

Copyright Revision Bill Requires Priority Action  
to Meet Needs of the Information Revolution

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Recently, I discussed some aspects of copyright in connection with the Soviet Union's announcement that it intends to become a party to the Universal Copyright Convention.<sup>1</sup> Inevitably, I touched on copyright problems associated with modern reprographic technology, especially photocopying.

The United States Court of Claims in Washington is about to render a decision in the case of *Williams & Wilkins v. the United States*. The decision will not be an easy one, and it is, of course, impossible to know now to what extent the making of the decision will reflect social, economic and technological factors anachronistic to any interpretation of the basic law. With the Soviet Union now pledging itself to respect proprietary literary rights, it will be paradoxical indeed if the Court's decision should work to permit unlimited copying by libraries in the United States. If the decision does that, then I am fairly certain that we can expect the copyright revision bill to become top priority in the Congress, after having been kicked around for more than a decade. The present law is more than 60 years old. It is frankly, however,

beyond my comprehension that the Court should rule that a library--profit or nonprofit--is free to copy books and periodicals, or parts of them, without permission of the publisher or author. But events as incomprehensible have occurred. I think that both sides of the abortion controversy were surprised by the Supreme Court's decision to legalize most abortions. As Bob Dylan, the singing poet, puts it, "The times they are a-changing."

Recently, I was privileged to lecture at the Case Western Reserve University on Garfield's Law of Concentration,<sup>2</sup> which relates percentages of journals in any library's collection to cumulative use of increments of the collection. A few years ago, Dean William Goffman of the School of Library Science at Case Western published a very interesting piece in *Nature* about the Bradfordian mathematics underlying the actual use of journals in a medical library.<sup>3</sup> Clearly, in any library a very small percentage of the journals available accounts for a large percentage of use. I have often suggested that this pattern of use, i.e., this concentration of use, should cause libraries to buy

extra copies of heavily used journals from which the library staff could, like ISI®, provide tear sheets instead of photocopies of requested articles. I recognize that it is probably much easier to make such a suggestion than for most librarians to implement it. Nevertheless, it does focus attention on the roots of the problem.

Publishers should seriously consider providing library subscribers with two or more copies of such heavily used journals, at special rates. If all libraries were required to keep proper and complete records of journal article requests, as most well-managed libraries do, then it would not be without precedent to ask libraries to order two or more copies on the basis of such records. The H.W. Wilson Company charges libraries for its indexing services on the basis of information libraries must compile that indicates an estimate of journal coverage.

Many publishers already have separate rates for libraries. ISI has set a precedent with its *Current Abstracts of Chemistry and Index Chemicus*™ by including one library copy and one circulating copy of the abstracts section in the basic *CAC/IC*™ subscription. At least one subscribing library uses the second copy to provide tear sheets of abstracts for chemists as part of an SDI service covering classes of chemical compounds.

One interesting aspect of the present copyright situation is the variation in viewpoint among various, so-called non-profit organizations. The Ameri-

can Chemical Society has submitted a brief as *amicus curiae* to support W&W, the plaintiff. Another group, the Committee for Diversity of the Press is planning to enlist the aid of Nader's Raiders in a battle against photocopier manufacturers. The Committee believes the manufacturers should be called to account where infringement is shown, since it claims these companies derive a profit from every copyright violation. So, however, do the paper, chemical, and power companies whose products and services facilitate use of the photocopies. One wonders, just how far responsibility can be made to extend in this manner. Are manufacturers of handguns to be called up as accessory in indictments for murder? Manufacturers of kitchen cutlery should perhaps review their liability insurance in view of the regrettable tendency of irate spouses to employ such instruments in marital disputes.

On the other hand, the American Institute of Physics has said it doesn't really care about photocopying. Authors have paid the Institute for typographic composition of their manuscripts, and subscribers' fees have paid for printing and distribution. In passing, it might be noted that the financial plight of physicists these days suggests royalties ought not be unwelcome to authors.

The issue is complicated further by the dozens of uncopyrighted journals published by government agencies and other organizations who want to encourage the widest possible use of what-

ever they publish. But even this philanthropic attitude may change as government and non-profit budgets tighten. And, all in all, there is something to be said for setting a fee, no matter how small, to make the user appreciate the service.

One of the main arguments used by libraries in their rejection of any plan for payment of royalties is that any feasible plan would be too costly to administer. Having operated ISI's OATS® service for more than ten years, I find the argument unconvincing. Librarians fill out multiple-copy interlibrary loan forms by the thousands. There is no reason one copy of an ILL form couldn't be retained and sent to some center that would sort them by publisher to calculate royalty payments. A royalty stamp might be affixed to each form, and I would even be so bold as to suggest the use of ISI's OATS stamp for the purpose, since they are already a kind of universal currency. Since ISI is already making royalty payments to many publishers, we would gladly pass along such additional payments. The idea of becoming an international banker appeals to me. If American Express can do it, why shouldn't ISI?

Actually libraries wouldn't have to use stamps, if they made uniform payments, but the use of stamps would be more convenient in smaller libraries. It would also facilitate passing on charges to the user. It seems to me that the scientific and scholarly community would readily recognize the reasonable-

ness of such royalty payments, and eventually most people would get into the habit of affixing a stamp to every photocopy made. In my experience, 99% of people are honest 99% of the time.

If the suggestion sounds a little tongue-in-cheek, let me say that I think ISI is eminently qualified to take on the responsibility, but I shan't be resentful if some other organization does. It has been suggested many times that authors and publishers need an equivalent of ASCAP. The author of a major treatise on this problem was for many years an ISI executive.<sup>4</sup> His activity in copyright affairs received my fullest support. The adoption of a simple scheme such as I have described would be the fulfillment of many years' hard work.

Should the implementation of such a scheme cost more than I forecast, confirming the fears of librarians, I feel that technology and systems will find a ready solution. The increasing use of international serial numbers, etc., is already headed in that direction, and I myself have worked on devices for selectively capturing such information.

I know that there is a tendency in academia to blame everything on the large corporation. But if the copier manufacturers profit from every photocopy, that is because they provide a worthwhile and desired service. While I am absolutely in favor of a revised copyright law that will protect publishers from infringement, I am nevertheless convinced that xerographic

machines have been a major factor in the increased utilization of scientific information. Most publishers, however, are not large corporations and depend upon small profit margins. Even a small increase in income can mean the difference between failure and success.

As President of the Information Industry Association I am glad to report that representatives of the Xerox Corporation have been very hard working in IIA's attempts to obtain revision in the copyright law. If you would like to see this obsolete law revised this year you should write or call your Congressman. And if any of you like the idea of the scheme I have proposed above let me hear from you or your librarian.

There is a widespread feeling amongst scientists that the copyright problem is really not their concern--not at least until they write a winner. Most scientists are so delighted that anyone should read their work that they would gladly pay the royalty themselves to be assured of it. Whatever the source of the revenue may be, *someone* has to pay for scientific publication and publishers have a legitimate right to profit for the risks they take. Royalties on photocopies would simply shift some of the financial burden to others. If the user is not in a hurry, he can write for a

"free" reprint as so many do. Is it unreasonable that he pay a comparable cost for the privilege of instant service when he needs it?

1. Garfield, E. Some implications of the Soviet Union's becoming party to the Universal Copyright Convention. *Current Contents*, No. 15, April 11, 1973, p. 5-7.
2. -----, The mystery of the transposed journal lists--wherein Bradford's law of scattering is generalized according to Garfield's law of concentration. *Current Contents*, No. 31, August 4, 1971, p. 5-6.
3. Goffman, W. & Morris T.G., Bradford's law and library acquisitions. *Nature* 226:922, 1970.
4. Sophar, G. & Heilprin, L. *The Determination of Legal Facts and Economic Guideposts with Respect to the Dissemination of Scientific and Educational Information as it is affected by Copyright; A Status Report*. Final report prepared by the Committee to Investigate Copyright Problems Affecting Communication in Science and Education, Inc., for the U.S. Department of Health, Education, and Welfare, Project No. 70793, 1967.