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Presented by Martin Garnar, Dean of the Kraemer Family Library, the
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Gesina A. Phillips

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Breakout Session: Copyright: The Ethical Imperative for Librarians. Presented by Martin Garnar, Dean of the Kraemer Family Library, the University of Colorado Colorado Springs

Gesina A. Phillips
Duquesne University

Author note: Gesina A. Phillips, Digital Scholarship Librarian at Duquesne University.

Correspondence regarding this article should be sent to Gesina A. Phillips, Gumberg Library, 600 Forbes Ave., Pittsburgh, PA 15282. Contact: phillipsg@duq.edu.

Breakout Session: Copyright: The Ethical Imperative for Librarians

This session centered on the evolution of the Code of Ethics of the American Library Association (ALA) as a method for discussing the changing role of copyright within librarianship. Although the Code of Ethics was first introduced in 1939, the phrase “intellectual property” did not appear until 1995, when the statement “We respect intellectual property rights” was added as Article IV (ALA 1995). This relatively late appearance can be explained by the advent of digital copying—as duplicating materials became easier, it more clearly became a necessary competency of librarians to understand the basics about intellectual property ownership and use.

This relatively simple addition raises some questions: What does this “respect” signify? This short statement does not mention the law or specific rights or even specifically whose rights are involved. Is it an affirmation of the rights of the creator? Is it also (or perhaps, alternatively) an affirmation of the rights of the user?

The 2008 revision of Article IV in the Code of Ethics filled some of these gaps by explicitly defining some constituent groups: “We respect intellectual property rights and advocate balance between the interests of information users and rights holders” (ALA 2008). It is notable that users appear first in the delineation of interests, which are implied to be oppositional and

in need of “balance.” The reference to “rights holders”¹ rather than “authors” or “creators” is also a specific distinction, gesturing toward the fact that the “rights holder” is often not the creator, but instead an information provider, such as a publisher.

The reliance on the concepts of balance and advocacy highlights the situational nature of intellectual property decisions and the active approach necessary to dealing with these issues. The idea of balance is of course not value neutral, emphasizing only the ways in which interests of users may diverge from those of rights holders rather than how they can be complementary. This vision of intellectual property also clearly delineates between users and rights holders in a way that lacks nuance, given the ease of digital creation. The language of the “rights holder” includes but does not emphasize alternative streams of content creation, such as those outside of formal publication and those relying on “copyleft” collaboration and sharing mechanisms.

In 2014, the ALA Council adopted an interpretation of Article IV (ALA 2014). Drafting an interpretation rather than a revision to the Code of Ethics offered the opportunity to provide continuous commentary on copyright policy with regard to libraries, in addition to avoiding the political aspects of updating the Code of Ethics directly. This format also made it possible to cover far more ground than may otherwise have been possible within the Code of Ethics itself, leading to a vision that is quite robust. This interpretive document focuses specifically on copyright, rather than trying to cover all intellectual property, and lays out a framework for the major areas of concern with regard to copyright policy, expertise, and advocacy in libraries.

The interpretation begins with a statement about the goals of copyright law, which “should balance the public’s need to access and use informative and creative works and the interests of rights holders.” Although this characterizes copyrighted works more thoroughly (“informative” as well as “creative” works, rather than the “intellectual property” of the 2008 statement), the use of “should” indicates that this might not always be the reality. The interpretation goes on to define the “opportunity and the obligation” that librarians have to engage in advocating for a balance of user and creator rights in their everyday course of work, with examples that pertain to various areas of librarianship. These obligations are meant to be enshrined in policies, in addition to being enacted within librarians’ daily tasks.

1. Although it is a standard formulation of this idea, it is perhaps important to note that rights are “held,” not “owned,” indicating the term-limited nature of copyright protection.

It is within the penultimate paragraph of the interpretation where the authors offer a striking vision of the duties and responsibilities of librarians. “Librarians are sources of copyright information for their user communities,” the authors state, making a strong assertion about the reality of library work. Librarians—the majority of whom have no formal copyright training—are responsible for dispensing information about copyright to their user populations directly and indirectly on a regular basis. This forms the foundation for a declaration about the ethical obligation of librarians (“librarians should”) to remain informed about how copyright impacts their work and their user interactions.

The contents of the interpretation can only be read as applying to all librarians (and to some extent, library staff as well), rather than just to dedicated library copyright specialists. It strikes a bold note when it couples the obligatory “should” with a call for librarians to “develop . . . the confidence to implement the law using good judgment.” This may seem at first glance to position librarians as dispensers of legal advice, which is a risky endeavor. However, accepting the premise that librarians regularly deal with copyright—copyrighted materials themselves, library use of those materials, and the interactions of users with those materials—leads to the conclusion that librarians are under the same obligation to work within the law that is incumbent on all citizens. Just as librarians should advocate privacy and stand against censorship by utilizing legal structures on behalf of public interest, so too are librarians called upon to support the public interest in the realm of copyright.

The final paragraph of the interpretation shifts the focus to legal and national policy, advocating continued consciousness of the importance of balance. Interestingly enough, the interpretation does offer an opinion regarding the current legal status of copyright law, under which “the balance between rights holders and information users needs to be restored.” This strong stand for the public interest expresses a reality within which libraries and their users are often hamstrung by rights holder-focused copyright policy. It implicitly advocates a future in which libraries more actively negotiate contracts and licenses to seek better terms, seek consortia arrangements with more allowances for sharing, and support user rights through fair use, copyright-light or copyright-free materials, and Creative Commons-licensed content. As the presenter noted, “we aspire to all those ‘shoulds’”; the “shoulds” in the 2014 interpretation prompt librarians to work toward a future that recognizes the flexibility and permeability available within copyright law that enables creation and at the same time respects the basic rights of content creators.

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