

brary should develop, where it does not already exist, a system for recognizing and rewarding staff based on job competency and contributions to the library and the profession. In an academic library, a system of recognition and reward might be reflected in the promotion in rank or tenure system, consideration of merit increments, and so forth. Library professionals also receive personal satisfaction for their accomplishments and contributions through the recognition received from colleagues.

Continuing education is critical to academic libraries, and therefore major issues should not be

ignored or drowned in well-intentioned rhetoric. Now is *not* the time for library professionals to once again compare themselves with other professional groups. Instead, continuing education should be considered in relation to the needs of academic libraries and the professionals that staff these libraries. If we begin by defining the purpose and scope of continuing education in relation to these needs, we will be better able to identify essential programs and activities as well as mechanisms for recognizing and rewarding performance and contributions.—*Sheila Creth, Assistant Director, University of Connecticut.* ■■

## Copyright—More Views

### ONE SOLUTION

I am writing not to offer a different interpretation of the copyright law than that of Charles Martell, but to suggest a solution to the problem of reserves and to correct three small errors in his "Summary Sheet." I believe these errors were present in the original publication from which this list of dos and don'ts was taken and that they were caused by an attempt to paraphrase the language of the guidelines.

First, it is stated that "a teacher MAY NOT . . . make multiple copies of a short poem, article, story, or essay from the same author more than once in a class term or make multiple copies from the same collective work or periodical *issue* more than three times a term" (emphasis added). The "cumulative effect" test of the section 107 guidelines, from which this is taken, uses the term "periodical *volume*" (emphasis added).

Second, it is stated that "a teacher MAY NOT . . . make multiple copies of works more than nine times in the same class term." The provision in the "cumulative effect" test is "there shall not be more than nine instances of such multiple copying for *one course* during one class term" (emphasis added).

Third, it is stated that "a teacher MAY . . . make multiple copies for classroom use only and not to exceed one per student in a class of the following: . . . one chart, graph, diagram, drawing, cartoon, or picture per book or periodical." The language in the "brevity" definition in the guidelines is "per periodical *issue*" (emphasis added).

Turning to the problem of reserves, I think there is an alternative that to date I have rarely seen discussed: namely, obtaining permission to make the copies. It should be recognized that the copyright law and its guidelines do not impose a flat ban on copying; they only require that per-

*Continued on p.162.*

### COPYRIGHT LAW AND RESERVE OPERATIONS— ANOTHER INTERPRETATION

To save space, this interpretation of the copyright law is limited to specific points of disagreement with Charles Martell, including minor differences in emphasis. In general, Martell's reading of the law seems sound and his recommendations worthwhile. At crucial points, however, he is content to recommend seeking legal interpretation instead of venturing an interpretation himself. His approach is admittedly "purposely conservative."

However, perhaps libraries should instead be looking at the law as a lawyer would and determine what weight the *Guidelines* would carry. Admittedly they have not the force of law. But they came into being at the urging of the House Committee on the Judiciary. The House Committee Report (H.R. 94-1476) says that the committee report of 1967 summarizes the arguments on the question of classroom photocopying—which "have not changed materially in the intervening years"—and proceeds with comments of considerable moment, including these passages:

. . . The fair use doctrine in the case of classroom copying would apply primarily to the situation of a teacher who, acting individually and at his own volition, makes one or more copies for temporary use by himself or his pupils in his classroom.

Spontaneous copying of an isolated extract by a teacher, which may be fair use under appropriate circumstances, would turn into an infringement if the copies were accumulated over a period of time with other parts of the same work, or were collected with other material from various works so as to constitute an anthology.

A key, though not necessarily determinative, factor in fair use is whether or not the work is avail-

*Continued on p.162.*

*One Solution, cont. from p.161.*

mission be obtained for copying in excess of fair use. Our library has decided to take the initiative in obtaining permission in order to avoid the anticipated hassles with faculty and in order to least disrupt the educational process we are in business to support. The foundation of our effort is the Copyright Clearance Center, Inc. (Box 765, Schenectady, NY 12301), an organization formed by serials publishers to facilitate the obtaining of permission to copy their serials. Once a library is registered with the center it can keep a log of copies made and need make payments only monthly or quarterly, depending on the volume of copying it does. The prices per copy are listed on the title pages of every journal article of the member publishers, beginning with 1978 issues. The center also distributes a handbook with prices for articles before 1978. I am inclined to think that more and more publishers will be participating in this center. We are contacting non-center publishers directly with a form letter asking permission to copy. In no case, however, are we waiting to receive permission before making copies, since we do not anticipate any absolute refusals. Our serials department is handling correspondence with serial publishers, and our acquisitions department is handling correspondence for monograph publishers. Fees paid for copying will be assessed to the appropriate departmental allocation within the materials budget.

Perhaps my colleagues will think this is undue capitulation and a betrayal of academic freedom; but it seems to me that we have an obligation to obey the law, and the question after that is whether we will obey it by refusing to provide the reserve materials that students need or whether we will obey it by facilitating the process of getting permission.

Some libraries may do reserve copying on such a scale that they feel they will not be able to afford to pay for it. This is, of course, a valid objection, but bear in mind that fees may not always be required; we have already received a reply from a publisher granting us permission to make a total of nine copies without charge. We are not absolutely certain that we will be able to afford it either, but for the time being it seems to us a viable solution.—*Jack Ray, Assistant Director, Loyola-Notre Dame Library, Baltimore, Maryland.* ■■

### NLA Forum

"Speaking Up For Librarians: A Forum On Professional Concerns," Wednesday, June 28, 1978, 10 a.m. to noon, Chicago, Illinois. Moderator: John Berry, editor of *Library Journal*. Contact: Peter Dollard, Monteith Library, Alma College, Alma, MI 48801; (517) 463-2141, ext.332.

*Another Interpretation, cont. from p.161.*

able to the potential user. If the work is "out of print" and unavailable for purchase through normal channels, the user may have more justification for reproducing it than in the ordinary case.

The Senate Judiciary Committee Report (S. 94-473) is very close in language to the 1967 House report. But a significant statement in a gloss to section 108, though omitted from the conference report (H.R. 94-1733), is at least quite specific:

Subsection (g) provides that the rights granted by this section extend only to the "isolated and unrelated reproduction of a single copy," but this section does not authorize the related or concerted reproduction of multiple copies of the same material whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group. For example, if a college professor instructs his class to read an article from a copyrighted journal, the school library would not be permitted, under subsection (g), to reproduce copies of the article for the members of the group.

To sum up this matter, though the *Guidelines* and the various committee reports in which the *Guidelines* are incorporated have not the force of law, they are to be reckoned with. The court of claims that adjudicated the *Williams v. Wilkins Co.* case cited the 1967 report with the remark that "although such comments were not binding on the court, they were influential" (*American Law Reports. Federal Cases and Annotations*, v.21, p.217).

A second point of concern is that the *Guidelines* do not take up reserve room copying, nor do sections 107 or 108 of Public Law 94-553. Martell is aware that there is considerable feeling among faculty that reserve room operations are "extensions of the face-to-face classroom process." In the light of the committee reports it seems plain that no such interpretation may be allowed. There are too many occurrences of the phrase "classroom use" to suggest that this is accidental; "instructional" or "educational" use might have been used, but they were not.

Martell is aware of the many restrictions that would be imposed if reserve use comes under the fair use provisions of section 107. But what if it is demonstrably akin to the copying done by libraries on their own initiative under the provisions of subsection 8? The brevity, spontaneity, and faculty initiation of the order then vanish, to be replaced by other restrictions not so hard to live with. The fair use provisions remain, but a different interpretation of fair use prevails.

The Senate gloss on subsection 108(g), cited earlier, points up the kinship between 108(g) and reserve room use, though it refers only to multiple copies "for the members of the group" with

no reference to where they use the materials.

In the most general sense section 108 allows a library to photocopy any of its own materials in the interests of "preservation" of the original, without any commercial advantage and for scholarly purposes, to the extent that other purchasable copies are unavailable at the time of need at a reasonable price. With respect to unpublished manuscripts, the principal prohibition applies to copying a manuscript that the copying library does not own. Published works may be copied to replace a copy that is "damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price." Subsequent parts (d) and (e) are concerned with interlibrary loan restrictions, which Martell handles satisfactorily.

The terms of 108(c) cited above, especially the word "deteriorating," seem to open the door for much reserve room copying. When a scholarly journal article is assigned for class reading, no one questions the right to place the original in a reserve room. But this would create undue wear on a probably bound volume and would restrict free access to other articles from the same issue or volume. The photocopying of the article in this case is demonstrably fair use and the same is true of a chapter from a book. In either case, the library must make some effort to determine whether inexpensive reprints are available.

The same principles might be extended to multiple copies for large classes if the library has taken steps to purchase multiple reprints of the item. And in the face of an inability to secure reprints, the use of the same photocopies in suc-

## Cataloging of Microforms

The Subcommittee on Bibliographic Control of Microforms, RTSD/Reproduction of Library Materials Section, will hold an open meeting at the ALA Annual Conference in Chicago. Starting at 2 p.m., Sunday, June 25, the discussion will address the question of access points peculiar to microforms that should be included in an automated cataloging system. The basis of discussion will be the Library of Congress statement on *Access Points for Microforms*, which was distributed at the Mid-winter Meeting. The *Library of Congress Information Bulletin* will carry the above statement in a spring issue to enable concerned librarians to be informed before the ALA meeting. All interested persons are urged to add their input on this important subject; comments should be forwarded to Greg Cole (chairman of the subcommittee), Ellis Library, University of Missouri-Columbia, Columbia, MO 65201.

cessive school terms is at least defensible, though the library may here be required to get permission from the copyright holder at a reasonable cost.

Finally, the sharp restrictions in 108(g) to the "isolated and unrelated reproduction or distribution of a single copy" have reference only to interlibrary loans and have little bearing on library copying for preservation of deteriorating material.—Gerald J. Eberle, Director, Earl K. Long Library, University of New Orleans. ■■

## Oregon ACRL Chapter Meets

The Oregon ACRL chapter met at the Lewis & Clark College library in Portland on February 17. Marcia Lowell, state librarian, chaired the meeting. She discussed the Oregon Governor's Conference scheduled for June 1-3 and gave background on planning for the conference.

The ACRL members present broke into groups to discuss ideas that should be raised at the conference regarding library services, needs, and development. The results were presented to Marcia Lowell and Laurelyn Schellin, conference coordinator, to aid in setting an agenda and as expression of the concerns of academic librarians.

On March 13 the chapter met at Oregon State University to hear Pauline Atherton discuss the subject access project. On-line catalogs may not be as useful or accessible as they should be if only LC subject headings are used for description. Her experimental project expanded tra-

ditional subject access points to include significant words from the index and contents page. The file that was created was then searched via the traditional entries and using the augmented information. The results of their comparison are due to be published soon.—Mary Devlin, Chairperson, Oregon ACRL Chapter. ■■

## Resources in Education Worksheet Available

A "Worksheet on How to Use *Resources in Education*" has been prepared by the ACRL/EBSS Committee on Bibliographic Instruction for Educators. It has been approved by the full committee and by all of the members of the EBSS Executive Board. Single copies are available from the ACRL Office.