



districts in order to prevent neighboring districts, for example, from duplicating each other's purchases, ultimately to reduce costs for districts.

It appears to me from a reading of the statutes and cases that there would be less threat of infringement if the scripts, etc., were used solely for classroom teaching and in-class "performances." Assume, for example, that Ankeny produced "The Music Man" [validly copyrighted] in 1986, having purchased the scripts and score from the publisher, and they then turned over everything to Area 11 following the performances [school play -- admission charged]. In 1988, Johnston High School chose to perform "The Music Man" as its school play and borrowed the scripts, score, etc. In my estimation, this significantly impairs the commercial value of the script/score because money from the sales of these as well as royalties are payable to the copyright owner.

On the other hand, if I [as drama teacher] want a group in my third hour Drama I class to put on "The Glass Menagerie" as their semester "exam," there's no problem with using the "lending library" scripts.

In essence, the distinction is between classroom and "public" performance use of the materials, although there may be some situations that cloud that delineation.

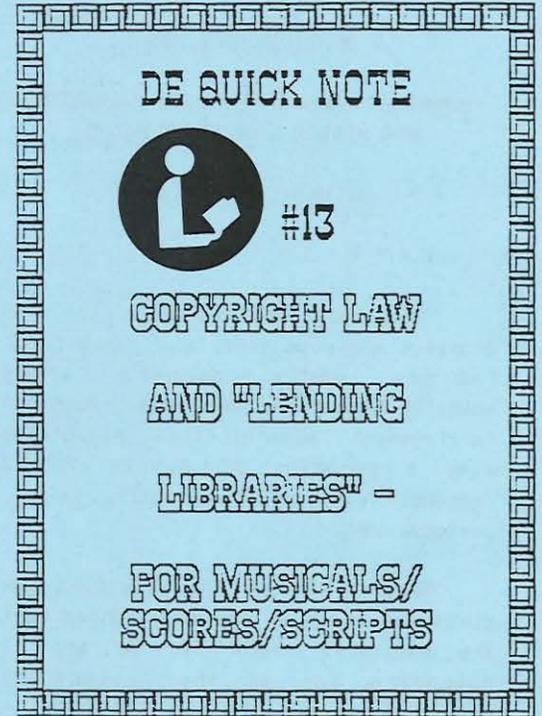
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COPYRIGHT LAW AND "LENDING LIBRARIES"
FOR MUSICALS/SCORES/SCRIPTS

by Kathy L. Collins

One copyright question AEA and district media centers, and those local library media centers using interlibrary loan may face, concerns infringement possibilities associated with a practice of maintaining a regional "library" of musicals, scores, scripts, etc.

Section 106 of the Copyright Law gives the owner of the copyrighted work the exclusive right "to do and to authorize any of the following": [quoted in pertinent part]

- [1] to reproduce the work in copies or phonorecords;
- [3] to distribute copies . . . to the public by sale; or by rental, lease, or lending;
- [4] in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and . . ."

Section 107, the Fair Use Defense, provides that certain educational uses do not constitute copyright infringement. Those purposes include "criticism, comment, news reporting,

teaching [including multiple copies for classroom use], scholarship, or research."

The statute tells us that we determine fair use by looking at the following factors:

- [1] the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- [2] the nature of the copyrighted work;
- [3] the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- [4] the effect of the use on the potential market for or value of the copyrighted work.

17 U.S.C.: 107 [emphasis added]

Section 108 deals with reproduction by libraries and archives. The following is not an infringement: ". . . for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work. . . if:

- [1] the reproduction or distribution is made without purpose of direct or indirect commercial advantage."

Finally, section 110 deals with an exemption of "certain performances and displays." This is a lengthy section, so I will paraphrase to the best of my ability. Only one section is truly pertinent. It is not an infringement

to perform a copyrighted work such as a play or musical

- [1] in a classroom or stage as part of instruction, by instructors or pupils.

In addition to the U.S. Code sections, I reread Encyclopaedia Britannica Educational Corp. v. Crooks, the "BOCES" case [like our AEAs] out of New York. That case was slightly different as it involved a practice by BOCES of videotaping television programs copyrighted by Encyclopaedia Britannica, making copies and storing them for distribution to schools. The question was whether that practice constitutes fair use, a complete defense to infringement charges. The court concluded that the actions of BOCES constituted infringement, not fair use. An injunction was issued barring the practice.

In 1983, the United States Supreme Court decided Universal City Studios v. Sony Corporation [the "Betamax" case] regarding the availability of videotaping ["timeshifting"] for later viewing and whether by manufacturing VCRs, Sony was "contributorily infringing" on plaintiff's copyrighted works. This case was important because it broadened the fourth factor of section 107 to include the question whether the commercial value of a work is impaired because of the copying. Sony is of assistance in resolving the question: Whether an AEA [or a school district] can set up a "lending library" or list of musicals, plays, scores, etc., to be shared between