

Submitted March 9, 2007

COMMENTS ON PROPOSED REVISION TO COPYRIGHT LAW, SECTION 108

IDENTIFIER INFORMATION:

Name: **Mary Kaye Nealen**, S.P., Ph.D.

Organization affiliation: Theology faculty member

Address: **University of Great Falls**
1301 20th Street South
Great Falls, MT 59405

COMMENTS:

Specific Questions

1. How can the copyright law better facilitate the ability of libraries and archives to make copies for users in the digital environment without unduly interfering with the interests of rights-holders?

My first comment is philosophical: please take seriously the differing contexts of libraries and archives. I teach at a small private university in northcentral Montana, where large libraries with extensive collections are nonexistent. To require commercial purchase of materials now permitted under ILL provisions would gravely jeopardize faculty and staff research, student research, and ability to recruit excellent instructors and other professionals to our isolated area.

I have personally utilized Interlibrary Loan extensively for classroom teaching and for presentations to professional associations. Some of my colleagues have depended upon readily-accessible material to complete their terminal degrees.

2. Should the single-copy restriction for copies made under subsections (d) and (e) be replaced with a flexible standard more

appropriate to the nature of digital materials, such as “a limited number of copies as reasonably necessary for the library or archives to provide the requesting patron with a single copy of the requested work”? If so, should this amendment apply both to copies made for a library’s or archives’ own users and to interlibrary loan copies? **Yes and yes.**

5. If the single-copy restriction is replaced with a flexible standard that allows digital copies for users, should restrictions be placed on the making and distribution of these copies? If so, what types of restrictions? For instance, should there be any conditions on digital distribution that would prevent users from further copying or distributing the materials for downstream use? Should user agreements or any technological measures, such as copy controls, be required? **Restrictions on further copying/distribution and user agreements seem reasonable.** Should persistent identifiers on digital copies be required? How would libraries and archives implement such requirements? **Possibly yes to both these questions; I leave the particulars to our library professionals.** Should such requirements apply both to direct copies for users and to interlibrary loan copies? **Yes.**

6. Should digital copying for users be permitted only upon the request of a member of the library’s or archives’ traditional or defined user community, in order to deter online shopping for user copies? **This seems fair.** If so, how should a user community be defined for these purposes? **Our university currently requires passwords for database access that depend on semester-by-semester registration or employment. A comparable system for digital copying seems fair.**

7. Should subsections (d) and (e) be amended to clarify that interlibrary loan transactions of digital copies require the mediation of a library or archives on both ends, and to not permit direct electronic requests from, and/or delivery to, the user from another library or archives? **No to requiring library or archive mediation at the user’s end. We serve distance students who are even more isolated than our home campus. Requiring a library to receive copies at their end would add to the difficulties they already face.**

9. Because there is a growing market for articles and other portions of copyrighted works, should a provision be added to subsection (d), similar to that in subsection (e), requiring libraries and archives to first

determine on the basis of a reasonable investigation that a copy of a requested item cannot be readily obtained at a fair price before creating a copy of a portion of a work in response to a patron's request? Does the requirement, whether as applied to subsection (e) now or if applied to subsection (d), need to be revised to clarify whether a copy of the work available for license by the library or archives, but not for purchase, qualifies as one that can be "obtained"?

Comment: Currently some libraries already charge for copies, especially for materials difficult to find. For an article recently requested through ILL in our library, the sending library charge would have been ca. \$11.00; the same article through the commercial provider InfoTrieve would have cost \$37.00. It is easy to see that for a small private university, not financed by taxes, such charges would make it difficult, if not impossible, to maintain a level of library service that meets accreditation requirements. Even our publicly financed state universities struggle with annual tuition increases; commercial charges for all or most ILL materials would be a heavy burden for them also.

10. Should the Study Group be looking into recommendations for revising the CONTU guidelines on interlibrary loan? Should there be guidelines applicable to works older than five years? Should the record keeping guideline apply to the borrowing as well as the lending library in order to help administer a broader exception? Should additional guidelines be developed to set limits on the number of copies of a work or copies of the same portion of a work that can be made directly for users, as the CONTU guidelines suggest for interlibrary loan copies? Are these records currently accessible by people outside of the library community? Should they be?

Comment: The guidelines that allow no more than five articles less than five years old from one journal by ILL before charging copyright fees would make adequate research prohibitive on campuses like ours. To take another example from our library: for a sixth article from *British Medical Journal*, copyright fees on a private basis would be \$16.00 per article, plus any sending library's charge. The commercial copyright fee through InfoTrieve would be \$25.00. Such charges would severely limit our library's ability to assist students, staff, and faculty.