

Copyright and the Librarian

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It is no secret that these are times of appalling communication gaps. Nations with diverse philosophies of life and government may make detentes, but they still do not speak the same language, literally or figuratively. A president may speak and not be understood by courts, Congress, or people. Scholars and librarians may speak and not be understood by publishers and authors. And vice versa. Age, occupation, interests — all can serve as barriers not only to agreement but even to comprehension. For communication requires an ability and a willingness to listen. It also requires assumption of the perspective of another, at least for purposes of listening. And it demands some reconciliation of special interests. So, in a world of shrunken communication, many speak and few listen. A desperately needed revision of a national Copyright Act enacted into law in 1909 remains before Congress after 10 years of debate, impasse, and frustration.

It would be wrong to think that most major breakdowns in communication are planned. Most just happen. For example, last Halloween a little angel came to our door, replete with wings and halo. My wife, charmed, told the angel: "Hold open your trick-or-treat bag. I want to give you something special!" And she dropped a

big red apple into the bag. The angel peered into the bag and then into my wife's eyes. Fighting back tears, she said: "You broke every damn cookie in the bag!"

That just happened. So did the communication gap between authors and publishers on the one hand and teachers and librarians on the other with regard to copyright. The result can be stalemate: Pernicious, debilitating, and prolonged.

Experience shows that such difficulties are resolved — eventually, but rarely to the complete satisfaction of anyone. Some years ago, as a radio news commentator and director of news and special events, I planned and directed a weekly debate program involving governmental officials. On a program concerning the desirability of a liquor referendum, the leader of the so-called "dry" forces pled eloquently that liquor made people mean and argumentative. His opponent, the leader of the so-called "wet" forces, responded: "I quite agree. They do say we are *both* a little quarrelsome when we've been drinking." You win some; you lose some; and, above all, you compromise. But when some 535 senators and representatives are called upon to vote on legislation affecting a nation and (to a degree) the world, breaking off the thorns of deadlock can prove particularly sticky.

Where are we in copyright law as it relates to the librarian? Let us note at the outset that the most immediate problem

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derives in part from the librarian's role which is to provide access to printed, published and other materials and in special measure from the role of the university and college librarians whose function requires them to provide access for scholars, teachers, and students. That derivation is only a fragment of the whole picture. For, on the same side of the coin, the problem also derives from the need of scholars, students, and various research people to have ready access to books and other printed materials or, sometimes, to fragments of those materials. And it further derives, on the flip side of the coin, from the understandable need and desire of authors and publishers to realize a fair return on their creative and distributive efforts. The two sides of the coin represent divergent interests, involving education, economics, and justice itself. They are not easily reconciled, yet reconciliation is essential to the well-being of all concerned.

The catalyst that has brought the problem to the foreground is the modern copying machine. Until Xerox, IBM, and the other producers of multiple copiers came up with the magic of applied electronics as a means of rapid duplication and potentially broad distribution, the question of copying was far different and much less acute. In fact, from 1935 until recent years the whole matter usually was covered by a so-called "gentlemen's agreement." The "agreement" was originally entered into with the National Association of Book Publishers by the Joint Committee on Materials for Research of the American Council of Learned Societies and the Social Science Research Council. Citing the right of a student to copy by hand, assuming that "mechanical reproductions from copyrighted material" are "intended to take the place of hand transcriptions and be governed by the same propositions governing hand transcriptions," and noting that, "the courts have recognized the right to a 'fair use' of book quotations," the agreement granted an exemption from liability "permitting a library, archives office, museum or similar institution owning books or periodical volumes in which copyright still subsists" to "make and deliver

a single photographic reproduction or reduction of a part thereof to a scholar representing in writing that he desires such reproduction in lieu of loan of such publication or in place of manual transcription and solely for the purposes of research." The agreement did include conditions warning against copyright infringement by misuse of the reproduction and against institutional profit from the copying of the materials.

For decades libraries, and notably university and college libraries, have relied upon the vestiges of that "gentlemen's agreement" as authority for providing a single copy of materials for those who so request.

Librarians have gone about their duties hoping that their confidence in the "one-copy" procedure was not misplaced. Meanwhile, proposed federal copyright revision legislation brought reason to hope that the concept of "fair use" would be given legislative legitimacy and photocopying limits placed in the realm of certainty.

The copyright revision bills introduced in the Congress in the past decade have been pretty much of one piece. The most recent bill would extend the period of copyright protection from the present 28 years plus another 28 years, if claimed, to a flat period extending throughout the life of the author plus 50 years after his death. By providing protection under statutory copyright law for unpublished works equal to the protection of published works, the bill would do away with the problems created by the existence of common law copyright and the question whether that copyright protection expires with registration for statutory copyright protection. The measure also would, for the first time, give statutory definition and recognition to the doctrine of "fair use," making specific those conditions presently indicated only in court decisions under which unauthorized copying would not infringe the right of the copyright owner. The revision legislation would create a National Commission on New Technological Uses of Copyright Works. That Commission would deal primarily with problems of computer and

copyright and would be responsible for studying and comparing data on the use of copyrighted materials and automatic systems for storing and retrieving information and for the various forms of machine production.

Other provisions would extend the classes of works protected by copyright to include pantomime and choreographic work and ornamental designs of useful objects which are now included only under design patent statutes. Under the proposed legislation an inadvertent omission or misplacement of notice would not result in loss of copyright, as it does now, although the new bill would retain the requirement of copyright notice. Copyright protection would no longer be denied to American authors if their works are published outside the United States. In other words the controversial "manufacturing clause" would be deleted and copyright law would no longer discriminate against American citizens in a way that one Congressman has called "a legal outrage unparalleled in any other statute." Finally, all copyright would be brought under the provisions of the federal statutory law, and American copyright law would be made much more compatible with copyright laws in other countries.

Although the points at issue in the proposed legislation clearly included provisions relating to the copying process, librarians had little notice that the practice of making single copies of copyrighted materials for scholars and students might suddenly be lost. There was little inkling — until *The Williams and Wilkins Company v. The United States* (172 U.S.P.Q. 670) burst into the limelight. That case, presently on appeal, raises directly the question of photocopying works for research and educational purposes. The plaintiff, a publisher of medical books and journals, sued the Department of Health, Education, and Welfare, its National Institutes of Health, and the National Library of Medicine, for copyright infringement. The importance of the case is suggested by the fact that a number of organizations were permitted to file briefs as friends of the court (*amici curiae*),

including The Author's League of America, The Association of American Publishers, Inc., The American Library Association, The Association of Research Libraries, The Medical Library Association, and The American Association of Libraries. The Court of Claims made its ruling through a report of a Commissioner.

The facts of the case were agreed upon. The plaintiff publisher publishes for profit and charges annual subscription rates to various copyrighted medical journals which have subscription lists ranging from 3,000 to 7,000. The National Institutes of Health maintain a technical library open to the public containing 150,000 volumes and subscribes to some 3,000 different journals. Researchers among the more than 12,000 employees of the NIH may request and receive photocopies from the journals. Since the original copy of each journal must remain in the reading room of the library, it is scarcely surprising that in the year 1970 alone, about 85,000 requests for photocopies were received and filled by the library. The library tried to observe the "gentlemen's agreement": it would not make more than one copy of the same article for one person nor would it copy more than a part of a journal at a time.

The government attorneys in behalf of the defendant federal agencies, contended that the process constituted a "fair use" of materials and not an infringement of copyright; that, absent printing and publishing of multiple copies, there was no liability; that making single copies under these circumstances is not of itself an infringement of copyright. The Commissioner held that earlier copyright laws on which the defense had relied had been done away with by the present Copyright Act, and that the "single copy" argument did not stand up because certain articles are copied repeatedly by the agencies and sometimes for the same person making separate requests for the same publication at different times.

To the contention that single copy copying is acceptable under the traditional

scholarly practice of copying by hand copyrighted works for use in research, and to the claim that this process is in the public interest and to stop it would stifle the "free flow of technical and scientific information," the Commissioner said: "Whatever may be the bounds of 'fair use' as defined and applied by the courts, defendant is clearly outside those bounds. Defendant's photocopying is wholesale copying and meets none of the criteria for 'fair use.'" The Commissioner went on to explain: "The photocopies are exact duplicates of the original articles; are intended to be substitutes for, and serve the same purpose as, the original articles; and serve to diminish plaintiff's potential market for the original articles since the photocopies are made at the request of, and for the benefit of, the very persons who constitute plaintiff's market."

This Court of Claims decision is interesting in terms of its reasoning and suggested directions as well as its specific holding. For example, it quotes the "gentlemen's agreement" as follows: "While the right of quotation without permission is not provided in law, the courts have recognized the right to 'fair use' of book quotations, the length of a 'fair use' being dependent upon the type of work quoted from and the 'fairness' to the author's interest. Extensive quotation obviously is inimical to the author's interest . . . it would not be fair to the author or publisher to make possible the substitution of the photostats for the purchase of a copy of the book itself, either for an individual library or for any permanent collection in a public or a research library. Orders for photocopying which, by reason of their expensiveness or for any other reasons, violate this principle should not be accepted." The decision then goes on to note that the "gentlemen's agreement" "does not have, nor has it ever had, the force of law with respect to what constitutes copyright infringement or 'fair use.'" It states that the record does not show that the "agreement" has ever "been involved in any judicial proceedings" but that it is "entitled to consideration as a

guide to what book publishers and libraries consider 'reasonable and customary' photocopying practices in the year 1935." The holding concludes that the "gentlemen's agreement" has "little significance . . . to this case."

The decision quotes Professor Melville Nimmer's *Treatise on Copyright* as follows: "Both classroom and library reproduction of copyrighted materials command a certain sympathy since they involve no commercial exploitation and more particularly in view of their socially useful objectives. *What this overlooks is the tremendous reduction in the value of copyrighted works which must result from a consistent and pervasive application of this practice.* One who creates a work for educational purposes may not suffer greatly from an occasional authorized reproduction. But if every schoolroom or library may by purchasing a single copy supply a demand for numerous copies for photocopying, mimeographing, or similar devices, the market for copyrighted educational materials would be almost completely obliterated. This could well discourage authors from creating works of a scientific or educational nature. If the 'progress of science and useful arts' is promoted by granting copyright protection to authors, such progress may well be impeded if copyright protection is largely undercut in the name of fair use." (Ironically, Professor Nimmer, speaking at a meeting at Washington that I attended last week, said that when he first published his book on *Copyright* in 1963 he was chastised by friends for his "poor timing" because a new federal copyright revision act clearly was about to be enacted into law and would make his treatise on the current law useless!)

The Commissioner, and thus the Court of Claims, in the *Williams and Wilkins* case further held: "The doctrine of 'fair use' and the 'gentlemen's agreement' cannot support wholesale copying of the kind here in suit." The Commissioner further decided: "The photocopying done by NLM and NIH library . . . poses a real and substantial threat to copyright owners' legitimate interests."

The decision then quotes Professor Nimmer at length on the difference between scholars making handwritten copies of copyrighted works for private use and a library or other institution making machine copies on a wholesale basis for all scholars. He cites Nimmer's conclusion that: "Once this is acknowledged as fair use, the day may not be far off when no one need purchase books since by merely borrowing a copy from a library any individual will be able to make his own copies through photocopying or other reproduction devices which technological advances may soon make easily and economically available."

Citing the constitutional powers of Congress and its broad discretion to grant exclusive rights of copyright for a limited time, the Court of Claims finds nothing to indicate that "Congress intended to exempt libraries or others from liability for wholesale copying of copyrighted works, whatever be the purpose or motivation of the copying." Nor does the court buy the theory that the agencies were licensed to copy the articles. In its review of earlier statutes and case law on copyright, the Court of Claims finds that Congress in every statute it has passed has sought to "proscribe unauthorized duplication of copyrighted works." It quotes the Supreme Court as recently as 1968 in the *Fortnightly* case¹ to the effect that "... Section 1 of the [Copyright] Act enumerates several 'rights' that are made 'exclusive' to the holder of the copyright. If a person, without authorization from the copyright holder, puts a copyrighted work to a use within the scope of one of those 'exclusive rights', he infringes the copyright. The decision also quotes the Register of Copyright's report (pp. 21-22) to the effect that copyright is a 'two-fold right to make and publish copies' and 'pertains to all categories of copyrighted works.'"

One of the most revealing aspects of the decision is its concept of this case as

it applies to desired directions in photocopying. The court says: "Plaintiff does not seek to enjoin any photocopying of its journals. Rather, it merely seeks a reasonable royalty therefore. Its licensing program would so indicate for, as far as the record shows, plaintiff will grant licenses to anyone at a reasonable royalty." The court goes on: "No doubt, plaintiff would prefer that all of its journal users be subscribers. However, plaintiff recognizes that this is unrealistic. Some articles in its journals are in greater demand than others, and many journal users will not consider it economically justifiable to subscribe to a journal simply to get access to a few articles. Implicit in plaintiff's licensing program, therefore, is the idea that it is in the best interest of all concerned that photocopying proceed without injunction, but with payment of a reasonable fee." That would appear to be a logical and common sense solution to the problem, not unlike the solution provided by the American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music Inc. (BMI) in the field of music and the performing arts.

At the end of the holding, the Court of Claims, in a *Postscript*, states that "the issues raised by this case are but part of a larger problem which continues to plague our institutions with ever-increasing complexity — how best to reconcile, on the one hand, the right to authors and publishers under the copyright laws with, on the one hand, the right to authors and publishers under the copyright laws with, on the other hand, the technological improvements in copying techniques and the legitimate need for rapid dissemination of scientific and technical literature. The conflict is real; the solution is not simple. Legislative guidelines seem appropriate." (The footnote makes clear that here the court considers relevant several 1969 bills in Congress to establish a National Commission on Libraries and Information Science and a National Science Research Data Processing and Information Retrieval System, as well as certain 1967 legislation.) The court goes on to quote the *Sophar*

¹*Fortnightly Corporation v. United Artists Television, Inc.*, 392 U.S. 390, 402, 88 S. Ct. 2084, 20 L.Ed. 2d 1176 (1968), Rehearing denied 393 U.S. 902, 89 S. Ct. 65, 21 L.Ed. 2d 190.

and Heilprin report² (pp. VIII-IX of the Summary) to this effect:

"From the viewpoint of the information scientist, copyright may appear as an impediment to the most efficient flow of information. It is apparently a blockage in an information system. Our early tendency was to oppose and try to limit the protection and control granted in copyright for the sake of efficiency. After careful analysis we no longer do.

"There is a philosophical reason for not wanting to see copyright destroyed and there are a number of practical reasons. The philosophical reason is simply a belief that copyright is one of a number of ways in which our society expresses its belief and hope that an individual can continue his identity in a world of mass efforts by assuring the individual, his publisher or his association sufficient income from his ideas to maintain a degree of independence. The erosion of the economic value of copyright must lead to federal support of all kinds of writing and, of course, control.

"The practical reasons flow from the philosophical reasons. Publishers, non-profit as well as commercial, will simply not be able to continue publishing under an eroded system. The scientific and other professional societies which, through their memberships, have done the most to develop information-handling tools and media are the ones most hurt by them. A means must be developed to assure payment to the copyright owner in return for unlimited and uncontrolled access to and duplication of the copyrighted work.

"Our only concern and 'vested reason' in copyright since we became interested in the problem 'is to find a way to protect the 'exclusive Right' of an author to his 'Writings,' while permitting the advantages of modern information dissemination systems to become as useful as they may without

weakening or threatening the economic urge and the need to create.' We believe the two must become reconciled, not in the interests of compromise, but simply because both concepts are too valuable for either one to be permitted to severely harm or destroy the other."

What does the opinion mean? First of all, it should be noted that an appeals court decision, already overdue, could uphold, reverse, or modify the Court of Claims holding. If the decision is reversed, presumably photocopying could be continued with the added assurance of a supportive judicial decision. If the Court of Claims decision is upheld, some further judicial and statutory interpretation is necessary to ascertain precisely what, if any, photocopying is still permissible and under what circumstances. If the decision is upheld in part and reversed in part, or modified, once again clarification of the circumstances and situations under which and the extent to which photocopying by libraries is permissible would be requisite.

Since further appeals may be possible, it is far from certain that even the expected federal court decision will be the final word.

Meanwhile, the lines are drawn and the battle rages, not alone in the courts but in Congress. And well it might, for any copyright revision bill should provide legislation answers to the knotty questions which currently plague us. At August hearings in Washington on the Senate bill Harold E. Wigren said: "Congress must nullify Williams and Wilkins." Mr. Wigren, chairman of the *ad hoc* Committee of Education Institutions and Organizations on Copyright Laws Revision, represents 41 educational associations. On the other hand Andrea Albrecht said that copying machines are "making copying more profitable than publishing." Ms. Albrecht is director of market research at Williams and Wilkins. In general, at the hearings, librarians and educators urged certain exemptions from copyright enforcement; authors and publishers wanted protections from copyright infringement. The federal bill,

²1969 Register of Copyrights Annual Report VI.

as it stands, would permit reproduction by a library of a published, copyrighted work for final use, provided the library first determines that a replacement work is not available at the usual price. In other words, the librarian would assume the responsibility of making certain that patrons who request copies have been unable to buy the material requested. Under provision establishing "fair use," the bill also permits copies to be run "for purposes such as criticism, comment, news reporting, teaching, scholarship, or research." That would require an evaluation of every situation using as criteria the nature of the work, the purpose of the copy, the proportion of the work to be copied, and the potential effect of copying on the market value.

Educators told the Senate Committee that these criteria are too restrictive and too vague. Librarians said that the requirement that they make certain that no marketable copies are available would be debilitating to the interlibrary loan system (which was called by Steven A. McCarthy "one of the most important and accepted ways of sharing scarce library resources"). Mr. McCarthy is executive director of the Association of Research Libraries. Educators also expressed fear that the bill might cause teachers to spend excessive time looking for marketed publications, delay scholarly research because of the necessity of permission and arrangements for payment before copies could be made, increase library costs by forcing an accounting system in libraries to take care of royalties, permit monopoly publishers conceivably to withhold some publications from copying, and open the door to possible injustice through allowing a judge to assess a violator, even an unaware one, up to \$50,000 in damages.

Senator McClelland of Arkansas, chairman of the Senate committee, rejected two proposed amendments by the *ad hoc* Committee which its spokesman said were necessary before educators could support the bill. One of the amendments would authorize libraries to furnish copies of a work, even an article or an equivalent section of a book — without first looking

into whether marketable copies exist. Senator McClelland found this proposal vague and insensitive to the financial needs of publishers. The second amendment of the *ad hoc* committee would provide a general "educational exemption" giving "double-barreled" protection in that it would guarantee free photocopying under the fair use doctrine to educators and educational institutions. Senator McClelland thought that proposal too broad. Both sides felt that terrible things would happen if the other side prevails. Authors, publishers, and journals may all go under. Scholars may perish rather than publish for want of access. Teachers may suffer from a dearth of class materials. Libraries may crumble like ancient Pompeii. They may — if one believes all he hears.

The split between the publishers and authors and the educators becomes even more acute when the question of royalties is raised. Suggestions not reflected in the bill before Congress included establishment of a clearinghouse with responsibility to grant permission to copy and collect fees for royalty payments; collection of a flat fee at the time the subscription is paid, carrying with payment of the fee the right to copy; and setting up a royalty tribunal with the power to set a per page rate in most cases. The variety of such suggestions gives point to Senator McClelland's comment that it is impossible to "legislate on every particular kind of journal and copyright material" at once. Not even all parties on the same side of the argument agree on everything. For example, the Association of American University Presses wants to restrict fair use by attaching a first relevance to the effect of copying on market value of a copyrighted work. On the other side, the amendment on library rights submitted by most library organizations was not supported by the Special Libraries Association.

The Congressional committee on copyright law revision recognizes that many other questions remain unsettled. For instance, in addition to deciding who collects licensing fees or royalties, there must be decisions on the policing of any system

that is agreed upon, royalties from educational and cable television, and procedures for copyrighting audio-visual works used in the classroom. The Senate Subcommittee on Patents, Trademarks, and Copyrights which held these hearings still is weighted down in considering these and other points. Some of the answers no doubt will await passage of the bill and the setting up of a Commission expected to be provided for in the act. But some decisions cannot wait long.

Certain things are clear. A library should use caution in permitting even one copy of copyrighted works to scholars, teachers, and students. The question whether copying for personal use is a fair one remains to be finally resolved. The old question of modern photocopying has brought about a new era and added new dimensions to the question. No one can doubt the seriousness of the question what happens to the book or journal market if everyone can copy it under the doctrine of fair use. The time is past when the old rule of handwritten copies is applicable to the modern machine. Yet it is equally clear that photocopying is not going to stop. Some copyright authorities feel that compulsory licensing is the only answer. Certainly that was one central thought at a conference in Washington on "The Law and the Publishing and Entertaining Media" that I attended last week.

Although the primary interest of the librarian clearly involves photocopying, it would be a mistake not to be aware of other important recent developments in copyright that have implications for us all. I shall only touch on three of them which illustrate the depth and diversity of challenge in the copyright field. The three are (1) the federal statute which became effective on February 15, 1972, designed to stop the piracy of sound recordings; (2) international copyright, and specifically the recent much publicized Russian joinder of the Universal Copyright Convention and (3) the apparent Supreme Court approval given recently (in *Goldstein v. California*)³

to the right of a state to have and enforce copyright law. That last decision, especially, could have far-reaching implications.

A 1971 amendment permits the registration of sound recordings fixed after February 15, 1972, and before January 1, 1975, with the copyright office. The deposit of phono-record would protect the series of sounds on manual recordings. The courts had held that sales of a recording before obtaining registered copyright divests the owner of common law copyright. The federal amendment was designed to stop widespread piracy of such recordings. Although the Copyright Office expected some 15,000 registrations of sound recordings this year, so far only 9,700 have been received. The Copyright Office warns that copyright in a sound recording is not to be confused with nor is it a substitute for copyright in a musical composition, dramatic work, or literary work of which a performance or rendition is recorded. The only protection given the sound recordings is duplication of that particular series of sounds. The main problems of the Copyright Office so far have to do with narrative tapes — such things as how-to-do tapes and panel discussions — the very sort of tapes held by some libraries. Should it be possible to register sound recordings of the tapes of Colson, Ehrlichmann, and Dean? Is editing copyrightable or mechanical? A musical album may be copyrighted in advance of release of a film. Bridging music also may be copyrighted. But this amendment opens up a whole new area of copyright questions.

In fact, a series of cases in recent years relate to the misappropriation of copyrighted materials and especially to sound recordings. The most recent and currently most important case is *Goldstein v. California* decided this year. The case involved the applicability of a California State statute making it a criminal offense to "pirate" recordings produced by others. The United States Supreme Court, with Chief Justice Burger delivering the opinion, upheld the California statute declaring, among other things, that no substantially prejudicial interstate conflicts result where

³93 S. Ct. 2303 (1973).

some states grant copyright protection within their own jurisdictions while other states do not; that conflicts will not necessarily arise between state enactments and Congressional policy when states grant copyright protection; that unless Congress determines that the national interest requires federal protection or freedom from restraint as to a particular category of "writings," state protection of that category is not precluded; that the durational limitation imposed by the copyright clause on Congress does not invalidate state laws like the California law, that have no such limitation; and therefore that the California statute does not violate the supremacy clause by conflicting with the copyright law.

In other words the *Goldstein* case, in effect, upholds the right of states to pass copyright laws. The California act is worded in terms of misappropriation, but its application to record piracy clearly establishes a sort of copyright protection. Two of the nation's top copyright authorities, Professor Walter J. Derenberg of the N. Y. Univ. School of Law and Professor Melville B. Nimmer of the Univ. of Cal. School of Law, view the *Goldstein* decision with dislike and apprehension. In fact, Professor Derenberg has suggested that the Court majority could use further legal education in copyright law. For the moment, however, *Goldstein* stands as a source of further complication in the already over-complicated copyright situation.

And then there is the news that Russia joined the Universal Copyright Convention early this year. In Washington last week Allen Schwartz, who was one of the American representatives in the negotiations with the Russians, pointed out that the Russian joinder was not entirely out of a spirit of cooperation. According to Schwartz, the Soviet government really was interested only in assuring and legitimizing access to our hard science journals and they have been surprised since signing the agreement that our publishers do not appear interested in providing them with the expected arrangements. He also noted that the Russians signed the 1952 UCC convention rather than the more

stringent 1971 international agreement. Unlike ours, the Russian copyright law protects any communication by statute. The UCC agreement applies only to works first copyrighted after May, 1973. Since the signing, it is illegal for a Soviet author to contract abroad without approval of the Soviet copyright office. So all was not gain. In fact, Schwartz thinks that Russia may use the compulsory assignment provision of the agreement to stop American publishers from publishing dissident Soviet authors. The manuscripts then may be lost to us in a conflict of laws. Furthermore, under the UCC agreement, the U. S. pays royalties to Soviet authors in dollars based on the price of copies, wholesale or retail. Russia pays American authors in rubies on the basis of author's sheets, regardless of copy sold.

Mr. Schwartz speculates that Russia may yet get out of the UCC if it finds itself unable to get or make the desired copies of our scientific journals. So, even those aspects of international copyright which appear rosier have their thorns.

Perhaps the lesson in all this, if there is one, is suggested in Hamlet's advice to his friend Horatio: "There are more things in heaven and earth than are dreamt of in your philosophy." Certainly there are more problems and impasses in copyright than are contained in the knotty problem of photocopying. The new question of cable television (or CATV, or "family" cable — as the cable people prefer to call it) and copyright represent an entirely separate impasse, further blocking legislation. Until the court of last resort has handed down its final word on *Williams V. Wilkins* and perhaps later related cases, and until the Congress has enacted a thorough revision updating our ancient federal copyright law, librarians will have to work within rules of photocopying that appear to conform to the latest official interpretation of existent law. That is a sad fact, but it is as certain as the final decisions on photocopying are uncertain. Where basic and profound disagreement exists among powerful interests, the ultimate answer always lies in compromise in

which neither side obtains its optimum wish and both have to accept some accommodation of the other's perspective and needs. The one present certainty amid all the confusion is that further compromise on the part of authors and publishers and on the part of educators, including librarians, will be required by the courts and in the new federal law. Never doubt that revised law will become a reality. The question is when, since Congress is slow to act where powerful groups are lined up on both sides of a difficult issue, and since these are times in which Congress may not be able to give priority to copyright legislation, it may be too much to expect early action. But the need for reform is so clear that change will come. That change will not bring the millenium in copyright law. Change rarely brings the millenium in anything. But in the case of copyright, it clearly will bring a much-needed sense of certainty, an effort to conform the law with updated needs and practices, and overall a vast sense of relief.

Meanwhile, while our problems await final answer, perhaps it is wise to retain our sense of humor which has been manifest with regard to photocopying and copyright as it usually has with all controversial aspects of American life. Perhaps we could recall with pleasure the limerick by Jean Shira:

If he'd just had a teaching machine,
Observed an erudite dean,
Old Oedipus Rex
Would have learned about sex,
Without having to bother
the queen.⁴

Beyond the practical problems of education and economics that color, illuminate, and sometimes distort the copyright scene, lie the moral and ethical dilemmas which underlie and underscore both the need to encourage and reward creativity and the need to provide broad access to the resources of the mind. At some point the needs meet and dovetail. They are not opposites and irreconcilable.

⁴Quoted in George A. Gipe, *Nearer to the Dust*, Baltimore: The Williams & Wilkins Co., 1967.

Down east in North Carolina a grave-stone reads.

Pause, dear friend, as you pass by.
As I am now so you will be.
As you are now so once was I.
Prepare, therefore, to follow me.

Beneath that sad inscription some tombstone commentator has scrawled:

To follow you I'm not content.
Until I know which way you went.

In photocopying and copyright the two divergent paths must become one before our needs meet, our deeds become certain, and our hearts are at ease.

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