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Complete Copyright: An Everyday Guide for Librarians

By Carrie Russell. Chicago: American Library Association, 2004. xix, 262 pp.
Illustrations. Index. Spiral-bound paper. \$45.00. ISBN: 0-8389-3543-5.

The Librarian's Copyright Companion

By James S. Heller. Buffalo: William S. Hein & Co., Inc., 2004. xi, 257 pp. Index.
Paper. \$45.00. ISBN 0-8377-3300-6.

Copyright for Archivists and Users of Archives

By Tim Padfield. Second Edition. London: Facet Publishing, 2004. vii, 270 pp. Index.
Paper. \$75.00. ISBN1-85604-512-9.

Copyright affects every facet of archival work. When archivists acquire or accession materials, they must consider whether they are acquiring only physical title or whether copyright is conveyed as well. Preservation is often accomplished through the reformatting of items. Since reproduction is one of the exclusive rights of the copyright owner, archivists must first determine if a work is still copyrighted and if it is, if there is an exemption in copyright law that will allow them to preserve the work. Similarly, reproduction for users can be problematic unless the work has entered the public domain. Even displaying a work in an exhibit is a technical violation of the copyright owner's exclusive rights of public display, though fortunately there is an exemption in U.S. law that allows manuscripts to be publicly displayed.¹

The emergence of digital technologies has increased the importance of copyright to archivists. On the one hand, archivists can use digital technologies to make archival holdings better known to researchers and the general public, and in some cases to actually deliver material to users. On the other hand, such delivery may be a violation of the copyright owner's exclusive rights of distribution, reproduction, and display. Furthermore, digital publishing makes it easier for copyright owners to discover presumptive copyright infringements. Reports of copyright lawsuits brought by the recording industry have raised the general awareness of the existence of copyrights and the potential need to protect them, and the risk inherent in archival reproduction and distribution seems greater. Lastly, proposed technological solutions intended to prevent perceived widespread copyright infringement are likely to bedevil archivists in the future as we attempt to preserve and make available materials protected with a bewildering variety of encryption, copy-protection, and digital rights management systems.

Copyright has clearly become a topic of importance to all archivists – but how can archivists stay current with development in this area? While the ideal manual on copyright for American archivists has not yet been written, the three books under review

in this essay can help fill in knowledge gaps. Two of them, as their titles suggest, are intended for librarians. Nevertheless, there is much that is of interests to archivists in them. The third, while intended for archivists, is sharply influenced by its English context, and thus is of limited usefulness in this context.

Don't let the spiral binding, cartoon illustrations, and overall "cutesiness" of Carrie Russell's book fool you. As one would expect from a copyright specialist with the American Library Association's Office for Information Technology Policy, *Complete Copyright* is the single best overview of the copyright policy issues facing libraries and archives today. After first briefly explaining copyright fundamentals, Russell provides clear and concise introductions to current controversial issues such as the TEACH Act, database protection and the UCITA laws, the Digital Millennium Copyright Act, and Digital Rights Management. In sidebars and "Q and A's" she addresses some of the current "hot" topics in copyright management, including the legality of linking on the web, copying public domain works, and whether state employees (including employees of state universities) have immunity from copyright infringement. In one chapter, Russell notes that librarians are frequently the copyright experts in their institution and often have to explain copyright law to others. She therefore includes sample presentations on basic copyright and the TEACH Act that reinforce the underlying theme of the book – that copyright law when it is working well is a limited monopoly grant to copyright owners that balances between the interests of the copyright creators and the interests of the public that wish to use copyrighted works.

In a book that provides a solid introduction to the basics of copyright; discusses topics such as fair use, audiovisual displays, reproductions, and the web; and includes in its appendix useful summaries of some of the most important copyright cases in recent history, something has to be omitted. In Russell's case, it is explicit discussion of the issues that face archivists, especially issues surrounding the duplication and use of unpublished materials. One can find the occasional reference to unpublished material in the text, and there are summaries of some court cases of importance to archivists in the Resources section, but this is not a complete manual on copyright for archivists. Still, it is the single best overview of the copyright issues currently under discussion in libraries and archives, and would prove a useful introduction for any archivist.

James Heller's book, *The Librarian's Copyright Companion*, also seeks to serve as an introduction to copyright issues for librarians. While it lacks the cartoon characters of Russell's book, it too tries to strike a light, discursive tone while talking about an issue that might otherwise seem dry. After quoting at length the overly aggressive copyright ownership statement on the state of Florida web site, for example, Heller asks, "Who are these cocoanuts [sic]?" and then proceeds to explain why the site is wrong in its approach. He also happily notes that every publicly-released Marx Brothers' film is mentioned in the text.

Yet Heller, the Director of the Law Library at William and Mary and former chair of the American Association of Law Library's Copyright Committee, takes a slightly different approach than Russell. Russell's book emphasizes that in the absence of direct court cases involving libraries and archives, it is hard to determine what are the exact limits of copyright law. She cautions us against yielding too much in the struggle to find a balance between owners and users. Heller, on the other hand, is much more willing to propose guidelines and best practices, and often those guidelines are more restrictive than Russell. On electronic reserves in libraries, for example, Russell describes three different

policy approaches, and notes that all might be legal or all might be infringing. Heller lays out one approach, on the conservative side of Russell's spectrum. A library is unlikely to be at risk if it follows Heller's bottom line recommendations – but it may have to limit unduly its services to users.

Is Heller's book of more use to the archivist? As with Russell's book, there are few explicit references to unpublished materials. Because it more closely follows the copyright law, and particularly those sections of the law that affect libraries and archives (fair use, reproduction by libraries and archives, and teaching performances), it may have a bit more to say to archivists about preservation copying and reproduction for users than Russell's book. Yet the most important contribution in the book, Heller's detailed analysis of license terms in a typical contract to license a database or electronic resource, is unlikely to be of much use to most archivists.

One of the driving forces in copyright today has been the effort to harmonize different national copyright regimes. Through the Berne Treaty, the World Intellectual Property Organization, and a series of international trade treaties, there has been a general belief that copyright is becoming more consistent around the world. I held out high hope, therefore, that Tim Padfield's book on copyright for archivists in the United Kingdom might be of benefit to American archivists as well. As with the other two books, Padfield, an archivist at the National Archives in Kew, starts with an explanation of the nature of copyright and runs over the basics – what can be copyrighted, how things are copyrighted, and the rights of the copyright owner. In this, English and American copyright laws are similar. Padfield then dives into the special cases and exceptions about copyright ownership, duration, and use. His book is a reminder of the unusual problems archivists can face, either in this country or in the United Kingdom, including the copyright ownership of the records of bankrupt companies, the records of volunteer directors of organizations, or even the finding aids and other archival tools produced by employees and volunteers of the archives itself – issues that never occur to the authors of the general treatises intended for librarians. Unfortunately, the copyright status in the United States of works by English authors is determined by US, not British, law, so Padfield's conclusions as to copyright ownership or duration would need to be tested against US practice - but at least he raises the issue. Furthermore, anyone who wishes to make material available in the United Kingdom as well as in the US will need to respect the laws in that country; Padfield's book is an exhaustive reference guide to the subject.

While there is still no perfect book on copyright for American archivists, Russell's and, to a lesser extent, Heller's volumes can serve as readable introductions to the basics of copyright. They can be supplemented with more specialized essays on the copyright of unpublished materials by Scott Burnham² and especially Kenneth Crews,³ as well as the dated but still useful archival law manual by Trudy and Gary Peterson.⁴ Padfield's book adds an interesting comparative flavor.

Many of us had hoped that when the bulk of unpublished materials entered the public domain on 1 January 2003, most of our copyright issues would go away. It is apparent now that this is not going to happen. The books under review here, while not perfectly germane to archivists, are still useful educational tools that can assist us in addressing the copyright challenges we all face.

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In Ireland, however, special legislation had to be passed this year to ensure that James Joyce's manuscripts could be displayed by the National Library on Bloomsday. Mark Hennessy, "Emergency law to prevent copyright threat to Joyce show," *Irish Times*, 27 May 2004 at <http://www.ireland.com/newspaper/front/2004/0527/2828097395HM1JOYCE.html> (accessed 27 November 2004).

² Scott Burnham, "Copyright in Library-Held Materials: A Decision Tree for Librarians," *Law Library Journal* 96:3 (Summer, 2004): 425-448, at <http://www.aallnet.org/products/2004-26.pdf> (accessed 27 November 2004).

³ Kenneth D. Crews, "Unpublished Manuscripts and the Right of Fair Use: Copyright Law and the Strategic Management of Information Resources," *Rare Books and Manuscripts Librarianship* 5:2 (1990): 61-70.

⁴Gary M. Peterson and Trudy Huskamp Peterson, *Archives & Manuscripts: Law*. Chicago: Society of American Archivists, 1985.