

Copyright Law in the Digital World: Fair Use, Education and Libraries after CONFU

Copyright Law in the Digital World:
Fair Use, Education and Libraries after CONFU
CONFU Town Meeting, Portland, Oregon, September 27, 1997
Barbara Anderson, Interim Director
Rex Arragon Library, Portland Art Museum

Being fairly new to the decision end of the intricacies of the fair use issue, (I am a newly appointed chief to the Rex Arragon Library after Dan Lucas left for greener pastures and a chance to use his artistic abilities), I arrived at the meeting with expectations of learning everything I needed to know about it and CONFU. Before this date I knew nothing about CONFU or the tremendous burden that many individuals had accepted in order to arrive at an acceptable set of guidelines to herald us forward into the rapidly changing realm of technological husbandry of intellectual information. Since this meeting I have researched past records of other meetings, reviewed my notes, and tried arriving at a knowledgeable understanding of the event to be able to submit a report that would be worthy of those that are, and have been, abreast of the issue. I regret that I have nothing new to report.

Although, for me, it was a very informative and well spent day, most of what was covered was the same dialogue from previous meetings and reports over the last two years. This town meeting at Reed College, Portland, Oregon was attended by professionals from all over the country. I had never been in the presence of so many librarians. It was exciting to meet and talk to them and learn that librarians on a whole are flexible and innovative. They are more than willing to deviate from tradition, cross boundaries, and establish new areas of expertise to fulfill the needs of the patron. I have heard rumors of librarians being a dying breed, next on the list of extinct species. But as caretakers of knowledge, the prime directive is to preserve and dispense knowledge with whatever means available to whomever is wanting to attain it, and they are quite adaptable to the changing times and technology.

As we signed in we were given a smart packet of information; a binder containing an outline of the program, short biographies of the speakers, a history of CONFU, reports, documents, speaker's handouts, and a discussion series produced by The Consortium for Educational Technology for University Systems. The meeting started out with Georgia Harper, University of Texas, leading us into the program with a report on the results from countless meetings by many individuals and organizations.

Her most profound statement was that CONFU was a failure, there was not an agreement reached in the area of advanced electronic data transmittal. The guidelines in the areas familiar to us dinosaurs; Xerox copies and slides for educational non-profit use were still pretty much accepted by users and owners, but in the case of digital and extended classroom use, a definite time warp between

human and technology was apparent. It had been decided to defer guidelines in these areas until technology has settled down a little, or humans catch up. Things are developing a little too fast and are a little too new to chisel anything in stone just yet.

The talk from all the speakers came down to the same basic concern: Suit, the fear of being sued for using material, and not paying for it, even if it is for nonprofit educational use. How far can an institution push the law in order to provide the necessary information needed to educate? Owners want compensation for their creations, users want access (most are unable to meet the financial requirements of the owners) to these creations to enrich the curriculum and provide the materials vital to the stimulation and growth of their students.

Under this topic the most beneficial speaker was Mary Levering, the Associate Register for the National Copyright Programs in the U.S. Copyright Office. Her words, basically, were, what you are doing now, keep doing. In other words, common sense, good judgment, and reserve have served well in the past when determining fair use, it is the same in the areas of digital and extended classroom use. Keepers of intellectual knowledge are not a frivolous or exploitative lot. Their decisions are based on the legal and moral rights of the owner as well as being keenly aware of the needs of those who are dedicated to preparing others for the responsibility of shaping the future. No educational facility, I would hope, has in their design to deny the rightful compensation to the creators of intellectual material. Instructors and students do spend a considerable amount on this material; not all are copies and classroom handouts, or electronic transmittals.

A discussion developed over where the line is crossed, defining handouts and reserved copied material. It was established that spontaneity was not evident with the on reserve copies that are held in the library for students use. Apparently, timeliness dictates just how gray this area is, although there didn't seem to be a problem with the Copyright Office if one copy is made for students to read or copy for later use, or many copies are made and distributed in classroom. As long as recognition is given to the source, no cost is necessary for the student to obtain the copies, and it is necessary for instruction in that class for that term only.

The barrier in the way of establishing any fair use guidelines lies in the electronic arena. Information is just too available. There are fears that users will run amuck, trampling owners rights, robbing them of rightful compensation, and defiling the original material. There is the fear of the unknown, as expressed in other words, of course, by several of the speakers. Robert Baron, art historian and consultant, asks the question of just how is this new on-line generation is going to use the power now available, will they honor the values that have been established over the past two decades? And feels that the rules do not fit our multi-intellectual society. The new age of networking creates too many scenarios that we don't have enough experience to deal with at this time.

Mike Holcolm, an artist and copyright owner, saw a threat to higher education in obtaining material it cannot afford. This could change the paradigm of educational missions and functions, where they become producers of intellectual material which industry will buy. When the facility starts producing the material it uses and sells it on the market, he asks another question; will this change the student's position back to that of apprentice?

Towards the end of the program, a member of the publishing world, Chrysanne Lowe, spoke on her involvement in digital imaging and electronic journals. The industry is working towards providing access and distribution of intellectual material and images. Much of this was beyond what I am knowledgeable of. She gave several website addresses: www.Idealibrary.com, www.Imagedir.com, and www.academicpress.com. if you wish to know more about what they are doing.

After all the fears, questions, and suggestions were voiced by the many excellent speakers, Mary Levering closed with a final suggestion that the guidelines be tried for a few years. Along the way, changes could be made, but whether they will be successful or not could only be proven if given a chance. In her opinion, the intellectual faction has established itself as being responsible and capable of using good common sense in defining fair use. The Copyright Office has faith in our abilities. We need to continue to follow our conscience and remain in touch with the traditional values that have been established and preserved. They can and are the template for which future decisions will be made.

The next town meeting will be held in Boston in January.