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Photocopying by Libraries of Copyrighted Documents. A Proposal for Revision of the Present Copyright Law*

By GEORGE E. McCARTHY and EDWARD H. VALANCE

Geigy Chemical Corporation, Ardsley, N. Y.

Received May 21, 1962

In July of 1961, the Register of Copyrights reported to the House Judiciary Committee on general revision of the United States laws governing copyright material. This was the culmination of several years of study and some thirty-four interim reports on the varied aspects of author-composer-architect and artist protection. Many, if not all, of these reviews touch upon the work of the library, librarian and researcher. Specifically, this paper is concerned with the area dealing with the photoduplication of copyright materials by libraries. The recommendations include the following:

"The Statute should permit a library, whose collections are available to the public without charge, to supply a single photocopy of copyrighted material in its collections to any applicant under the following conditions."

"(a) A single photocopy of one article in any issue of a periodical, or of a reasonable part of any other publication, may be supplied when the applicant states in writing that he needs and will use such material solely for his own research."

"(b) A single photocopy of an entire publication may be supplied when the applicant also states in writing, and the library is not otherwise informed, that a copy is not available from the publisher."

"(c) Where the work bears a copyright notice, the library should be required to affix to the photocopy a warning that the material appears to be copyrighted."

The inclusion of the clause "are available to the public without charge" has, of course, met with a number of objections. It limits photocopying of copyrighted materials to the public libraries. The university, the business-connected research group, the government library could

not reproduce such papers without the time-consuming permissive grant from the copyright owner for each specific request. On the face of it, such a policy would seem over-restrictive and almost unenforceable.

Perhaps a glance at the present practices of libraries and research centers is in order.¹ The joint libraries Committee on Fair Use in Photocopying investigated the policies and photocopy work of government, university, and public libraries.² The making of copies for library clients is not only common practice but is a simple extension of the traditional library service, available because of the development of equipment capable of making such extension possible. Librarians and others have been offering such services under the "fair use" policy. They protect themselves, at times, with a signed statement from the patron that it is for his own use. On only rare occasions does a copyright notice appear on the copy. Does this lack of notice relieve the patron of responsibility if he makes as many additional copies as he finds convenient?

Corporate libraries, of course, also do a fair share of photocopy work. Few, if any, do any policing of the copyright material. The library user may request a copy or simply make use of the machine himself. And who is to say how many such copies are made? And, of a given paper, how often? It is much easier to make a copy to be read at leisure than to consume time taking notes. And, at today's cost of a chemist's time, isn't it better? Library notes are replaced by copies whose information is later transferred to laboratory punch or code cards. The danger of missing an important point in a paper is eliminated. Note-taking is becoming an old-fashioned and out-of-date art.

* Presented at 141st meeting, American Chemical Society, Division of Chemical Literature, Washington, D. C., March 24, 1962.

And what of the researcher? No one has been unaware of the cries of anguish from the scientist that he cannot keep abreast of his field. Publications are too numerous and are becoming more numerous by the year. Were he to read everything thoroughly he would have no laboratory time. So he takes a copy, makes and files a few pertinent notes, and returns to the paper, not the journal, when he needs it. The researcher eventually publishes the results of his own labor. And, because he feels he is contributing something to the art, he selects a medium most likely to come into the hands, and before the eyes, of those who can understand and appreciate his work. He sends out reprints as requested. He would, for the most part, give it as wide an audience as is compatible with the scope and depth of his paper. He has received no recompense. Indeed, he has surrendered his right to reproduce his own work. He may even have purchased the reprints to distribute. He will not deny a copy to a fellow worker, nor will he ask to know who is using it. We trust that recompense, even in the form of salary increases, is secondary to widespread dissemination of scientific publication.

And the publisher? Here, perhaps, the copier is on thinner ice The publisher has paid for the editing and printing. He has registered the work in the copyright office and can demand that he alone reproduce and sell anything published therein. Is the publisher losing ground (or subscriptions) because of the copying proclivities of the library user? Are increased production costs and prices the main cause for circulation drop? It would take a most extensive survey, and an unprejudiced one, to show the reason. Subjective answers are naturally suspect. Perhaps the increase in the number of special field journals has made the chemist more dependent on the library, less likely to rely on and subscribe to the old basic journals.

"Fair use" with reference to copying means that "a reasonable portion of copyrighted work may be reproduced without permission when necessary for a legitimate purpose which is not competitive with the copyright owner's market for his work" Whether any particular use of a copyrighted work constitutes a fair use rather than an infringement of copyright has been said to depend upon (1) the purpose of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the material used in relation to the copyrighted work as a whole, and (4) the effect of the use on the copyright owner's potential market for his work.³

The copyright law grants protection to the owner for the form of the work. In any scientific paper, the form is minor, the content important. Many valuable papers are written in language so obtuse and in such poor form that it is with difficulty that we find the essence. Editors moan about this and try to correct it; and now, we have technical writers who translate a paper into more understandable language for publication.

To photocopy or reprint such a paper would infringe a copyright. To digest it or rewrite it would not. Surely,

from an ethical viewpoint, the latter is as much a trespass as the former. An extensive abstract in *Chemical Abstracts*, or *Biological Abstracts*, or *Zentralblatt* must be as much a moral infringement of ownership rights as is the photocopy made of a paper from the *Journal of the American Chemical Society* in a research library. To eliminate the non-essentials, shorten the terminology, abbreviate the spelling, and broadcast it in a company or published periodical is surely a detour which avoids legal invasion, while paying naught for the privilege.

Garfield⁴ has suggested that a library keep count of the number of copies made and render an accounting and payment to each journal at the end of a given period. While we can think of no library or corporation which would not willingly pay for such copying, the mere mechanics of the program, and the accounting connected therewith would make it unwieldy at a time when speed and simplification is our aim.

We suggest that all libraries be privileged to make photocopies of copyrighted material from scientific and/or technical journals and publications so long as they do not compete with the copyright owner and such copies are not used for commercial purposes. An acceptable definition of "scientific and/or technical" should not prove too difficult. We would also define commercial use (along with its more obvious meanings) to include copies made to answer technical questions posed by actual or potential customers, and copies made for commercial "good will." We propose that the restriction "single copy" be changed to "reasonable number" so that members of a research team may have working copies of the same material. The "single copy" idea is, of course, unrealistic and can be negated by multiple requests.

Perhaps the photocopy answer to the problem of the harried scientific researcher lies in not revising this section of the copyright law, in recognizing that the proposed limitations are designed to slow the pace of the researcher, to foil his use of tools which technical progress has given him. The private, government, commercial, or university librarian has no desire to avoid responsibility or cheat the copyright owner. On the other hand, he will also resist and resent any new roadblock built in the path of quicker, wider, and more complete use of information sources.

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