

Lipinski, Tomas A. **The Complete Copyright Liability Handbook for Librarians and Educators**. New York, NY: Neal-Schuman Publishers, 2006. 413 pp. 125.00 USD. ISBN-10: 1-55570-532-4. ∞

This work is a sober review of current U.S. copyright law and discussion of how non-profit public institutions can offer services to patrons while remaining compliant with the legislation. Lipinski, Associate Professor and Co-Director of the Center for Information Policy Research, School of Information Studies, University of Wisconsin (Madison), does not argue the merits of the Copyright Act and its recent amendments (Digital Millennium Copyright Act; TEACH), opting instead to inform practitioners of the complexities of the legislation and to provide model copyright policies and notices, a copyright compliance audit tool and 'Real-World Examples' of the legislation's applicability in schools, libraries and archives. The text is divided into five parts: Copyright infringement/liability; Penalties and immunities; the DMCA impact; Limiting exposure; and Tools and policies. Each chapter begins with a brief presentation of the law followed by its application in the library/education sector (particularly higher education).

Lipinski modestly suggests that this not be the first book one reads on copyright (an unlucky neophyte might soon throw up their hands), but is correct in stating that it can be "an important second one" (xi). His opening chapters discuss the concepts of infringement liability (direct, contributory, and vicarious), while his latter ones offer comprehensive directions to ensure that reproduction activities in libraries stay within the letter of the law. Together, they provide both solace and scare for librarians struggling to bring current student and faculty practises into line with the demands of copyright legislation. He notes that librarians and educators have been quick to integrate digital technology into the educational experience: "the problem is that these librarians and educators forgot, or perhaps deliberately neglected, to tell patrons and students that just because technology allows one to do something, that does not mean one should do it..." (xiv).

Given the current climate in libraries, it is the middle three parts of the book that will provide the most value (and cause the greater amount of hair-pulling). These are the chapters (4 through 9) that discuss forms of legal damage and how they can be mitigated, immunities to damages offered to libraries through special rights (s. 108), safe harbour provisions (s. 512), and exemptions from liability arising from circumvention of technology protection methods (s.1201). In the sections of the Copyright Act reviewed here, Lipinski is careful to distinguish whether educational institutions or their libraries alone, enjoy the benefits of the law. Throughout the chapters he returns to two important points: firstly copyright compliance is, by and large, a matter of risk analysis and, secondly, except for the actions of rogue employees, libraries can largely mitigate much of the risk by adopting proactive copyright measures such as the establishment of a copyright policy, notification of compliance requirements, education of their patrons, and action against habitual infringers. By and large, libraries will most likely suffer legal sanctions in the areas of contributory or vicarious infringement: that is, by

not monitoring the actions of employees or ignoring patron practises, libraries could be accused of not playing ball in the copyright world.

Lipinski notes that legislators framing enhancements to the 1976 Copyright Act have sought to bring public institutions into a partnership with copyright holders, to their mutual benefit (and cost). Nowhere is this mix of permission and partnership more prevalent than in the DMCA provisions codified in section 512, dealing with online content. This is the 'infamous' section that requires service providers to take down potentially infringing material from Web sites and disable access (including termination of accounts) for offenders. The 'take down' responsibilities do not demand proof of infringement, simply a notice by the copyright holder that she believes content 'x' transgresses her rights under the Act. The university library is not required to monitor activity on the Web, but it must take reasonable actions (monitoring bandwidth, providing education on infringement) that will inhibit infringement. When acting in accordance with the section, libraries enjoy immunity from all monetary liability, including attorney fees and costs of the plaintiff's case. The cost is having a registered agent to accept copyright notifications and resolve claimed infringements in an expeditious manner. Furthermore, libraries cannot turn a blind eye to knowledge or awareness of infringing activities. Under the safe harbour provisions, "service providers such as libraries and schools, colleges and universities may be placed in an uncomfortable choice [sic] between self-preservation and undermining the trust of their patrons or charges." (p. 149).

The anti-circumvention section of the Act (s. 1201) poses a different type of problem for libraries. The intent of the section is to prevent the trafficking and use of anti-circumvention devices, which may have (many argue, 'are designed to have') an adverse effect on fair use of the underlying content. The peculiar nature of the section concerns its lack of control over the user: in short, if one can break the access control (circumvent the protection employed by the copyright holder), there is no sanction against a fair use of the content. "In other words, you could circumvent a use control, but not the access control needed to use the protected work" (p. 272) - as Lipinski wryly notes, the legislation could make hackers of us all! Again, there are exceptions for libraries to circumvent access controls for the limited purpose of collection development.

In the fourth part of the book, Lipinski discusses three important ways that educational institutions can remain compliant with the legislation, again noting library versus school applicability. The discussion of sections 108 through 110, which deal with libraries in such areas as ILL and self-serve photocopying, or as non-infringing distributors of software and materials for distance education, again provides a balanced assessment of compliance activities. As many have pointed out, these exceptions to infringement for libraries may result in a more limited use than might be made under a 'fair use' claim. The requirements for application of these sections, especially those that libraries take active measures to discourage infringing downstream activities, including strongly-worded public notices,

seeking signatures to compliant behaviour agreements with patrons, and refusal to provide content to patrons they have reason to believe will use it in an infringing manner, strike many librarians as antithetical to their stated mission. Lipinski concludes his book with a set of tools and proposed policies and notices (37 pages of them) that serve to ensure compliance if properly implemented.

Canadian librarians may have unwittingly been saved from a great deal of this difficult and unpleasant work by the death of the last round of copyright legislation reform in 2005. The current library and educational exceptions for use are fast losing relevance in the forward movement of the provision of content, and there is some concern that any attempt to bell the Internet cat is bound to lead to unhappiness (and possible litigation) for users and/or creators. We now have both evidence of the consequences (positive and negative), and instruction in enjoying the benefits of library and educational exceptions, and Lipinski has assisted us in understanding the costs of compliance that many will find difficult or impractical to implement.

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