mitted in exceptional cases where such protection would be essential to effective dissemination of results.

Meanwhile, by a strange turn of events, action by the Soviet Union may have contributed to the movement to secure copyright of U.S. Government works abroad. Following the Soviet decision in 1974 to abide by the Universal Copyright Convention, U.S. Government agencies feared they would have little leverage in negotiating information exchanges with the centralized Soviet copyright office. OSIS arranged a series of meetings to explore possible federal agency responses to this new development. In these meetings, the U.S. Copyright Office offered the view that U.S. Government works could be offered copyright protection under the "national treatment" concept. That is, if other governments copyrighted their works, our works could be accorded the same protection, provided the U.S. Government asserts its claim to copyright. This could be done by using a copyright notice claiming copyright abroad. Within the Department of Health, Education and Welfare, the National Library of Medicine began pursuing such a course of action. NTIS is investigating a similar course of action.

These developments have been reflected as well in the copyright revision bill. In recent testimony, the Register of Copyrights has urged the House Committee handling the revision bill to clarify the copyrightability of U.S. Government works in foreign countries. One possibility is that Congress would express its approval of such action by appropriate language in the report accompanying the bill but not in the bill itself.

DISSEMINATION VIA PRIVATE JOURNALS

Private journals, mainly published by scientific and technical societies, are the mainstay of the formal scientific and technical communication system in the U.S. The bulk of the research reported in these journals is federally supported. For the most part, these journals are copyrighted.

Under the revision bill this practice would not only be continued, but would be strengthened. In Section 101 of the bill, "work of the U.S. Government" is narrowly defined as "a work prepared by any office or employee of the U.S. Government as part of his official duties". Otherwise, barring any other limitation included in the award agreement, results from federally sponsored research published privately can continue to be copyrighted, but the award agreement will continue to assert a royalty-free license for reproduction of the material by the Government for its own use.

DISSEMINATION BY OTHER PRIVATE MEANS

In addition to publishing journals, private organizations create and disseminate a wide variety of products based on federal research. These include educational materials, monographs, data compilations, atlases, other reference works, and computer software. As with journal articles, these materials are and will continue to be subject to copyright, provided the sponsoring agency does not require otherwise. The

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"otherwise" can come in two forms: (1) as stated in the award agreement or (2) as invoked under Rule 38—a recent pronouncement of the Joint House/Senate Committee on Printing and Binding.

Rule 38 requires a short explanation. Rule 38 says that information for publication based on appropriated funds shall not be made available to a private publisher for initial publication without the prior approval of the Joint Committee. This rule, however, does not apply to certain agencies such as the National Science Foundation, which, under their enabling laws, are permitted to secure publication by means other than GPO. Further, some agencies are seeking blanket exceptions from Rule 38. Exceptions being discussed include:

- Articles published in scientific, technical, and professional journals.

- Materials included in multimedia publications which, to be effective, must be made available as an interrelated unit.

- Publications, including reviews, state of the art monographs, and proceedings of conferences, that are usually published by an organization that has ready access to a particular market or set of purchasers.

- Materials resulting from activities funded jointly by an agency and a private organization.

- Materials requiring premarket testing, demonstrations, user education, and periodic updating, i.e., which require continuous involvement of a publisher.

Negotiations over Rule 38 continue between the Joint Committee and various agencies. So far, it appears that previous agency practices generally have continued as they were before Rule 38.

Copyright revision will not override Rule 38. Rule 38 stands on the authority of the Joint Committee and its control over Federal publishing activities. However, by narrowly defining "U.S. Government works", the revision bill does give ammunition to those who contest Rule 38 and should aid in establishing blanket exceptions to the rule.

COPYRIGHTED DISTRIBUTION OF DATA COMPILATIONS

The legislation that created the National Standard Data Reference Service at the National Bureau of Standards also granted copyright protection for its products. Results of this program, as many of you know, are published in a joint ACS/AIP venture. The revision bill would not alter the copyright status of the NSDRS.

PHOTOCOPYING OF COPYRIGHTED MATERIALS

Photocopying of copyrighted materials as official activities of library and information center staffs has been one of the stormiest and persistent issues in the copyright revision process. Moreover, this issue has focused on use of scientific and technical literature. The issue is shaping up over what constitutes "fair use" copying vs. "systematic" copying.

In this regard, the revision bill asserts the rights of owners; then allows certain exceptions under which photocopying is legitimate, as in the case of single copies or for preservation of damaged materials; and then puts restraints on copying, as in the case of systematic reproduction. The latter includes making multiple copies or agreements among libraries to selectively buy and then share materials in ways to systematically reduce holdings of the participating libraries. Also,

library photocopying authorization is limited to performance undertaken "without any purpose of direct or indirect commercial advantage".

The latter language poses no problem for federal libraries and information centers, but it does present an ambiguous situation for libraries operated by for-profit firms.

In addition to "fair use" vs. "systematic" copying, there is a second issue. This is how to draw a distinction between legitimate interlibrary loans using photocopies instead of bound books and prearranged understandings that result in a given library becoming the source for an indeterminant number of photocopies.

Practices of federal libraries, as for all others, will be affected by what decisions are ultimately reached, whether by law, judicial action, licensing agreements with publishers, or through royalty payments in some clearinghouse arrangement.

OTHER DEVELOPMENTS

In considering copyright revision, Congress set aside certain issues by assigning their analysis to the new National Commission on New Technological Uses of Copyrighted Works—CONTU, for short. CONTU is to recommend legislation concerning photocopying, except for educational purposes, and reproduction by computers and other technological means. CONTU has a seemingly impossible task; it is to report its findings and recommendations by December 31, 1977. An interim report is due in October 1976. At that time, Congress may want to reconsider whatever copyright legislation is then pending.

Finally, the Copyright Office and the National Commission on Library and Information Science have been working to bring the warring copyright factions together. Under the leadership of these two organizations, librarians, authors, and publishers have been trying to resolve their differences among themselves. One tangible outcome has emerged: the group has agreed on the scope of a study of library photocopying involved in interlibrary loans. NCLIS will be the study sponsor, although the National Science Foundation is putting up most of the money for the investigation.

The study has two objectives: (1) to measure what is loaned, to whom, how frequently, and so on; and (2) to test the feasibility of clearinghouse arrangements for collecting royalties on reproduction of materials. Results should be available in about 18 months. Their application could affect practices and payment arrangements for all libraries, but at this time speculation is premature.

SUMMARY

In summary, except for library photocopying, copyright revision will have relatively little impact on federal information-dissemination activities, but other policy, economic, and technological developments conceivably will have profound changes on practices. In the latter regard, federal operations are not unique and will bend to the driving forces of change in the broader domain of information technology.

LITERATURE CITED

- (1) For a description of scientific and technical information activities, see "Federal Scientific and Technical Communication Activities: 1974 Progress Report", National Science Foundation, Washington, D.C., June 1975. Available from the National Technical Information Service as PB-242-318.