



The Copyright Librarian: A Study of Advertising Trends for the Period 2006–2013



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ABSTRACT

Academic libraries are creating copyright positions to respond to the evolving and litigious copyright environment associated with digital content and services. This paper reports on a study of advertisement trends for copyright positions available in academic libraries. A content analysis of job advertisement data was carried out on data generated from *JobLIST*, an electronic listserv of the American Library Association (ALA) where library positions from the United States and Canada are posted. Job data were generated by searching the *JobLIST* database using the following search terms: *copyright*, *intellectual property*, *scholarly communication*, *repository*, *electronic resources*, *licensing*, and *digital*. Data were for the period August 2006 through April 2013. The search generated 2799 job advertisements (ads) of which 264 jobs mention 'copyright' in the title or text of the job advertisement (job ads). Of the 264, none required a Juris Doctor (JD) although 5 preferred a JD. The MLS/MLIS was always mentioned first. Of the 264 jobs, 16 were copyright officer/manager type positions. Between 2006 and 2011, there was a slight but steady growth in the positions mentioning copyright from 9% (2006) to 13% (2011). In the first quarter of 2013, copyright positions already represented 8% of the positions retrieved from *JobLIST*. The majority of the positions were a combination of copyright and related areas like intellectual property, scholarly communication, electronic resources, licensing and digital management. It is evident from the data that the copyright librarian or competence in copyright is a prerequisite for current and future needs of academic libraries and academic institutions in general.

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INTRODUCTION

Until recently, copyright questions and problems handled by academic librarians were marginal compared to other areas of library services. Likewise, the formal position of copyright or licensing librarian was less common. However, with the proliferation of digital resources and services, and their associated legal challenges, the professional landscape is shifting. Academic librarians are dealing with more copyright issues. This trend is necessitating the creation of a copyright librarian position, or a reorienting of existing positions to address copyright issues. The need for librarians competent in copyright and licensing issues coincides with growth in digital resources and services (Vesely, 2006). Library initiatives involving scanning, interlibrary loan, electronic document delivery, content licensing, digital preservation, photocopying, electronic reserve (e-reserve), and more, directly or indirectly raise copyright questions (Graveline, 2011). With emerging digital services like data or digital curation and 3D printing, even more copyright questions are cropping up. Increasingly, academic librarians

worry whether the copyright law, and particularly the doctrine of Fair Use, permits these and other activities (Gould et al., 2005). While such assessment is encouraged, the current state of trepidation is stifling and undermining librarians or library institutions from developing innovative services (Ogden, 2003).

A number of factors, some outside academic libraries, are contributing to the changing copyright environment. For instance, mass digitization, digital first sale, and online course management issues are being litigated, and Congress, as well as various stakeholders, are calling for the reform of copyright law (Department of Commerce, 2013; Pallante, 2013). A number of cases with significant implications for libraries have been decided or are making their way through the Federal judicial system. *Authors Guild, Inc. v. HathiTrust* (2012), affirmed by *Authors Guild v. HathiTrust* (2014), and *Authors Guild, Inc. v. Google* (2013), on appeal, involved digitization of library book collections by third parties. Both decisions are on appeal to the Second Circuit but the final ruling will have significant implications for what libraries or third parties can or cannot digitize from the library collection. *Capital Records, LLC v. ReDigi, Inc.* (2013) affects first sale doctrine of not only digital music, which was the main question in the suit, but also digital or electronic books. *Cambridge University Press v. Patton* (2012) which was recently reversed in *Cambridge University Press v. Patton*

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(2014), directly addresses library electronic reserves (e-reserves) and library or institutional policies on e-reserves. *Cambridge University Press v. Patton* (2012), or the GSU case, and *Authors Guild v. HathiTrust* (2012), the HathiTrust case, are particularly important because they demonstrated that libraries are no longer immune from lawsuits. Both the HathiTrust and the GSU lawsuits illustrate the kind of vulnerabilities and legal challenges faced by academic libraries. The origins of the GSU case can be traced to publishers' contention that GSU's copyright policy on e-reserve and electronic course materials adopted in 2009 contributed to the infringement of their works made available via the University's e-reserves platform. The rest of the case focused on how much infringement occurred after GSU adopted that policy. While analysis and ruling by the Northern District Court of Georgia was generally favorable to GSU and the library's e-reserve services, a ruling recently reversed by the Eleventh Circuit Court in *Cambridge University Press v. Patton* (2014), the fact that institutional policies on e-reserves were the subject of lawsuit is problematic. These and more cases are constantly changing the copyright landscape with serious implications for library praxes and services. Without dedicated copyright librarians in most academic libraries, both librarians and library users have little to no guidance on copyright matters. Academic libraries at for-profit or private institutions operate in even more legal uncertainty than GSU, a public institution. In the case of for-profit academic libraries, fair use analysis often tilts against most uses (Krenelka Chase, 2013).

A recent analysis of over 1000 questions sent by librarians to the Copyright Advisory Network (CAN) Forum of the American Library Association between 2004 and 2011 revealed that close to 34% of those questions were calling for training in Fair Use principles (Clement, 2014). The surge of copyright-related questions reflects the growing concern for copyright issues in libraries. Most academic libraries have responded by developing copyright resources and guides for users and librarians, although the efficacy of some of these tools is in question (Crews, 2001). A number of academic libraries like University of Wisconsin-Madison, Columbia University, and others have developed and made available detailed information resources on copyright for students and faculty to consult. However, more academic libraries are going beyond guides to developing copyright courses as part of the library outreach services (Rodriguez et al., 2014). Even further still, some academic libraries are creating full time positions dedicated to copyright and related issues. These actions are understandable given the ever changing landscape of copyright policy.

Copyright librarians are involved in everything from risk assessment to copyright clearance of digital and non-digital content (Vesely, 2006, p. 71). While there is a need for copyright librarians to address copyright questions from the academic community, the complexity of copyright questions relating to digital content and services has shifted their focus to risk assessment and prevention. Vesely (2006) notes that "a copyright specialist should be able to make the best of copyright privileges and restrictions, encouraging faculty and staff to use exceptions to the law intelligently while maintaining organizational security" (p. 71). Unfortunately, that balance is shifting towards lawsuit avoidance. Ogden (2003) argued that libraries were able to avoid lawsuits by taking precautions but were also "not attractive targets for copyright infringement suits" (p. 473).

Zabel and Hickey (2011) note that copyright librarians have to answer questions like how much of a book can be digitized; whether articles can be uploaded into Course Management Systems (CMSs) or library e-reserve systems, and whether streaming a copyrighted movie for distance learners is permissible (p. 10). These and more questions, while seemingly technical, often show the complexities of underlying legal questions. Librarians cannot rely on intuition or, for that matter, collective knowledge to answer these kinds of questions. Given the intricacy of these policies and laws, librarians cannot be expected to simultaneously juggle both the responsibility of copyright expertise and the already great breadth of duties requisite within the handling of library services. It is because of this that there is a need for the role of

librarians whose primary responsibilities are addressing these kinds of legal questions.

Most copyright librarians are hired to ensure that the academic community does not violate copyright and or commit related offenses. In this sense, they can be seen as limiting use. However, as an extension of their role, copyright librarians also expand access to institutional content through outreach, scholarly communication, and repository building. However, copyright librarians are not generally considered legal counsels and many do not view their role as dispensing legal advice. Yet, the line between the copyright librarian as a dispenser of legal advice, on one hand, and a general resource for facilitating access to information, on the other, is often thin. Zabel and Hickey (2011) articulated this divide best by suggesting that:

Information compasses all multimedia and consequently the complex laws that protect these works. It is part of every reference and instruction librarian's charge and province to be able to assist and educate patrons about copyright. In short: every librarian with these duties should consider themselves a copyright librarian (p. 10).

To Zabel and Hickey, copyright librarians are not simply librarians with specialized training to provide specialized legal information on copyright matters. Vesely (2006) also acknowledged that a copyright librarian with requisite legal training and expertise is not feasible for all libraries. For most academic libraries, librarians in areas such as reference will also answer copyright questions. Zabel and Hickey (2011) argue that librarians without legal training should not avoid answering such questions. In that case, MLIS programs should require knowledge of basic copyright law in case their graduates end up serving as copyright librarians or encounter copyright questions while working in other areas of library service. The American Library Association (ALA) core competences require knowledge of the "legal framework within which libraries and information agencies operate" (American Library Association, 2009, p. 2). ALA specifically identifies copyright as one of the 'legal frameworks' graduates from ALA-accredited programs should 'know' and 'apply'. Core competence statements from other professional bodies make reference to legal issues or copyright.¹ For this study, the expansive view of a copyright librarian to include a librarian with working knowledge of copyright issues was of particular interest because one of the key questions we wanted to address was whether advanced specialized training was necessary and required by potential employers.

A recent study of copyright information management in academic institutions by Albitz (2013) explored the question of appropriate location for copyright issues within academic institutions specifically asking, "who should be responsible for copyright information management, including what their education credentials should be, where that activity should organizationally reside, and what responsibilities the individual should have" (p. 430). Consistent with the literature reviewed above, Albitz's study revealed that the majority of copyright officers (10 out of 12 studied) worked within the library. The other two (2) were housed in the Office of the General Counsel. One of the key findings reported by Albitz is that "most copyright officers have some input into general and specific directions their institutions take in implementing the law based upon new court rulings and best practices" (p. 432). Copyright librarians or officers, as Albitz preferred to call them, are involved in institutional policy "as an individual or as part of a committee" (p. 432), pointing to a broader role librarians play in institutional copyright issues above and beyond answering questions within the precincts of the library. Albitz's study was conducted among members of the Consortia on Institutional Cooperation (CIC) or 'the big ten' which are highly resourced research-intensive institutions. Our study was not limited to CIC-like institutions and, therefore, reflects

¹ For a comprehensive list of knowledge and competence statements from different library and information science professional bodies, see: <http://www.ala.org/educationcareers/careers/corecomp/corecompspecial/knowledgecompetencies>.

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