

9

Coaching up the Chain of Command

THE PAST TEN YEARS HAVE SEEN AN INCREASING NUMBER OF academic libraries looking to hire individuals who have knowledge of U.S. copyright law and experience in addressing library copyright issues. This fact is illustrated by research conducted by Kawooya, Veverka, and Lipinski (2015) that found that, between August 2006 and April 2013, of the 2,799 job advertisements posted to the American Library Association's JobLIST, 264 (9.4 percent) of them "mentioned 'copyright' in the title or text of the job advertisement . . . and 16 were copyright officer/manager type positions."¹ As academic library deans and directors often direct and approve the development of new librarian positions or the revision of responsibilities of existing positions, the growth of job advertisements requiring copyright knowledge indicates that library administrators recognize the need to have individuals on staff who can help address copyright issues. The work of copyright librarians is not usually limited to just addressing library copyright issues; most also assist other members of the campus community, including faculty, staff, students, and campus administrators, with copyright questions. Copyright librarians often answer specific types of questions for each of these audiences. Faculty and students frequently ask questions that relate to their own individual uses of works; for example, how third-party works can be used in the classroom, how

these materials can be incorporated into new works that faculty and students are creating, or about the rights they possess under the law as the creators of copyrightable works. Library and campus administrators will sometimes ask these questions as well, but frequently they are focused on the larger issues of copyright policy development, the promotion and enforcement of these policies, and how best to mitigate the risk of claims of copyright infringement against the library or the academic institution. In this case study, I will outline the challenges a copyright librarian may face when helping library and campus administrators navigate copyright compliance, provide tips and best practices for overcoming these challenges, and make recommendations for building a network within institutions and across the profession to help identify and resolve copyright issues.

CHALLENGES

Serving as a copyright librarian can be a rewarding yet challenging experience. Some of the challenges encountered are created by the administrative structure of libraries and academic institutions themselves, but library and campus administrators are ideally poised to help copyright librarians respond to and overcome them.

CHALLENGE 1

Becoming a Copyright Librarian

While some librarians train for and actively seek employment as copyright librarians, frequently copyright librarian responsibilities are added on to an existing librarian position or incorporated into newly developed or revised positions. When a library administrator is looking to incorporate these responsibilities into a current position, they can sometimes find a staff member with a genuine interest in copyright law who will volunteer to take them on. However, it is also possible for a library administrator to walk into the office of a librarian and say “I’d like you to become our library’s copyright expert.” In these situations, a librarian with minimal or no prior knowledge of US copyright law may find themselves in the position of having to provide copyright information to their colleagues and members of the campus community.

CHALLENGE 2

Navigating Institutional Practices in Policy Development

Though it is not often openly talked about, most academic institutions have their own “way of doing things,” which can impact the work a copyright librarian is looking to do. For example, at some institutions proposals for

new policies and practices must travel up the chain of command in certain ways, while at other institutions staff can go directly to their dean, director, or department head with these proposals. At some institutions, policy development occurs quickly and is done mostly within the department. At others, the development of new policies and procedures takes many, many months and involves obtaining feedback from multiple departments and administrative levels before approval. At some institutions, the decision-making power regarding the interpretation and application of policies and practices that have some legal risk involved lies with administrators only, while at other institutions the front-line staff are empowered to make these decisions. To be successful, a copyright librarian must identify how institutional practices influence the development of new policies and practices, and the best ways to navigate within this system.

CHALLENGE 3

Risk-Averse Institutions

Some library and campus administrators will be hesitant to sign off on new policies and practices that take advantage of the exceptions found in U.S. copyright law, fearing that copyright infringement lawsuits may be brought against the institution. Their fear is not unfounded, since lawsuits are expensive, time-consuming, and stressful for all involved. In these situations, a copyright librarian will need to be prepared to advocate for how a balance can be struck between the rights granted to the creators of copyrightable works under U.S. copyright law and the exceptions provided in the law for users, and be ready to make recommendations regarding risk management in an effort to help allay those concerns.

CHALLENGE 4

Avoidance of the Law

Alternately, a problem that copyright librarians may encounter is administrators who choose to ignore or avoid the law, thinking that ignorance of the law negates responsibility, that addressing copyright issues is not a priority, or who may be hesitant to change the scope of services that patrons or students are accustomed to receiving even if those services are not compliant with the law. In these situations, copyright librarians may need to take extra time and care with administrators to help mitigate the risk of claims of copyright infringement against the institution.

WHAT'S A COPYRIGHT LIBRARIAN TO DO?

Many of these challenges can be overcome when copyright librarians work closely with library and campus administrators to address copyright issues

on campus in a proactive manner. In these situations, the copyright librarian will likely find they are the subject-matter expert in the room and are coaching their supervisor, library administrators, and senior members of the academic institution's administrative team on best practices for complying with the law. With preparation and a collaborative attitude, copyright librarians can be well-prepared to undertake these responsibilities, help administrators understand the law, and establish policies and practices that support the educational mission of the library and academic institution while still working within the scope and intent of the law.

STEP 1***Becoming a Copyright Librarian Starts with Learning about the Law***

In a 2017 interview Peter Jaszi, a retired law professor and faculty director of the Glushko-Samuelson Intellectual Property Clinic, provided sound advice for librarians who are assigned copyright responsibilities by an administrator. Instead of telling the administrator, "No, I will not do this," he recommends:

Turn . . . to whoever [asked you to take on these responsibilities] and say, "Look, I'll do this. I'm a team player, but I need training." Because there are an awful lot of opportunities for training that are available. An awful lot of seminars and sessions, especially those that are run by professional organizations, that librarians can take advantage of. And I would urge anyone . . . to say "Send me to the ALA [American Library Association] programs, the ARL [Association of Research Libraries] programs, the ACRL [Association of College and Research Libraries] programs that deal with [copyright] issues. Let me learn from people who know."²

Since library administrators oversee the budget and can be involved in setting work schedules and establishing priorities, an opportunity exists for the newly minted copyright librarian to approach her dean or director to establish prioritized time in her schedule to participate in training opportunities, with financial support from the institution to do so. At a minimum, this training can involve acquiring quality treatises on U.S. copyright law that can be incorporated into the library's collection and serve as reference resources for the library staff and members of the academic institution. This should be an easy request for administrators to grant, since it fits within the scope of a library's collection development practices. These titles should include the book you are currently reading, and should also include, but are not limited to:

Kenneth D. Crews, *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions*, 4th ed. (Chicago: American Library Association, 2018).

Donna L. Ferullo, *Managing Copyright in Higher Education: A Guidebook* (Lanham, MD: Rowman and Littlefield, 2014).

Mary LaFrance, *Copyright Law in a Nutshell*, 3rd ed. (St. Paul, MN: West Academic, 2017).

Tomas A. Lipinski, *The Complete Copyright Liability Handbook for Librarians and Educators* (New York: Neal-Schuman, 2005).

The training should also involve funding for the new copyright librarian to travel to conferences, symposiums, and workshops where qualified, knowledgeable instructors provide training on library and campus copyright issues. These opportunities give the copyright librarian an opportunity to engage with session instructors, as well as meet other copyright librarians and begin to build a network of peers who have similar job responsibilities. In his 2017 interview, Peter Jaszi encouraged copyright librarians to network, stating, “there are more and more supporting networks for people who are doing copyright jobs in various libraries to take advantage of, and [copyright librarians] really should do that. [They] will learn an enormous amount from [their] peers and from the opportunity to be in touch with [their] peers.”³

If budget restrictions or staffing issues (or both) do not allow a new copyright librarian to travel for training in their first year, then they should seek permission from their dean or director to prioritize time in their schedule to participate in high-quality online programs that explore library copyright issues. Many of these programs are free of charge. Three of them are the following:

CopyrightX

<http://copyx.org/#>

This is an online, twelve-week course that “explores the current law of copyright; the impact of that law on art, entertainment, and industry; and the ongoing debates concerning how the law should be reformed.”⁴

Copyright for Educators & Librarians

<https://www.coursera.org/learn/copyright-for-education>

This online course is “designed to provide a basic introduction to U.S. copyright law and . . . provide participants with a practical framework for analyzing copyright issues that they encounter in their professional work.”⁵

CopyTalk Webinars

www.ala.org/advocacy/pp/pub/copytalk

These monthly webinars, sponsored by the ALA’s Washington Office, explore “specific copyright topics that include orphan works, mass digitization, international copyright developments, pending and recent copyright court cases, the copyright implications of new technologies, and more.”⁶

Access to training opportunities and resources should not be limited to just the first few months or years of a new copyright librarian's tenure. Because the copyright law can be changed or interpretations of the law can be impacted by new court decisions, library administrators should provide support for copyright librarians to engage in continuing education opportunities throughout their career.

STEP 2***Developing a Game Plan for Providing Copyright Services***

The copyright librarian will need to work closely with their dean or director in order to determine the scope of their responsibilities. Questions to discuss include what services the copyright librarian will provide, how much of their time will be spent providing copyright services, and the decision-making power that will be granted to them when developing copyright policies and best practices for the library and the campus community. Emilie Regina Algenio's 2018 article "Making the Transition as the New Copyright Librarian," published in the *Journal of Copyright in Education and Librarianship*,⁷ provides tips and best practices for new copyright librarians to follow in undertaking their responsibilities. New copyright librarians should suggest to their administrator that he read this article, and find time to meet with them on a regular basis in order to identify which practices and services identified in the article are a good fit for their institution and how the library can best provide support as the new copyright librarian begins to establish a copyright education program.

STEP 3***Identify Allies on Campus***

In this situation, "allies" will be the people on campus or within the copyright librarian's college or university system who can help them learn about the law, promote compliance with the law, assist them in navigating institutional practices when looking to develop new copyright policies and best practices, and help support them in their work. The library's dean or director will ideally be a copyright librarian's greatest source of support, but they should not be their only source of support. Copyright librarians should work closely with administrators in their library in order to identify potential allies across campus. These allies may include but are not limited to the following.

Attorneys from the Office of General Counsel

Most institutions of higher education have an office of general counsel staffed by attorneys who "[supervise] litigation involving the [institution] and [provide] a wide range of legal services in the areas of employment and benefits,

immigration, contracts, student affairs, real estate, and intellectual property.”⁸ While some copyright librarians, especially those without law degrees, may be hesitant to seek out and work with the institution’s legal counsel, fearing they don’t have the credentials or knowledge needed to converse with someone with a law degree, this should not be the case. In the same way that many patrons, colleagues, and members of the campus community are eager to engage with the copyright librarian, it is likely that the attorneys in the office of general counsel will be eager to do so as well for a variety of reasons. While many campus attorneys realize that copyright issues arise frequently in academia and need to be addressed, they may not be able to give them the same priority as some of the other legal issues facing the institution, such as pending lawsuits. As such, most campus attorneys will welcome the opportunity to work with a knowledgeable and competent copyright librarian who can serve as the first point of contact for faculty, staff, and students who have copyright questions.

Copyright librarians should not be surprised to find that they are able to educate their campus attorneys about copyright law. Unless the attorney they are working with specialized in intellectual property law or has prior work experience in this field, it is likely that they may have only had a few weeks of instruction in copyright during an introductory course on intellectual property law that they took in law school. In these situations, copyright librarians and the institution’s attorneys can form a mutual partnership through which the copyright librarian can help guide their institution’s attorneys through the nuances of U.S. copyright law, and the campus attorneys can assist the copyright librarian with technical legal work (e.g., drafting legal documents, and reviewing contracts that include copyright clauses). When needed, the campus attorneys can also provide the librarian with legal advice regarding the development of campus copyright policies and best practices.

Deans, Directors, and Department Heads from Other Campus Schools and Departments

The deans, directors, and department heads of the various schools and departments found around campus can also be useful allies. These administrators may have been asked copyright questions and, as a result, may understand the copyright issues that their staff and faculty struggle with. They can also advise the copyright librarian on policies and practices within their academic unit that are impacted by copyright, or they can help assemble a team from their unit to work with the copyright librarian when policies and practices need to be reviewed for compliance with the law. They can also invite the copyright librarian to attend a departmental meeting so that they can introduce themselves to the faculty and staff, speak for a few minutes about the services they provide, and distribute their contact information so that those with copyright questions can easily follow up with them. It will be especially important for

the copyright librarian to establish a relationship with administrators in the department that oversees the institution's content management system (e.g. Canvas, Moodle, or Blackboard), with the administrators in the instructional design department, and with the manager of the campus copy shop. These are departments whose services will often involve the copying, distribution, and performance of copyrighted works. As such, building relationships with these department administrators will help ensure that the copyright librarian can be available to answer questions that staff in these departments have, and assist them in developing policies and best practices to help ensure that their work falls within the scope of the law.

Campus Administration

The campus provost or president will also play a key role in encouraging members of the campus community to comply with the law, and can provide the copyright librarian with the support needed when policies and best practices regarding copyright law are implemented campus-wide. If there are multiple branches or campuses within the institution, the copyright librarian should also reach out to the administrators on those campuses to establish relationships and help them address copyright issues.

PUTTING IT ALL TOGETHER

As stated previously, library and campus administrators will likely seek input from the copyright librarian in three key areas: (1) copyright policy development, (2) promoting compliance with the law among members of the library staff and campus community, and (3) mitigating the risk of claims of copyright infringement against the library and the academic institution.

Policy Development

Copyright librarians will likely find themselves invited or directed to consult with fellow staff members and others in the campus community to develop new policies and best practices for working through copyright issues. In its simplest form, this can be done by:

1. Helping to identify the copyright issue at hand (e.g., faculty looking to make and distribute copies of a copyrighted work such as articles and book chapters to students, or the library staff interested in giving public performances of the films in their collection for patrons).
2. Identifying the options available under U.S. copyright law that may apply to the situation (e.g., could the copying and distribution of the work be considered a fair use; was the DVD acquired with a public performance

license, could the film screening fall under the classroom exception found in subsection 110(1) of U.S. copyright law, or could permission be obtained for the screening?).

3. Drafting policies and best practice documents that are written in plain English and can help members of the campus community learn more about U.S. copyright law and make thoughtful and informed decisions on how to proceed in the aforementioned situations.

Here it will be especially important for the copyright librarian to consult with their library's administration to identify and work within any institutional practices that may affect policy development. For example, at some institutions it may be perfectly acceptable for the copyright librarian to propose new policies and best practices pertaining to U.S. copyright law within the library. However, when working with faculty and staff in other departments, proposals like these may need to go through specific committees within the department or through various individuals in order to be received and considered. A good library dean or director will have an understanding of how things work in various departments across campus and will likely have their own allies and contacts within those departments that they can use to help the copyright librarian succeed in getting these new initiatives implemented.

Another point of clarity that copyright librarians will need relates to who has the final decision-making authority when it comes to interpreting copyright policies and best practices. It will be critically important for those working on the front lines to know what authority they have when making determinations regarding the law; for example, making fair use decisions, digitizing works whose copyright status is unknown (orphan works), and providing recommendations and information to users regarding the law. If this decision-making ability lies with the front-line staff, then the copyright librarian can work with departments that operate under the copyright policies to provide training to these staff so they can make informed and thoughtful interpretations of the copyright policy and the law. If the staff are not empowered to make these decisions, then the copyright librarian must work with administrators to determine who will interpret copyright policy and have the final word on various copyright issues.

The tools and resources that can aid copyright librarians in policy development include:

Kevin L. Smith and William M. Cross, "Developing Copyright Policy: A Guide for Liberal Arts Colleges," Oberlin Group of Libraries, 2010, www.oberlingroup.org/developing-copyright-policy-guide-liberal-arts-colleges.

The "Institutional Policies" section of the Copyright Crash Course website, developed by Georgia Harper, <http://guides.lib.utexas.edu/copyright/instpolicy>.

Promoting Compliance with the Law

Having sound copyright policies and practices in place that are based on the law is the first step in promoting copyright compliance on campus. Policy and practice documents should have the contact information for the copyright librarian placed on them prominently so that members of the campus community can easily make contact if they have questions. The copyright librarian should also speak with their campus administrator about prioritizing time in her schedule to offer workshops, brown-bag sessions, or other informational sessions through which members of the campus community can learn more about the copyright law. Here, too, relationships with other administrators across campus can play an important role because they can help facilitate communication between those who may be utilizing a copyright policy (e.g., a faculty member looking to post a reading to the content management system) and the copyright librarian. Alternatively, in the case of department-specific copyright policies, the administrator can invite the copyright librarian to provide educational sessions for those in the department who will be working under the policy.

Copyright librarians should not set out to be the “copyright police,” and they should make sure that administrators are not portraying them as individuals who are looking to get staff, faculty, and students into trouble for reusing copyrighted works in teaching, learning, and the creation of new works. Instead, the copyright librarian should work with administrators in their library to market their services as a reference resource for members of the campus community. In the same way that subject specialists can help students, faculty, and staff identify, connect with, and use high-quality information in a particular subject area, so too should the copyright librarian be viewed as a facilitator for helping members of the campus community identify and use high-quality information about the law.

Risk Management

Most interactions that the copyright librarian will have with fellow staff members in the library and with students, faculty, and staff in other departments will be positive. There will be times, however, when individuals or groups will choose to ignore the advice of the copyright librarian or disregard copyright policy. In these situations, copyright librarians should prepare to stand their ground and advocate for what is right, but they should also find champions who can stand beside them and help remedy the situation. These champions will come from the campus allies the librarians have identified and could include the following ones.

The Library Dean or Director

Within the library, the dean or director will have the authority needed to address a situation where a colleague on staff is ignoring or disregarding the copyright librarian's recommendations on how to resolve a copyright issue. The dean or director will also likely have thoughts and recommendations on how best to proceed when the copyright librarian's advice regarding campus copyright issues, such as film screenings and classroom photocopying, is being ignored by members of the campus community. In the case of working with people from other departments, the dean or director may be able to work through administrative channels to resolve problematic situations, or put the copyright librarian in touch with someone in the department who can help ensure that copyright policies are followed.

Attorneys from the Office of General Counsel

In situations where the copyright librarian's advice and recommendations are being ignored, the campus attorneys can also step in and, if needed, mandate that the offending parties comply with the law, or possibly even suspend the infringing service until changes are made to bring it within the scope of the law. Copyright librarians who have worked in their field for some time will attest to the fact that some faculty and staff who disregard copyright policies and best practices will respond more readily when they are told "no" or "stop that!" by a campus attorney rather than by the copyright librarian.

Responding to Inquiries from Rights Holders

Mitigating the risks of copyright infringement will also involve working with identified allies to respond to inquiries from rights holders who are concerned that the reuse of their work by the library, students, faculty, or staff is infringing on their copyright. These inquiries may range from polite e-mails asking about the use of a third-party work by a member of the campus community, to a cease and desist letter demanding that the third-party work stop being used, to a lawsuit brought against the institution for copyright infringement. The copyright librarian should work with campus administrators and attorneys from the office of general counsel to determine how they will respond to these inquiries.

REMEMBERING THE MISSION

In every interaction, copyright librarians should seek to provide high-quality information about the law to members of the campus community and help mitigate legal risk for the institution. However, they should also strive to uphold the mission of their library and the larger educational institution,

which usually involves providing access to information, helping to promote scholarly inquiry, and supporting the development and dissemination of new scholarly works. This mission actually aligns closely with the purpose of the copyright law as outlined in article 1, section 8, clause 8 of the U.S. Constitution, which aims to “promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Balance can be achieved by respecting the rights the law grants to those who create copyrighted works while also advocating for the development of policies and practices that support the reuse of works within the scope of the exceptions found in U.S. copyright law. Library and campus administrators should be seen as allies, not adversaries, who can help copyright librarians achieve these goals, and the copyright librarian should value the role they can play in helping institutional leaders promote ethical applications of the law in their library and on campus.

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