

7-1-2007

The Complete Copyright Liability Handbook for Librarians and Educators. [Book Review].

Robert P. Holley

Wayne State University, aa3805@wayne.edu

Recommended Citation

Holley, R. P. (2007). The complete copyright liability handbook for librarians and educators. [Book Review]. *Library Resources & Technical Services*, 51(3), 226-227.

Available at: <http://digitalcommons.wayne.edu/slisfrp/9>

This Book Review is brought to you for free and open access by the School of Library and Information Science at DigitalCommons@WayneState. It has been accepted for inclusion in School of Library and Information Science Faculty Research Publications by an authorized administrator of DigitalCommons@WayneState.

Book Reviews

Edward Swanson

The Complete Copyright Liability Handbook for Librarians and Educators. By Tomas A. Lipinski. New York: Neal-Schuman Publishers, 2006. 413p. \$125 cloth (ISBN 1-55570-532-4).

The goal of this book is not to discuss copyright in general or even explain all of its implications for librarians and educators. Rather, the intent of Tomas A. Lipinski, who is a licensed attorney, is much more limited: “to have you read and understand the law surrounding liability and its avoidance or at least its management” (xxi). Lipinski often uses the term “risk management” as he examines in great detail the complicated legal issues surrounding copyright. He makes it very clear that libraries have choices under the current law and that there may be times when they might decide to take greater risks to achieve goals that are important to them. He wants to make sure, however, that libraries make these decisions with an understanding of these risks and of the penalties for making the “wrong” choices if they should be sued.

After the preface, Lipinski presents a seven-page “glossary of essential terms used in this book” (xxvii-xxxiii) to make sure that the reader understands the specialized copyright terminology. The text then starts with a discussion of the three types of copyright liability, proceeds to the penalties and immunities for libraries and schools, analyzes the implications of the Digital Millennium Copyright Act (DMCA), and then gives “three ways libraries and schools can limit their exposure” (301-359). Lipinski then provides three compliance tools that he considers an integral part of the main text rather than supplementary materials. Each part includes three or four chapters that follow the same format: a brief statement of the questions to be answered by the chapter, the main text, several “real-world examples,” “key points for your institution’s policy and practice,” and extensive “endnotes” that often include additional information beyond the citations. The volume concludes with a “cases” index and a “subject” index.

Lipinski makes it clear that this publication is meant to be read in its entirety and is not intended as a reference book. About midway through, he states that “[i]f the reader skipped ahead to the present discussion and remains ignorant of those concepts, now might be a good time to review those chapters” (156). He also cautions that the “summary statements may not capture the nuances of the law and are not meant as definitive statements” (xix). To gain an understanding of the legal concepts, the reader will need to work through the reasoning of each chapter, and the chapters build upon each other.

This book also destroys any belief in the certainty of the law and in the predictability of legal decisions because Lipinski makes it very clear that technology has created great uncertainty, both from the passage of new laws by Congress and from the difficulties of applying concepts that were clearer in the print environment to the digital age. He takes great care to avoid offering definitive interpretations but instead sorts through the multiple sources that judges and lawyers may take into consideration. These include the text of the laws, the legislative history, any outside commentaries, and the beginnings of case law. He concludes that it may take several major decisions by the Supreme Court before any certainty in case law emerges and that decisions in lower courts apply only in those jurisdictions, although the decisions will be used as legal arguments in other cases. He also cautions that Congress is annoyed enough by the extent of copyright infringement that new laws will most likely be passed that could add to the confusion. Finally, technology will continue to advance in ways that the original laws may not have been able to foresee, as was the case for peer-to-peer software.

Lipinski argues that Congress has been quite favorable to copyright holders in recent years by strengthening the length of copyright, shifting the burden of proof to justifying acceptable use, and passing the DMCA that criminalizes not only copyright infringement but also tools to break copyright protection even when there may be legal uses of the protected materials. He also stresses that Congress has provided exceptions for librarians and educators from the full effects of copyright liability or from the statutory monetary damages but that these exceptions come at a cost. Libraries and educational institutions must make efforts to foster copyright compliance, even to the extent of possibly requiring students to take copyright training, if these institutions are to benefit from this preferred legal status. Lipinski argues rather strongly that, while no institution can completely eliminate copyright infringement by its staff or patrons, an environment of copyright compliance reduces the risks both by minimizing the number of infringing cases and by providing the library or school with a legal defense for reduced liability.

On a more personal level, while I include a unit on copyright in my collection development course and believed that I was quite knowledgeable on the subject from reasonably extensive reading on the subject, I discovered that I was completely unaware of several important areas and, even worse, was wrong about others, most notably how the TEACH act applies to my use of copyrighted materials in

my distance education courses. Now that I can no longer claim ignorance (an appropriate factor in reducing liability both for me and for my institution) I have to make some hard decisions for next semester.

I found the book to be tough going since I have never read such a long text completely focused on legal issues. I found myself rereading sections and sought out a quiet spot free from distractions in order to concentrate. I agree in general that Lipinski has succeeded in his goal "to ensure that even the most obtuse materials presented should be accessible to the legal novice" (xix). For example, he often quotes the same section of the law multiple times as needed rather than referring the reader back to an earlier example. A few times, I had concerns about his "real world examples" where he assumed, after giving the principles, that the reader would come to the correct conclusion on whether the activity was legal or not. I would have liked him to have simply stated his conclusion. I found a few typographical errors here and there. More disconcerting was an error in the very first real world example (8) where the "employee of a public library" in the "Situation" becomes a "school media specialist" in the "Legal Analysis" a few lines below. Fortunately, my confidence in the author returned when I did not find a repetition of such errors.

In the "Foreword," Laura N. Gasaway comments that "this should not be a reader's first book about copyright—instead, it is an important second one" (xi). I would change this to recommend that the copyright expert in each library or educational institution read this book and that there should be such an expert if there is not. This text should also be mandatory reading for those who teach copyright. Those with a casual interest in copyright without enforcement responsibilities may find it too specialized to be worth the substantive effort involved in understanding its contents. My final comment, with which I am sure Lipinski would agree, is that this work cannot stand as the definitive tome on copyright liability for librarians and educators because new laws and new court decisions will continue to appear.—Robert P. Holley (aa3805@wayne.edu), Wayne State University, Detroit.

Becoming a Digital Library. Ed. Susan J. Barnes. New York: Marcel Dekker, 2004. 234p. \$135 hardbound (ISBN 0-8247-0966-7); \$150 E-Book (ISBN 0-8247-4915-4).

Becoming a Digital Library provides an overview of the decisions and actions, rather than a discussion of technical details or software, that culminated in the development of the digital library at Cornell University's Mann Library. All chapters were written by digital library practitioners who represent various library departments (with the exception of systems), including public services, collection development, and technical services. Each chapter deals with an aspect of creating a digital library, such as resources, staff-

ing, teamwork, and user feedback, which are grouped into three main categories: visions, assets, and technology.

This text is more a history of building a digital library than a guide to be consulted. Much has changed in digital libraries in terms of terminology, technology, and initiatives since it was published in 2004. The introduction states, for example, that "all of research libraries' millions of documents will be digitized, so digital libraries must be hybrid libraries, including digital materials and pointers to other formats" (xiii). It is notable to see how far the digital library concept has evolved in the three years that have passed since this book was published. It contains a number of terms and links to resources that are dated, established and no longer considered cutting edge, or no longer available. Examples include the terms "hybrid library" and "cyberspace"; discussions of MyLibrary; the Open Archives Initiative being referred to as a new initiative (it is now a fact of life for institutional repositories); and a position description for a metadata librarian that reads more like a position for a traditional MARC-based catalog librarian with the exception that MARC and FGDC (but not MODS or METS) are mentioned. Lastly, most of the references cited at the end of each chapter are dated in the late 1990s and early 2000s.

Key concepts such as metadata and digital preservation are noted briefly. This text lacks a chapter specifically devoted to metadata, which is unfortunate since this is what drives resource discovery and retrieval. Instead, it is included in various chapters in the book. There is also no mention of the *Functional Requirements of Bibliographic Records (FRBR)*, which date back to 1998 and are often included in discussions of metadata schema and applications.

Digital preservation is covered in Chapter 3, "Resources for the Digital Library," in a section titled "Creating the Digital Library: Providing Access to Historical Material" (76). A URL is provided to a Cornell document on recommended specific requirements for depositing image collections in a central archive repository. While this document is dated 2001, much of it is still applicable to image formats and digitization.

The term "institutional repository," which is now more commonly used than "digital library," appears nowhere in this text, although there is a 2002 Scholarly Publishing and Academic Resources Coalition (SPARC) reference to it available on the Web.¹

Chapter 3 also contains a section titled "What is a Digital Library?" that provides five definitions that are no longer used. They are an interesting illustration of how far the concept of a digital library has evolved in three years. The definitions are: (1) stand-alone digital library or SDL, (2) federated digital library or FDL, (3) harvested digital library or HDL, (4) gathered digital library or GDL, and (5) services for using the digital library or SUDL (50-52).