

Symposium on the Copyright Law: Introductory Remarks[†]

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Received October 5, 1981

At the ACS Centennial Meeting in New York (Aug 1976), the Joint Board-Council Committee on Copyrights and the Division of Chemical Information presented jointly the "Symposium on Impacts of Copyright Developments on Chemical Information Transmission and Use". In October of 1976 the new copyright law was passed by Congress and signed by the President. The law (PL94-553) took effect on Jan 1, 1978. In 1980, the ACS Committee on Copyrights felt that it would be appropriate to hold another symposium on copyrights to inform scientists of the ramifications of the new law and to air some of the problems therewith.

Preparatory to the full symposium, the Committee, jointly with the Division of Chemical Information, held an open forum at the Spring meeting in Atlanta to discuss questions about and problems with the law such as "fair use" and what is "systematic"? Questions and problems discussed during this forum guided the more formal symposium held in New York.

It was at about the same time that the Division of Chemical Education, at the instigation of Bruce R. Thrasher of Willard Grant Press and liaison from the Association of American Publishers, decided to schedule a symposium "A Practical Approach to Copyright for Chemists". With the cooperation of the Division of Chemical Information we decided to join forces and present a symposium sponsored by the three groups. With the aid of Barbara Friedman, ACS Copyright Administrator, and Carol A. Risher, Director-Copyright, Association of American Publishers, Bruce and I put together the program presented in New York—most of which is presented here.

In putting together the program we felt it was important to make the listener, and now the reader, aware of what the law says about copyrights and copying—the major problem identified at the open forum and of how to comply with the law. It was decided that the morning session on "The Copyright Law: Bane or Boon?" would be directed at information scientists and users of scientific information. The afternoon session, "A Practical Approach to Copyright for Chemists", was designed primarily but not exclusively for educators. Thus, there was some duplication in content of the papers since the sessions were directed at different audiences.

We purposely chose authors with a divergence of opinion as to the meaning of the law, particularly with regard to photocopying. At the end of the symposium it appeared that we had reached an agreement to disagree. The publishers have their position, and the librarians and their clients have another position vis a vis copying rights. At the present time, detente has not been reached, but I understand that the Copyright Office is working to help the publishers and the librarians reach a working accord on copying and publishers' interests.

The Copyright Law mandates that the Register of Copyrights report to Congress in Jan 1983 the effects of the law on authors, publishers, and users of the published works. The

Register has been holding open hearings, and I was privileged to attend one at which I heard Alan Wittman, Wiley-Interscience Journals, and Ben H. Weil, Exxon Research and Engineering Co. (Ben is also a member and past-chairman of the Copyright Committee). Here, these two discuss the law and the rights and responsibilities it gives authors, publishers, and users of the literature.

One of the emerging problems is that of information transmitted electronically. A member of the Copyright Committee, Joseph H. Kuney, Informatics, Inc., discusses data bases and copyright. Patricia W. Berger, National Bureau of Standards, describes an analytic study of interlibrary borrowing at NBS and the effect of the Copyright Law on this operation.

The Copyright Law requires us to pay royalty to the publisher of material we copy beyond defined limits. The Copyright Clearance Center was established to facilitate that payment. David P. Waite, President of the CCC, presents his views and reports on the status of the CCC. Another mode of obtaining information—a mode which also complies with the law—is to use document delivery services. James L. Wood of Chemical Abstracts Service describes the CAS service and its status. As part of its study of the Copyright Law, the Copyright Office has commissioned a survey on library photocopying. Dr. Dennis McDonald, King Research Inc., who is directing that survey, describes the organization of the survey. Since the survey is under way, no data can be presented until reviewed by the Copyright Office.

Carol A. Risher directs copyright education for the AAP; here she presents a primer on copyright. Janice Holladay, Science Librarian at the University of Rochester, presents an academic librarian's perspective on copying and copyrights. Alexander C. Hoffman, special representative to the AAP Board of Directors, describes ways to improve document access. Barbara Friedman, ACS liaison to the Copyright Committee and Copyright Administrator for the ACS, discusses the subject of Copyright Permissions. Carol Risher, who is active in the field of nonprint media, particularly audio and video material, gives an up-to-date picture of this rapidly changing field. Jeanne C. Howard, of the Chemistry-Mathematics Library of the University of Oklahoma, comments on the CONTU guidelines.

Thus the varying positions on copyright and copying are delineated and now it is up to you to decide which position you take when you copy a document.

My attorney friends tell me that if the copyright law is tried in the courts, as the AAP has announced its intention to do, the case will be heard in equity court. Further, they tell me that there is a "clean hands doctrine of equity" which, roughly stated, says that if you make conscious efforts to acquaint yourself with the law and its effect on what you do, then the judge may find that although you violated the law, i.e., infringed a copyright, the court will take into consideration your efforts to have "clean hands". Thus, if your interpretation of the law is based on your conscious effort to learn about the law and its implications, the judge will probably do the

[†] Presented (in part) before the Divisions of Chemical Information and Chemical Education, Symposium on "The Copyright Law", 182nd National Meeting of the American Chemical Society, New York, Aug 27, 1981.

equitable thing and take your efforts into consideration in assessing damages or penalties. This symposium is one way you can become more aware of the law and its ramifications. Ignorance of the law is no excuse, especially when there are opportunities such as this symposium to dispel ignorance.

One caveat—judges take a very dim view of willful disregard of the law. Knowledge of the law combined with willful transgression can be worse than ignorance. We have attempted to make you aware of what the law says about copying, but it is up to you to obey the law as you honestly see it.

Copyright: Kill the Goose or Protect the Golden Egg?[†]

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Received August 27, 1981

Copyright protects the rights of scientists and scholars as authors who wish to achieve the widest possible dissemination of their work and as researchers who require access to information. The founding fathers of the United States acknowledged the need for copyright protection. Two centuries later, Congress reiterated the concept that copyright assures wide dissemination of valuable information. Chemists and other scientists depend on the existence of publications with narrow constituencies in which specialized knowledge is distilled. The uncontrolled practice of photocopying without payment to the owner will surely spell the demise of science's most important medium for the exchange of current knowledge at the forefront of advancing research.

INTRODUCTION

The papers which follow explore the legal, moral, and practical issue relating to adherence to, and respect for, the copyright law. The points of view come from persons in different sectors, and they may appear adversarial. But they are not. Publishers and librarians, for example, have uncovered areas of disagreement stemming from different interpretations of the new law. However, we are all part of a continuing chain. At one end of this chain is the scientist/author conveying information to a colleague at the other end of the chain, a scientist/reader who returns the favor with his own subsequent contribution. We are simply the middlemen, the brokers in this chain, and we function as catalysts for stimulating development at the forefront of chemistry.

THE ISSUES

The Constitution of the United States says, in Article I, Section 8, "The Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries".

Most of you have contributed papers to journals. Many of you have contributed a chapter to a book. Some of you are authors of books. Many of you have worked on a development for which a patent was subsequently obtained, either by yourself or your company. Your right to protect your "respective writings and discoveries" is a basic constitutional right embedded in the original Articles. It is not a new idea. Chemists respect the patent and proprietary rights of others. Do they always respect the intellectual rights of fellow authors to their writings? I leave it to the reader to examine his conscience and to answer this question for himself.

Just as you transfer patent rights to your employer for the development and dissemination of the practical values in a discovery, you transfer your copyright to a publisher to ensure maximum dissemination of the ideas in your writings. When a fellow researcher photocopies your article or a chapter from your book without permission to do so or without compensation

for the use of the information, he is stealing from you. When you make unauthorized copies of copyrighted material, or your library does it for you, you may be stealing from your colleagues. You may also be destroying the foundations of the distribution system for scientific literature.

There is no free lunch. Someone must pay for the cost of putting material into the system. Congress recognized this economic fact of life when it created the copyright law. It explained that copyright does not restrict dissemination of information; on the contrary, copyright promotes such dissemination. It does so by encouraging investment in the creation and distribution of the publication. Whether the publisher is a professional society such as the American Chemical Society (ACS), a commercial publisher such as John Wiley & Sons, or a university press such as MIT Press, the publisher weighs carefully the prospect of a return on his investment through the sale of enough copies of a book, enough subscriptions to a journal, enough reprints, enough microfiche, or enough uses in an electronic delivery system. The legislative history details in several places that copyright is meant to encourage such dissemination by protecting the investment from unlicensed use.¹

Where does the abuse come from? What is the danger? In a word, the answer is republishing. Original publishing requires more than simply printing and binding. The process includes evaluating the quality of the ideas and the presentation, which in our field requires the peer review process. It means editing manuscripts for clarity. It means designing a format to improve legibility. In short, there is value added by the publisher initially, which he hopes to recoup through the distribution process. When the printed page is then photocopied and "republished" without compensation, the original publisher cannot recover his investment. The result is that a journal such as this one may very well be terminated, even though there is a wide (albeit illicit) audience for its papers. This is the journal you write for, the journal you read to keep abreast of developments. Its very existence is currently threatened by copying without permission and payment. Without respect for copyright, the system will offer less material of value or, worse, material of lesser value.

Why does a publisher need to administer copyright in a manuscript? Under the current law the author owns the rights

[†] Presented at the 182nd National Meeting of the American Chemical Society, New York, NY, 1981.