

Photocopying: New Copyright Law Changes the Ground Rules

The free and easy days of photocopying are over, at least for many people. A revised copyright law, effective 1 January, makes important changes in the legal ground rules on photocopying. In the science and engineering sectors, the major impact will be on libraries that copy quantities of journal material for their users.

For individual scientists or students, the right to make a single copy of copyrighted material for their own use remains substantially unaltered. Questions arise, however, when it comes to the common practice of making multiple copies of journal articles for classroom use or for circulation to colleagues.

Librarians, who fought hard against efforts to restrict their photocopying activities, still don't like the law, but appear to be accommodating to it. Their main concern now appears to be that the new fees to be paid publishers for copying will increase rapidly and that the kinds of copying permitted under the "fair use" section of the law will be further restricted.

Publishers have banded together to establish a Copyright Clearance Center (CCC) designed to centralize operations and free users of the necessity of conducting myriad transactions with individual publishers. The object is to keep costs and paperwork from getting out of hand or, in the phrase much used during the long debate over copyright revision on Capitol Hill, to avoid spending dollars to collect pennies.

Libraries will report their photocopying activities to the CCC which will sort things out by computer and distribute the money accrued from fees to the publishers who belong to the center, which has its administrative offices in New York City.

Users are spared delays that would be involved if they had to get permission from publishers and pay fees before making copies. CCC procedures enable library users to make and utilize copies and then report the copies requiring fees to the center. Three main methods of reporting will be permitted. A library can simply bundle up copies of the first page of each article photocopied and send them to the center, or periodically submit either log sheets or computerized records of photocopies made.

Publishers registering to participate in the center must agree to publish an identification code that indicates fees for copying on individual items in each issue. Most professional journals will print the code at the bottom of the first page of each article. The center will charge 25 cents per transaction, subtracting that from the fee set by the publisher. *Science*, for example, plans to charge from 50 cents to \$2 per article, depending on the length. The center will publish a guide containing information on publications registered, including fees for pre-1978 material. More than 900 publications are registered so far.

The center has been viewed with some skepticism by librarians, since the prime mover in the project was the publisher's chief trade association, the Association of American Publishers. Partisans of the center, however, point out that it is a not-for-profit service organization. Representatives of scientific societies and independent publishers as well as of authors serve on its board, and members of an advisory council, which includes library officials, can attend board meetings. They argue that the center is designed to

serve the interests of libraries and their users as well as of publishers and authors.

Uncertainty persists about exactly where the line should be drawn between fair use and copyright infringement. The new law carries the first statutory definition of fair use—until now, the doctrine had been expressed in a series of court decisions. But fair use is defined in such general terms that a committee made up of educators, publishers, and authors was recruited to draw up guidelines for photocopying for classroom use. These guidelines are incorporated in the House of Representatives report on the bill and thus they became part of the measure's legislative history.

The guidelines set out criteria meant to prevent "systematic copying." For classroom use they set standards of "brevity"—for example, a 2500-word limit on articles photocopied for one-time use. And they also prescribe conditions of "spontaneity"—this seems to mean mainly that a teacher's decision to use a particular piece of copyrighted material must be made so close to the time of use that it would be unreasonable to expect the teacher to secure permission from the publisher.

Considerable confusion over the ground rules is expected. One handbook designed to give practical answers to probable questions has been prepared in a joint effort by the American Library Association, National Council of English Teachers, and National Education Association.* The new law's provisions on assignment of copyright give authors somewhat expanded rights. A discussion of these changes as they affect *Science's* arrangements with contributors is to be found on page 10.

Perhaps the new law's heaviest demands for change will fall on industrial libraries. Many large industrial libraries now routinely circulate photocopies of contents pages or abstracts of articles from current issues of journals to employees. The libraries then provide photocopies of articles on request, and, in some cases, fill standing orders for articles on particular subjects. Such wholesale copying is evidently prohibited under the revised law. Industry libraries, in fact, are treated more restrictively than are nonprofit libraries. The law's prohibition against "indirect commercial advantage" gained through photocopying is seen as applying directly to industry libraries. The law is somewhat more lenient in some of its provisions to libraries which give regular access to the public. Observers say the effect of the law will be to encourage industry libraries to increase journal subscriptions.

As the time approached for the new rules on photocopying to go into effect there was among interested parties an air of waiting for the other shoe to drop. Passage of the copyright law, after a protracted wrangle, brought a sense of relief to most people involved. But the lack of clarity in the photocopying sections of the law, the requirements to change deeply ingrained habits of photocopying, and the novelty of the clearing-house mechanism have caused questions about how things will go. And all of this Congress seems to have acknowledged by requiring that the functioning of photocopying guidelines be reviewed within 5 years.—JOHN WALSH

*The New Copyright Law: Questions Teachers and Librarians Ask. May be obtained from the Order Department, American Library Association, 50 East Huron Street, Chicago, Ill. 60611. \$2.