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**DePaul Law Review**

Volume 52
Issue 4 *Summer 2003: Symposium - The Many Faces of Authorship: Legal and Interdisciplinary Perspectives*

Article 10

# Commentary on "Libraries, Users, and the Problems of Authorship in the Digital Age"

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# COMMENTARY ON "LIBRARIES, USERS, AND THE PROBLEMS OF AUTHORSHIP IN THE DIGITAL AGE"

*Judith A. Gaskell**

During my entire career as a law librarian, Professor Lolly Gasaway has been listed directly ahead of me in the directory of the American Association of Law Libraries. Now, I am delighted that she is visiting here and that her name precedes mine in the DePaul College of Law Directory. Thus, it is completely natural that she should precede me in speaking at this program, since she has always preceded me alphabetically (and she is an expert in copyright law as well.)

I appreciate this opportunity to learn more from our distinguished speakers about the theory and history of the evolving nature of authorship and its relationship to copyright law. Because I am a law librarian, I take a very practical hands-on approach to copyright. In our everyday work, Professor Gasaway and I both deal with the reality of the actual applications of copyright. This includes everything from the posting of copyright warnings on public photocopiers to the policies for putting materials on electronic reserves or requesting photocopies through Interlibrary Loan.

As Professor Gasaway has documented, copyright has historically been a protection and shield for the rights of individual authors. The law continues to balance authors' rights with the fair use rights of readers and researchers. The expansion of copyright law to protect the economic rights of corporate authors, who compile and publish print publications and on-line databases, directly affects the quality and quantity of the information and service that law libraries can provide to our users.

In the current field of legal publishing, several large multinational corporations dominate the market. They have purchased almost every smaller, independent legal publisher.

The effect of this increasing market consolidation is that the prices for print materials and databases are rising rapidly. These prices are becoming almost prohibitive for many non-commercial law libraries, such as academic and government law libraries.

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Traditionally, legal publishers have recognized the budget constraints of non-profit law libraries and have given steep academic and government discounts. But recently, a few publishers have begun to try to squeeze more money out of their long-time allies. One current example is that of a major publisher threatening to remove its content from Lexis Nexis and Westlaw unless academic libraries pay a large additional fee to continue to access this on-line material. Many academic law libraries have been facing flat or declining budgets and are trying to decide whether to continue to purchase this particular on-line content. The decision is made more difficult because the content is comprehensive and valuable. A number of academic law libraries may be forced to cancel other material in order to continue to pay for this information needed by their faculty, students, and other users. Ironically, these law libraries may be forced to cancel print material that is easily accessible to alumni and public patrons in order to pay for licensing fees for limited access to powerful databases.

One of the unintended consequences of the rising cost of accessing and archiving legal information may turn out to be the detriment to the work of future legal authors. Because many academic law libraries can no longer afford to buy as much material for their collections, they are being forced to reduce the number of monographs and secondary material they purchase and instead, rely increasingly on Interlibrary Loan to support study and research. This may lead to a decrease in the quality and even the quantity of legal scholarship by the individual authors who continue to publish in the field.

Another problem is the amount of public, government information that may not continue to be available to or accessible by the general public if this information is contained only in a copyrighted printed compilation or on-line database. An unsuccessful attempt by one of the two major legal publishers to copyright the volume and page numbers in its case reporting system and page references embedded in its database,[1] led several state bar associations[2] and the American Association of Law Libraries[3] to create so-called vendor-neutral or universal case citation systems. These citation systems usually use references

1. Matthew Bender & Co. v. West Publ'g Co., 158 F.3d 674 (2d Cir. 1998); Matthew Bender & Co. v. West Publ'g Co., 158 F.3d 693 (2d Cir. 1998), *cert. denied*, 526 U.S. 1154 (1999).

2. States using paragraph number systems include Arizona, Colorado, Maryland, and Utah. States using the Universal Citation System include Maine, Montana, Oklahoma, North Dakota, and South Dakota.

3. COMMITTEE ON CITATION FORMAT, AMERICAN ASS'N OF LAW LIBRARIES, UNIVERSAL CITATION GUIDE (1999). The current text of and additional information about the adoption of the *Universal Citation Guide* can be found at http://www.aallnet.org/committee/citation/ (last visited Feb. 19, 2003).

to fixed paragraph numbers within an opinion. Fixed format-neutral numbers allow the public content of state and federal opinions to continue to be easily accessible and readily cited by all despite the format in which they are found.

Yet, despite efforts to make government information readily available, more content is being consolidated in copyrighted databases that are not freely accessible by the public. According to one recent commentator,[4] the Digital Millennium Copyright Act[5] has locked up this content, killed copyright as we know it, and threatens to stifle the creativity of future authors. As legislation is adjusted to catch up with the technology, we can only hope that the interests of the public and would-be authors to access this information will be protected.

I want to end this brief commentary on a positive note and thank the many generous individual and corporate authors who continue to donate their works or to offer them to academic law libraries at a welcome discount. Without the support of all of these authors, many of whom are our faculty and alumni, our libraries would be far less comprehensive and would certainly be less interesting venues for legal study and research.

4. Glynn S. Lunney, Jr., *The Death of Copyright: Digital Technology, Private Copying, and the Digital Millennium Copyright Act*, 87 VA. L. REV. 813 (2001).

5. Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998) (codified in scattered sections of 17 U.S.C. (2000), 28 U.S.C. (2000), & 35 U.S.C. (2000)).