



Copyright Answers for the Information Professional

Presented at the 2007 Special Libraries Association Annual Meeting (June 6th)

CHU: My name is John Chu (sp?), manager (inaudible) resources at Gilliat (sp?) Sciences. Thank you for staying until the bitter end of the I understand the sixth session of copyright in this year's SLA. I think that kind of broke a record, because from what I recall, two to three at most, so I guess that shows the interest and attention that the copyright is being paid to these days.

Again, Copyright Answers for the Information Professionals, and this is room 708, so if you came to the wrong place, please just leave, but – all set, yes.

Just a little bit about our objectives. The title, of course, is called Copyright Answers for the Information Professional. Now, I'd like to just get a show of hands. How many of you are the sponsor or division member, pharmaceutical heads, technology? That's interesting. About one-third. I guess we're drawing other divisions. That's great.

I initially wanted perhaps to focus the questions more appropriate for the pharmaceutical industry, but then since two-thirds of you are not, let's throw that out.

The logistics will be we'll have two speakers, and Bill, you'll go first and Lesley second, and then I have a series of questions I collected through e-mails, pre-submitted and I generally categorize them to six different or five different areas. And I'll start at the end, questions. And I like to rotate. I'll ask the panelists one question and then somebody ask from the audience, and then I'll ask the second question.

Bill, you told me it's about 20, 25 minutes, and Lesley, 15, 20 minutes, so we've got plenty of time for questions. Thank you.

Let me introduce Bill Burger, our first speaker. Bill is the vice president of marketing at CCC. Everybody knows what CCC is, right? OK, great. And he's been there – joined the senior management team in 2005 and he leads CCC's product marketing and marketing communications group. Prior to that, Bill's first

career was in journalism, and he spent 14 years as an editor, writer and foreign correspondent at *Newsweek*. We all know what *Newsweek* is, of course, right?

And after that, he had careers within – excuse me – industries such as AT&T and concentrating on K-12 and consumer markets for e-library research service. I think I'd like to know what that is. You could explain that. And over the years, Bill has helped several companies launch new services for the consumer and business markets, including Rogers Medical Intelligent Solutions, and of course those of us in the drug companies, we know what Rogers is, obviously.

Bill holds a BA in political science from Stanford and he served on the board of directors of Stanford Alumni Association, and he lives in Andover, Massachusetts, with his wife and his three children. I understand that you are very close to the CCC headquarters distance-wise, right?

BURGER: Yes. This is incredible at the tail end to see this many people in the room. It's very heartening and there have been a number of programs this week around copyrights. It's good to see some familiar faces from some of those programs and a lot of new faces as well.

So I think John teed up the issue well. I just wanted to talk about a couple of the current issues in copyrights and also say at this point that I welcome questions during the course of this presentation, so if you want to ask anything, please just raise your hand, stand up, shout it out, and it'll be – we'll talk about it then.

I just wanted to list a few of the current issues in copyright these days. Orphaned works is certainly one. There's proposed legislation again in this Congress. There was legislation in the 109th Congress. It's been reintroduced and I think that there is a reasonable hope that there will be some orphaned works legislation passed in the next – can you hear me all right? – orphaned works legislation passed in this Congress, and I think really for the first time that there's a growing consensus around where that issue's going to go.

Open access is a much-talked-about issue. Certainly people in the scientific and STM content space or consumers of that content are interested in that. That's partly a copyright issue. It's also partly a business issue, but I'll just mention it here.

Section 108 Study Group. This is one area that I'm not going to speak on because I really don't have a lot of personal knowledge on that, but I put it up here. I suspect a number of you are caring about it, although it tends to be perhaps more of an issue in the academic library than the corporate library.

How many are corporate librarians in this? OK. Any academic librarians in the room? A handful, OK.

And Congressional hearings on P2P file sharing. There was a hearing yesterday in Washington, the House Judiciary Committee talking to a number of leaders of academic institutions and really holding their feet to the fire on primarily music file sharing, peer-to-peer music file sharing. The RIAA is, as you know, is suing about 400 students a month asking for settlements of \$3,000 per student, and there's a lot of controversy and really quite a lot of passion around that issue, and so those hearings were going on just yesterday.

Beyond that, there's a tremendous amount of public interest in a range of issues around copyright, and these headlines are pretty representative. You could find this almost any week in *Time*, from the newspapers and magazines and online content covering really the general business press. And in a way, some of these issues have even moved very much into the popular realm because of the kind of consumer nature of YouTube, of Google and where some of these copyright issues are actually coming into the public realm, and perhaps never before have copyright issues been discussed in such a public fashion as they are today.

Much of that has to do with Google, and so many of these headlines, it really reflects the fact that Google has taken a very, very conscious approach in the last couple of years to pursuing what they view as their fair-use rights, because their business is largely dependent upon a favorable fair-use analysis for them, so that ability to essentially copy and index content from the Web so that they can then direct their users to that content is really critical to them. Google Book Search they view as merely an extension of that. The publishers and some of the authors, obviously, take a slightly different view there.

So just representative of what's going on in terms of copyright.

The real question is, why is that happening? Why suddenly in the last two years, have copyright issues hit the front page, whereas 15, 20 years ago, it was difficult to find anybody who talked about copyright, certainly in the public realm?

Well, there are a few reasons for that. The first of course is the explosive growth of content and of users on the Internet. We've got a billion users today on the Internet, and just 11 years ago, it was only 48 million, so that's just tremendous growth, that many more people consuming and increasingly creating content.

And the amount of content that's being created is astonishing. In 2006, the amount of content equaled three million times all of the books ever written, the amount of content it created in copy on the Web in a single year. Within six years, the estimate is that that number will – within three years, excuse me. That number will increase six-fold. So just think of the speed with which content's being created.

And a couple of statistics there. Can you imagine, it takes five years to read the scientific material produced every 24 hours. So catch up on that reading.

There's an increasing pace of technological and business innovation. Web 2.0 is not just a buzzword. It's a really a set of technologies that are now very easily deployed and used by people who do not necessarily have a technical background. It's a little difficult to create a website, but it's very easy to create a blog. The tools are just there and you just pretty much go in, read it, start your blog and you can be going in 15 minutes.

And really that's what Web 2.0 is about. Web 2.0 is about tools that make it very easy to create content, to share content, to put content to use, to aggregate content from various sources so that you can bring it together and really consume it in the way you want.

In the early phases of the Internet, there was a discussion about the Daily Me. This was when the Internet was called the Information Superhighway. And the Daily Me was this notion that you could create a newspaper that was about your interests only. So if you didn't care about sports or gardening or business or whatever, you didn't have to read that stuff.

Now, there was a lot of criticism. People thought that was – some people thought that was a dangerous thing, that it wouldn't let new topics come in. But the Daily Me in the first incarnation of the Web never really happened, but it really has happened in the second incarnation of the Web, because a lot of tools such as RSS allow you to take that content that you want and very quickly consume it and organize it.

Increasing bandwidth has certainly given rise to YouTube and other forms of multimedia content and ad-supported business models, again, have encouraged the creation of individually created content because Google's AdSense program and others can now attach ads to specific pieces of content where there's genuine relevance between the content and the ad, so ad-supported content creation is now available and viable for the individual creator. Certainly, that was not the case even five years ago.

As a result of this, the one-to-many publishing model has broken down for many people. When you see the pain that some of the traditional newspaper publishers, magazine publishers, STM publishers are feeling, that one-to-many model is certainly under challenge from a lot of the many-to-many models.

And content and software are inextricably linked into tools and knowledge discovery. So the old we-publish-it-you-read-it sort of paradigm has really been changed fundamentally by that ability of many, many people to create the content and for that content to be found virtually anywhere through the power of the search engines today. So niche publishing is a business model that never could have existed prior to a lot of the tools that we have today.

So that's really what's driving all that interest in copyright.

Just a couple of words about CCC. I suspect that most of you know who we are, but I just wanted to, for those who didn't, give just a little bit of background. We've been around since 1978. We're a not-for-profit company. We were set up at the suggestion of the United States Congress following the writing of the Copyright Act of 1976, which certainly changed the landscape for copyright, created a new set of rules around the use and reuse of copyright.

So we were created. As I said, we're not for profit, and we're the reproduction rights organization for the United States. What that really means is we're one of about 30 or so RROs around the world, primarily in the major industrial countries that have set up a mechanism through bilateral agreements to exchange rights and royalties so that it gives our customers here in the United States access to a vast array of content from around the world. It does that same thing for the customers of other RROs in other countries who have access to content published here. And we're the world's largest provider of text licensing and permission services.

Our mission is very simple. It's to make it easy for content users to do the right thing. We're trying to remove barriers to licensing. We're trying to create markets where people can easily purchase the rights and permissions they need, because we know that thanks to a lot of these technologies, thanks to the explosive growth of content, people use content differently than they did even 10, 15, 20 years ago.

The tools are there to use, the collaborative tools. Companies are spending a lot of money on collaborative tools. Collaborative tools are no good without content that you can collaborate around, so we're really all about creating those new markets for content and the new ability to share content.

And we're also increasingly trying to provide some tools to help customers manage and understand their rights. We've introduced a product called Rightsphere. I'll talk about that just a little bit at the end. Again, it's a tool that we hope will help some of our larger corporate customers kind of work through the questions that their employees tend to have. Of course, in doing all this, you have to keep up with technological change.

We have corporate licensing services, so the kinds of services that people in this room are using or benefiting from. We have annual copyright licenses. It's really a blanket license for use internally within an organization of all the content that we represent through our repertory. That includes digital and photocopy uses.

We have various pay-per-uses for permissions or licenses that are needed for uses that are not covered by the annual copyright license, or perhaps for companies that have not purchased the annual copyright license.

We have desktop solutions. Rightsphere is an example of that. And we do a lot of educational work. The fact that there have been six programs here at SLA with information professionals that have drawn significant numbers of people to hear more about copyright is indicative of the widespread interest in the topic.

And we've been running Copyright 101 webinars for our clients, and we launched that six or nine months ago and we thought, well, maybe we could do one a month or something like that. There might be a little bit of interest in that. We can't keep up. People are just calling us all the time, handing us cards. We'd like a webinar in our organization. So it's really become quite an interesting new thing that we're doing

On the academic side, that's primarily been a pay-per-use business. This is course packs, e-reserves, interlibrary loan, the kinds of essentially supplemental uses of information that are used in the academic setting, and we've tried to integrate some of those permissions into other platforms so that people don't have to leave their ILL or e-reserve's workflow in order to get the permissions, so we'll integrate with other people to help them make that easy.

And we also do a lot of on-site educational work on campuses around the country.

So let's bring it back to the topic of copyright. So the purpose of intellectual property laws, of which copyright is one – patents are really the other big area of intellectual property – is – it's very simple. The purpose was intended to protect and promote creative and inventive works. And the quote here is actually from the United States Constitution, so the Founders were thinking about this in the 1780s. They gave a lot of thought to this and they had a very clear sense that intellectual property – the work of the mind as opposed to the work of creating physical things – was valuable and that it needed to be protected.

But they also noted that it was different from physical property because obviously, more than one person can take advantage of intellectual property at a time, whereas if you own a house, only one person can really own and live in a house at a time. So there is a difference, and for the limited times, it was part of Congress's – the founders' – answer to that dilemma.

And they certainly had a precedent. 1710, the Statute of Ann went into effect in England. This is generally viewed as the first copyright law in the world, and passed during the reign of Queen Ann. Thus the name.

So what does US copyright law do? Essentially, it's a few very simple things. It protects the author's original works of authorship. It covers published and unpublished works. That was not always so. The new Copyright Act in 1976 – not so new today, but it did change the rules of the game so that in fact content was copyrighted from the moment of creation and fixation – writing it down or taking a photograph.

And it used to be that you had to actually publish the content, and in fact in some cases even prior to that, register your copyright. You no longer have to do some of those things. That's really referred to as the elimination of the formalities around copyright that were instituted in that copyright act, and also by virtue of the United States signing the Berne Convention after almost a century of refusing to do so.

Copyright grants the copyright holder exclusive rights to do a number of things for a limited time – that's that kind of bargain that Congress and the Founders were trying to get at – or to authorize others to do so. And it protects works created on or after January 1 of 1978 until 70 years after the owner's death.

When the Constitution was written and the first copyright law was enacted, you were protected for 14 years. Not after your death. Fourteen years from creation, plus you could register for another 14 years if you wanted to extend that protection.

Over the last 200 years – and most of that in the last hundred years or so – that term has been extended by Congress on a number of occasions, and there's a fair bit of complexity now depending on when the work was created, if it was created in the '30s or '40s or '50s or '60s, whether they actually registered it, whether they actually went and essentially extended their registration. So it's a little tricky in terms of looking at an older work and understanding very quickly when that copyright expires.

Generally speaking, if it's before 1923, it's in the public domain. More recently than that, you should probably check with an attorney. If it's since the late '80s or so, it's almost certainly copyrighted. But I would check with an attorney on that, because it can become a little bit complex.

So as part of that right given to the copyright owner so they can control the copying, the distribution, the public performance and display, the preparation of derivative works or translations or adaptations. So if there's a document out there that you feel the need to translate for your own company and you want to translate that and then distribute that, that's a derivative work and you may well need permission for that.

And it also gives you the authorization to license other people to do this, and that's where the kind of the licensing piece of this has come in.

So why does it matter? Why do we care about copyright? Well, there's several reasons. It is the law, so we pass laws for a reason. And given the history of copyright in this country, the kind of the importance that has been invested in intellectual property, there's certainly a view that there's an important economic reason for this country to respect and promote the creation of intellectual

property, especially given how important intellectual property is to our economy today. It's certainly a much bigger share of the economic output of the country than it was years ago when people were laboring in a much more physical way more.

It's also the right thing to do. It's an ethical issue. Companies are creating intellectual property. All of us are creating intellectual property all of the time. That system breaks down a little bit if no one is respecting intellectual property.

It's really true that without copyright, the publishing industry would not exist. If someone spent years writing a book only to find that the week after that book is created, somebody could copy that book, bind it and start selling it at a cheaper price because they didn't have to pay any author royalties on that, the publishing industry would die fairly quickly, and I daresay quite a few people who are authors today would probably look for other lines of work. So there certainly is the right-thing-to-do element.

And it does continue to ensure that available of high-quality content. Again, without copyright, publishing wouldn't exist.

There are a couple other reasons to care about copyright, because if you work in a corporation, there's a real incentive to care, because some publishers over the years have taken a fairly dim view, to say the least, of people violating their copyright, certainly in any habitual or systematic manner.

So just a few examples starting with the most recent. People heard of the Legg Mason case? How many people have heard of Lowry's Legg Mason? OK. Well, Legg Mason's an investment bank and investment firm, and Lowry's publishes a series of newsletters. One of their newsletters dealt with interest rates looking at predictions of where interest rates were going. Pretty interesting stuff if you're a Legg Mason.

They subscribed to a single copy of that newsletter. I don't know what it cost, maybe \$1,000 or something like that. And they proceeded to make that content available to virtually every employee within the company. They put it on the intranet. They'd make photocopies. They'd just do it.

Lowry's heard about this and tried to kind of say, guys, it's not good. We have site licenses. We have other ways that you can purchase this content and use it throughout your organization, and for reasons that kind of defy logic, the folks at Legg Mason just kept going on. And of course, they were ultimately sued for this, and the judge's award was \$20 million. It was subsequently settled for a confidential sum, but the word on the street is around \$10 million. So that was an expensive copyright infringement. They paid a lot to copy that content.

The Texaco case goes back another decade or so. Again, fairly systematic copying by researchers. The American Geophysical Union sued Texaco. That case was in the courts for a number of years, but there was a seven-figure settlement and a lot of money in legal fees.

Kinko's is more in the academic environment. I suspect if you deal with course packs in any way, you have some familiarity with that case. Kinko's was producing course packs, again, not paying licenses. They were sued by Basic Books. They paid fines, a lot of lawyers' fees, and they actually got out of that business for a while and they've only recently returned. Yes.

F: I have heard that if somebody willingly or willfully ignored or infringed on somebody's copyright, not only are there large fines, there's a possibility of jail time. Does that ever happen?

BURGER: I don't know if it has. Do you know if it has, Lesley?

HARRIS: I have not heard of any specific cases. If there are or any are being pursued, it would be for not photocopying a newsletter or an article, but for –

F: (inaudible)

HARRIS: Film or music type of – CD, DVD piracy. It wouldn't be for the type of –

BURGER: I think that's right.

HARRIS: -- illegal uses going on by any of you.

BURGER: Some people I think for – the kind of taking the video camera into the movie theater, the pirated copies, and if there was mass production of that, conceivably, you could get into – somebody might actually take a more criminal approach as opposed to a civil kind of approach on that. John?

CHU: Isn't it true in the software industry, people actually went to jail?

BURGER: I believe it is true in the software industry, but I'd have to check – double check – on that.

HARRIS: Yeah.

BURGER: So a few common misperceptions. Physical ownership of the CD or the book or whatever it is is not the same as owning the copyright to it. Again, if you buy *Harry Potter*, it doesn't mean you can make thousands of copies of *Harry Potter*, and I think that's fairly self-evident to people here.

Registration, as I said, is no longer required, nor is the copyright symbol. People still tend to put it there, but it's not actually legally required. Protection now is automatic from the time a work is created in that fixed form, so when you write the e-mail tomorrow, you've just created a copyrighted work.

Works made for hire, many of the works produced out of the corporate environment. I suspect many employees sign work-for-hire agreements with their corporations. Newspaper reporters tend to be employees. There is work for hire. So in fact, there the owner is the corporate entity that that person works for, not the author.

Attribution is not a substitute for copyright permission. It's always nice to give people credit where credit is due, but it is not the same as getting permission to actually reprint something.

And publicly available, just because it's free on the Web doesn't mean that it's public domain and that you can therefore go off and copy it and share it as if were public domain.

But at the end of the day, copyright isn't only about the law. Yes, there's a legal aspect, but there are many other aspects to what drives our views of copyright here in this country, and in fact what even does drive the law, ultimately. Yes, it's about social policy and the public interest and Congress is involved in those issues all the time. It's about social norms and behaviors. The law reacts over time to new ways that people behave and interact with content.

It's certainly driven by technology and innovation, thus all of those headlines up there that are about very current cases in many cases using very current technologies. It's about business models and economic interest. The term extension act of the late '90s when, again, that term of copyright was most recently extended, it was no secret – that was called the Sonny Bono Act – and that Disney and some of the Hollywood studios were very, very interested in extending copyright terms. So it's not always –well, there are economic interests that come into play.

And the law ultimately reflects a social balancing of all of these factors.

Content's changing, though. It's coming in a lot of new forms today. How many people have used Wikipedia in this room? I would say almost everybody. How many have used Encyclopedia Britannica in the last six months? All right. So that tells you something about new ways the content is being created. 30,000 unpaid volunteers creating an encyclopedia in a fairly short number of years that has dwarfed – now dwarfs the Encyclopedia Britannica in terms of the depth and breadth of the content.

Is it all accurate? No. Are there some entries that you get to that you're kind of left scratching your head saying, boy, that seems pretty thin? Sure. But is it always getting better? Yes. And it's going to continue to get better, and clearly people in this room understand that.

The Encyclopedia of Life is another very similar enterprise. This was announced about a month ago, and this is a large effort kick-started by a \$10 million grant from the Mellon Foundation to create an online encyclopedia covering the 1.8 million known and named species of plants and animals and insects and all other living things, and to make that content available for free on the Web.

It will be created by scientists, but it will also have ordinary citizens who have an interest in science creating that content. I don't know how open it will be to just any Tom, Dick or Harry off the street deciding that they want to kind of go in and muck with the organization of our species, so I don't know how Wikipedia it's like, but it is certainly based on that same kind of technology.

The Yeti crab was discovered a couple of years ago. It's a scary-looking creature. I don't know how big it is, but I don't think it's too big. But it's an example of how these pages will look. This is just a demonstration page that they've put up. They estimate that it will take 10 years to complete this.

Now, think about this partly from a copyright perspective. I don't know what exactly the rules are going to be around this in terms of for the student writing the term paper and making use of some of these photos. Could they grab a photo and put it in their high school term paper about the Yeti crab? I don't know what the licensing rules will be here. Those will clearly be worked out, but it sort of presents some interesting challenges there, but it presents some interesting business challenges because there are publishers who make money today publishing books and encyclopedias dealing with species. So if I were one of those publishers now, I'd be thinking about changing my business model.

Technology is also making content easier to move around, easier to share. This is a document that I found on the Web. It's a press release from the Authors Guild announcing nearly two years ago now that they were going to sue Google over the Google Book Search project. This is the authors suing Google.

Took this, took a look at it, and upper right-hand corner of this screen shot of my browser is a little share-this icon. That's a little application that you can download and if you click that application, what happens is that a window pops up. The main content recedes into the background and you're presented with a window where you can type in as many e-mail addresses as you want. You can click that you can post this to your MySpace profile or your Facebook page, and you can write a little message to the people that you're sending it to, and you can click and send it off.

And this is what comes into your in box. There's a little thumbnail of the actual article, which is pretty neat. I've never seen that in an e-mail-to-a-friend feature before. And obviously, the headline and the link, and below that, the ability for that recipient of the content to in turn share it further to other friends and colleagues either through e-mail or again, through Facebook or MySpace postings. So it's very viral distribution, very kind of – certainly presents some interesting questions around copyright.

So Web 2.0. We've all heard about it. Many of these companies, I suspect, are familiar to you. There are hundreds more, some of them probably less familiar to you. So what is Web 2.0 at the end of the day?

Well, it's about user participation and user creation and the ability to – for the user control over content.

This is a graph taken from Technorati, which is the dominant search engine in the blogosphere, showing the growth in the number of blogs from 2003, March of 2003, to March of 2007, a four-year span. In that four-year span, we've gone from essentially no blogs to more than 70 million blogs in four years.

Now, you think that's good. 120 thousand blogs are being created every day. That's more than one per second. So that growth is going to keep going and keep going. Eventually, it has to stop because there are only so many billions of people on the planet, but at 70 million now, I suspect it has a ways to grow.

Those tools on the right – another set of Web 2.0 tools – are essentially RSS readers. There are a number of RSS readers out there. Who uses RSS to keep track of content in their field? Have RSS readers of various types? I suspect more of you will very soon. Those are some of the RSS feeders that you can take and make sense of maybe the 10 or 20 or 30 blogs that are of interest to you in your profession or perhaps your social life or hobbies that you have. There's a blog about everything, given that there are 70 million of them, so you can organize those and kind of get through them without having to go from site to site to site to site.

So what are all the creators of these blogs doing? What are their expectations around the content that they are creating? Are they all intending to make money from their blogs? Certainly some are. There are a few prominent bloggers who are actually doing fairly well off the sale of advertisements on their blogs. But by and large, most bloggers are not blogging for money.

Most bloggers are blogging for other reasons. Maybe they just love to have their voice heard, or they hope they can have their voice heard. Some of them are perhaps blogging because what they really want is to be noticed by their communities. Maybe they're an academic and they want their colleagues to notice what they're doing, so it's a way of just informing their community.

Other people might be selling consulting services or they write books or they speak. And so the blogs are really a way that they're just trying to get known and get some of their message out there. So they're not too concerned these days in a practical sense with the copyright around their blog.

Is their blog copyrighted? Absolutely. Do all the same rules that apply to *Harry Potter* apply to their blog? Absolutely. But the social norms are slightly different, and I think that the laws have not necessarily caught up with the social norms yet. So there are some interesting things that are going to develop around here.

For some reason, Samuel Johnson's picture refuses to appear on my slides, so he was a little difficult. And as you can see, he had a very clear sense of why people write. No one but a blockhead writes except for money.

Samuel Johnson was an 18th-century British writer and poet. He was the producer of one of the first dictionaries. Kind of a man about town. He was the guy that Boswell followed around for years and wrote a biography of.

It's a little bit different today. People aren't writing for money. They're not creating for money, in many cases. Flickr is a grand experiment in people creating. They're taking photographs. They're putting them up on the Web and they are sharing those with people. Many of those photographs are actually put there under creative commons licenses. I'll mention that in just a second a little bit more.

So clearly people are creating for different reasons today, and I think that creates some interesting questions around copyright.

So when you bring all this together, what do you have? You have this clash of cultures. YouTube. People are putting their content up there. They're encouraging everybody to share it, and Viacom is suing them for a billion dollars because some people have put up clips of the *Daily Show* or various other clips of Viacom-owned media.

Unfortunately, that's really the case. A lot of these new technologies, as fascinating and as useful and as fun as they are, infringe on the rights of one or more stakeholders in this whole community of content creation and consumption. So it's a real battlefield.

Alternatives are coming up. The creative commons I mentioned a minute ago. Again, another kind of hockey stick growth, almost like the growth of the blogosphere. Creative commons, as I suspect you know, is a licensing regime under which you can pick any one of a number of licenses, attach it to your content and essentially say that you will provide that content under that creative

commons license and that you are almost giving up some of your rights as a copyright owner. Not totally giving them up, but you are not asserting all of your rights, so you will let people, perhaps, copy your content, as long as they attribute it to you or share it in a way that doesn't require some form of payment or explicit permission at the time.

The number of creative commons licenses appended to pieces of content has grown, again, from zero to more than 140 million today, as best they can track it. There's no database of creative commons licenses, but they can track it a little bit by counting the linkbacks back to the creative commons site.

So what lies ahead? Where does this all take us? I think it's just more of the same. Our environment will be increasingly information-rich. More people will be blogging. More people will be creating content in a variety of forms.

Living documents are increasingly going to replace static documents. Wikipedia is a living document. The Encyclopedia of Life will be a living document. As people start publishing in ways that allow other people to append notes, append suggestions, the author may come back and rewrite sections of that in reaction to almost that conversation that the author is having with the reader, will create the sense of the living document.

That creates a challenge for libraries who ultimately are trying to archive knowledge at specific points in time. Well, if the knowledge is never fixed, if the knowledge is always kind of moving in a Wikipedia way, it's a really interesting question for how libraries deal with that.

Participation and collaboration are going to be increasingly central, and new tools and techniques will continue to disrupt the status quo.

So let's just bring it down to a second around collaboration, because in the corporate environment, where you all live, you're spending a lot of money on content. Your employees are using that content very, very intensively from many different sources, and they are sharing it. They're sharing it all the time, 89% sharing documents with colleagues on a weekly basis.

Some of that is permitted by one or more of your licenses, but I suspect that some of it probably falls outside the realm of those licenses. That creates a clear copyright challenge because collaboration and copyright can be – are not always but can come into conflict.

So again, you have the forwarding of content. You have a lot of knowledge workers starting their search on the Web. People are – they're not experts, right? How can you count on them to be that? So they're sharing that content. They think it's OK. They don't really know what the rules of the road are.

We've just tried one approach to this. I think there will be other approaches. We created this product called Rightspere. I suspect some of you know about it. And really, the point was to try to bring some simplicity to this very complex situation, let people answer that simple question, what can I do with this content, again, to try to encourage collaboration in a way that's consistent with copyright and in a way that increases some awareness among employees.

So thanks very much. I'd be happy to answer any questions along the way.

(applause)

F: Are these presentations going to be available (inaudible)?

M: They certainly can be.

CHU: Thank you, Bill. I actually had a question, if I may. It's a philosophical one, if you don't mind. This is the third time I've seen the Encyclopedia of Life this week, and I didn't know about it. How many of you knew about Encyclopedia of Life before? Wow. Great.

The reason I mentioned it's philosophical is, if you look at the – there's a biology content, 1.8 million organisms, eventually, right? Ten-year effort. And it's at what, right now, free, or –

BURGER: It will be.

CHU: It will be free. OK. Let's change – little bit comparison. Let's look at the chemistry area. We have a vendor which produces a database that contains a registry file, contains millions and millions – probably more than 10 – compounds. And they sell images. They have structures, right? And then that content is proprietary, and the use of that database is extremely – range anywhere from expensive to exorbitant. So I think you know what I'm talking about.

So what's happening here? Chemical compounds. Why is that copyrighted and biological organisms, that's – well, it is copyrighted, too. But why is it free on one end and why is it so expensive on the other side?

BURGER: Well, I don't know. Is this on? It's a great question, and I think maybe the biological sciences are merely the first to be disrupted by new technology. I don't know, but perhaps other areas of science will be disrupted in similar ways in the future, so I don't know. It takes a long time for all these things to filter through all of the areas of our economy and our areas of interest.

I think it's a fascinating – I think the Encyclopedia of Life is fascinating. I think it's wonderful. I think it's just wonderful in principle. But who knows where this model will go. Good question.

CHU: Thank you.

I'd like to introduce our second speaker today, Lesley Harris. Lesley is a copyright and licensing attorney who works on legal business and strategic issues in the publishing, content, entertainment, Internet and information industries. Lesley's clients range from individuals to governments, associations, unions and corporations. How many of you are Lesley's clients? Oh, great opportunity here.

Lesley began her career in copyright in 1984 working with a lobbying group interested in revising Canada's copyright laws. From 1987 to 1991, Lesley was senior copyright officer with the Canadian government. That's interesting. Did you work with Cancopy in the licensing? I'm (inaudible) putting a plug for you, Bill.

We had a Cancopy license until two years ago and what happened was, I was carefully reviewing the document from CCC called Multinational Amendment. After reading that, I said, well, wait a minute. Canada's covered. Why do we have to pay twice? So I contacted Cancopy. They said, yeah, it's fine.

But just to make sure, we contacted – and my question, I think ultimately went up to Ed Haber, your general counsel.

BURGER: Fred Haber.

CHU: Fred Haber. I'm sorry. So, see, I was able to save some money. OK.

Lesley's articles and papers are published internationally and she is the author of the books *Canadian Copyright Law and Digital Property*, *Currency of the 21st Century* and many other publications. She also is the editor of the Copyright News Media Law newsletter. Did you give this out to everyone or –

HARRIS: No. (inaudible)

CHU: OK, great. By the way, is this a reprint or a PDF download?

(laughter)

CHU: Just kidding, just kidding.

Lesley has spoken at major conferences on copyright in the US, Canada, Mexico, England and Europe, and of course SLA, here. And she is involved with SLA's Click University and has taught courses in the past. Was in the SLA.

And finally, once sitting in a crab house off the Chesapeake Bay near her house, Lesley met a young man with a shaven head with the words, copyright 1969, his

birth year, tattooed on his head. Unfortunately, he wouldn't license the rights to a photograph of his head for use in her slides today.

(laughter)

HARRIS: That is a true story.

Thank you very much for inviting me here today. Last time I spoke at SLA, unlike Bill, who has spoken every day at least once, was in Toronto, which – was that last year or two years ago?

M & F: Two years ago.

HARRIS: Yeah. I skipped last year's.

Today, I hope to provide you with some practical suggestions and tools for finding answers to your copyright questions. I think Bill did an excellent job of providing background on how content is being used now and some of the new copyright issues that we're looking at, and also copyright questions.

That previous slide was my first. This actually is my last so I'm going to sit down now.

(laughter)

HARRIS: I'm going to tell you a joke that if you've already heard, just laugh anyhow. If you ask two lawyers the same question, you often get three answers. And generally, that's the way that copyright answers are.

I'm getting used to this new technology here. As you well know, many answers to copyright questions are, it depends, maybe, what are the risks you're willing to take rather than yes or no answers, which is really what you want and which would make your life a lot easier.

There are three things to keep in mind when trying to answer copyright questions, that copyright law is not exact, there are many gray areas, and a lot of what you do depends on the risk that your organization's willing to take, and if you're willing to take no risk at all in many copyright situations, then you will either always be abiding by your CCC licenses, by your digital licenses, or otherwise obtaining copyright permission for specific uses.

Now, one thing I find in many of the talks I give is that many non-lawyers are faced with answering questions that they'd rather refer to lawyers. Do we have any lawyers other than me in this room? So we have a few lawyers. And how many of you as non-lawyers are sometimes asked copyright questions which you'd rather not answer? OK.

Well, my goal actually today is to provide you with some confidence in answering or dealing with those questions, and the first thing I want to tell you is that, obviously, you are not alone.

Whoops. That's just to see if you're awake.

Probably my most important piece of advice today is to be proactive. Don't wait for the question to be asked. You should have tools and procedures in place to answer copyright questions as they arise, and I hope that my next few slides will help you be proactive.

You have to know the type of copyright uses and questions that arise in your organization, and if you kept a list of those uses or questions, you'll find generally that they tend to repeat themselves. I just have a few questions here.

Are you photocopying materials for in-house seminars? Are your licensed electronic databases used perhaps in your offices around the world or when your employees are traveling abroad? And what is the standard procedure – or do you have a standard procedure – for obtaining permissions to use the content of others?

An important part of copyright answers is to make sure that you're not alone and to sensitize your senior management in being behind you, whether it's budget, time, whatever you need, whatever sort of resources you need from them. And actually, Bill set out many of the reasons why senior management should be interested, from \$20 million law cases to your organization appearing as being unethical if you are sued.

Another thing to keep in mind is that your employees or your fellow – your colleagues – want to also be confident in the uses they're making of copyright materials, that they are legal and that they are within any guidelines that you can provide them. In a lawsuit, anyone might be named in that lawsuit if you are sued. Not necessarily going to jail, but you are named in a suit. So you want to make sure that all your uses are within your own copyright guidelines.

One basic rule in terms of all of this – and this will soon come together in a five-point tool list I have – is to be aware of copyright principles, which again, Bill did mention some of them. He was smart not to mention Fergie's (sp?) because that could be a four-day conference.

You really do have to know exactly what your CCC license allows you to do and what it does not allow you to do, and the same with any of your digital licenses. And you have to have some compliance procedures in place.

Keep in mind that this is not done by you alone. Just because you might go back to your offices tomorrow and say, hey look, we've got to do something with these copyright issues. We have to be proactive. And someone says, yeah, great idea. You do that. That's not how copyright works. Almost everyone in your organization is using copyrighted materials, as are your customers, possibly, or patrons being exposed to these materials, and you have to have an organization-wide compliance procedure in place.

Now, my list of tools. And since John said I only have 15 or 20 minutes, my tool list is relatively short, but again, this could go on for days and there's lots of workshops and seminars online, offline, all over, that can help you with these. I'm going to just list them here. One and two, I have a slide on each. On three, four and five, I'll just make a couple comments on.

A copyright officer. How many of you have a single person in your organization who is responsible for coordinating your copyright efforts? OK. That's not bad. That was maybe – I don't know – 15 people. Hopefully, next year at SLA in Seattle, if I get to ask the same question, it'll be double or triple.

I think it's really important to have a person – not a lawyer, but to have a non-lawyer copyright officer or whatever name is appropriate – that deals with permissions, that coordinates all the copyright efforts in your organization.

Number four, resources. It's very important to have your resources in advance, not when the question comes up. I actually brought a bunch of books on copyright for laypeople if you want to take a look after the session ends. My column in *Outlook* this month is us just about resources. I think, like I said, it's really important to find the resources that provide you with answers so when you have the questions, you can quickly look at them.

And access to a copyright lawyer. Many of you probably don't have the resources or often the complaint is the time to wait for a lawyer to get back to you with answers. What I suggest, again in terms of efficiently using your lawyer time, is to keep a list of questions that arise from time to time and try and meet with a lawyer maybe quarterly. Go over all the questions, keep answers, and you'll find over time that there's less and less questions, because, again, the same questions tend to arise.

One of the keys to all of this is to have a written policy which is regularly updated not only to deal with any changes in the law, but also with your uses of copyright materials, because as we just saw, our uses of copyright materials are changing daily, even in the corporate world.

You need to distribute your policy and you need to discuss it. Having a written policy that goes in a binder or goes on your intranet without any sort of education or discussion is going to be useless to you.

And of course, the education, whether it's education of your copyright compliance policy, other written publications, any sort of courses you can attend, whether it's conferences, whether you bring someone in, even just having discussions, lunchtime discussion once a month or once a quarter to discuss some of these issues.

And I'm just going to summarize the points I've tried to make this afternoon. Be proactive. Sensitize your senior management. Educate your organization at every level on copyright issues. And develop a copyright compliance policy. Thank you.

(applause)

CHU: Thank you very much, Lesley. I can't help but looking at this and flip to the back. There's a price list, of course and then it says, \$149 institutional subscribers in North America. Is this a quarterly or a bimonthly or –

HARRIS: A quarterly.

CHU: So \$149 divided by four. Let's face it. That's cheaper than a single article, right, most cases, from a document delivery vendor? Right, about, yes?

And then you have this \$99 add-on license for print subscribers only, and this is the great part. Intranet license for PDF newsletters and alerts. So we can literally load this up on the intranet?

HARRIS: That's correct.

CHU: For global use?

HARRIS: Yes, there is a license that goes with that, yes.

CHU: Wow. See, talk about enlightened publisher. Thank you.

So moving – my first question, moving from – there's a reason I asked that question, because it's a newsletter, education. How many here have a copy of this? Yes, yes, right? You can see, right.

Copyright training in the corporate world. It's kind of interesting. I didn't pay too much attention. I did read the article, but I didn't pay too much attention about the author and I was talking to Bill Monday. I said, wow, that's a pretty well-written article, and Bill told me that it's written by –

BURGER: Doug Black, who's our public relations manager.

CHU: Right. Great. So –

BURGER: That journal (inaudible) rights as well.

CHU: Right. So my first question has to do with the education, I guess, especially for corporate librarians like us. Not the lawyers. They already know. If you look at the scene currently, there's several options, obviously. They are traditional classroom type teaching, whether it's by Lesley or Laura Gassoway. Everybody knows Laura Gassoway, right? So we have those option of I guess a classroom type, and then I understand Laura goes around the country. Do you do that, too, Lesley, to teach courses, classroom?

HARRIS: I do some. I actually teach six online courses for SLA through Click U.

CHU: See, that's great, great. Your online courses, and Bill, you mentioned that –

BURGER: We're doing a great many webinars for our corporate clients and a lot of academic training all around the country.

CHU: And I think there are several other sites, and the one I just discovered yesterday – I don't know whether any of you have heard of it – is called ipshield.com. Any of you heard of that? The company was founded by a former I think the president of senior management staff of IHS, Information Handling Service, John Toth, T-O-T-H.

And I didn't know about it, so I accessed the site last night, looked around, and yet again, it's really focused for Web-based training, e-learning, that kind of thing. To see copyright going to that kind of level, open access to everybody – you still have to pay, but fairly inexpensive – I think it's great.

So my question to both of you is, what do you think that the future of education in copyright – obviously, it should be important, but without becoming a lawyer taking these many courses, what would be the most effective way to become more, I guess, an expert?

HARRIS: I think variety and quantity. Even – some people call me an expert, but I feel like I'm still always learning about copyright and it's a continuous process. You can really never know enough. Sometimes you know what you don't know, and that's also very important.

And because there's so many different ways you can learn about copyright from some of these books I brought along, including one by Laura Gassoway, which is excellent. I'd say just keep taking – read books, read newsletters, read lots of online articles, attend sessions at conferences, take advantage of every opportunity that you can.

And also, keep in mind, it's not always the lawyers who know everything about copyright. Often, a librarian who works fulltime in licensing digital content is actually going to be able to provide you with a lot more practical advice than a lawyer. So look towards different people with different backgrounds for that information.

BURGER: To help answer that, I have a question. How many people in this room have an MLS? All right. Put your hands down. How many of you, as part of your degree process or in some other formal way, something more than this, have had what you would think of as a significant amount of copyright training or training in licensing? All right. That's very consistent with a session last year that I was on in Baltimore where someone asked the same question.

That to me suggests that MLS programs need to include some serious copyright education and training as a part of that program. I just think it's fundamental, just fundamental.

(applause)

HARRIS: Just to add to that, it's surprising to me that there aren't more copyright courses in the MLS programs. Why? The copyright issue for librarians has been around for decades, really.

F: I'm dating myself. (inaudible) information through the years and the trend of the aid of libraries for (inaudible) because I've been (inaudible) in your presentation, copyright had just become an issue (inaudible) within the last two years. So it depends on how young the librarians are or how old or how mellow we are. (inaudible)

(laughter)

F: (inaudible) to use (inaudible) nothing against my profession and what I do. But for me (inaudible) and they have those courses in these schools, so I don't think it's a fair indication (inaudible).

BURGER: Well, I hope you're right. It's certainly the case that it is a hotter issue today, so there's a greater imperative to have some formality of training around that today. I don't know if there are any recent graduates in the room who can illuminate us on that.

F: Well, I'd like to say for recent graduates do cover the topic but it's also (inaudible) law librarians there's issues regarding the law that fall to lawyers and not librarians.

BURGER: Oh, absolutely.

F: (inaudible)

CHU: Rhya (sp?), you had a question?

RHYA: I just wanted to say, if people take courses so that they can make money and make a living, they're going to learn how to do a search or work in a medical library, not how to do this. They're just not going to.

CHU: If you could – I just want to rotate back and forth, because I had to collect all the questions before the session. By second question has to do with the role of information professionals on copyright within our corporations. In conjunction with our effort, I guess to make MLS a more visible degree and have more impact within our corporations, I know we're all trying hard.

In my case, I used to work for Wyeth and Baxter and now it's Gilliat. I have established personal relationship with intellectual property counsel, and we have this lady over there said opinion-providing role. However, if you look at – at least within the biopharmaceutical industry corporations, at the IP department, their first priority absolutely by far highest is patents, right? The next is trade secrets and trademark maybe third. If you're lucky, copyright is third, and copyright is usually at the bottom.

In general, my instructions – or instructions from them to me – are something like well, you should know your stuff. You're a librarian. This is published literature, digital, otherwise, hard copy. Just don't get us into trouble.

So I'd like to pose that question to both of you. What should be the ideal role of information professionals within our corporations? How can we do – how can we get to that perhaps elevated level?

HARRIS: Sure. I think I mentioned that briefly in my presentation, more the role of coordinator of information and copyright resources rather than providing legal advice. None of you want to provide legal advice, but by having someone in each organization at least coordinate the effort so the marketing department knows what the research department is doing, what the resource center is doing, I think that's essential.

But by no means do you have to be an expert in copyright law and just have access at least from time to time to copyright lawyers.

BURGER: Yeah, I would agree with that. I think there's a kind of a level of lay knowledge of the law. Knowing that something as basic as just because it's on the Web doesn't mean it's public domain is something that many of your employees may not understand, but that's a level of understanding you can clearly bring to the table.

You will need to have effective partnerships with your own legal department. That may involve some education of your legal department in terms of the importance of this, so I think that level of partnership with legal is an important and necessary thing, because some of the questions will get into some fair-use applications and ultimately, some judgments will need to be made around levels of risk acceptance, and that becomes, in some cases, a senior management decision.

CHU: Thank you. Miss.

F: My question has to do with – we (inaudible) the Copyright Clearance Center. We know about licensing and those kinds of things. The stuff that concerns me are the things related to the intranet (inaudible) a website. Intranet, deep linking, linking to articles. Nobody seems to – well, (inaudible) the whole issue of deep linking. I never see that showing up easily in the documents and examples of copyright policy. When you look at – some websites are very good and they're tell you, no deep linking. You want to deep link (inaudible) contact us. But many of them don't. And yet, we know that deep linking violates in most cases all these websites. What's going on with the whole (inaudible) intranet (inaudible) for-profit, corporate-wide? What are the guidelines? Are there any? I haven't read through the article (inaudible).

BURGER: An intranet is a redistribution just like the Internet. It just doesn't reach as many people. So I think that many of the same rules apply.

The deep linking issue, you have an interesting point of view on that. I'm not so sure it's always so clear, so I think that's – there has not been much case law, if any interesting case law, in the US. There have been some things going on in Europe around deep linking, so I can't venture a view on that. Again, there's probably some level of your own lawyers need to kind of interpret and weigh what they view as your risk on that. I think it's – deep linking –

The one thing I will say, it's not as clear cut as a lot of other clearly consumptive copying.

F: And that's why a lot of – some online publishing actually started the (inaudible) you have deep linking on your public website (inaudible) and they hit you with expensive, high fees. So on your public website, if you have some deep linking –

BURGER: Are these (inaudible) scription protected products?

F: No, these are free things on the Web. But if in fact you deep link to an article, some publishers, on their terms of use actually say if you want to deep link to your intranet or to the Internet to any of our stuff that's out on the Web, there are fees attached to it. So you might want to think and be forewarned that it's happening to some of us. I was involved in (inaudible).

HARRIS: As your new lawyer in those situations, you don't always have to pay those fees.

F: I don't have to? (inaudible) have to (inaudible).

HARRIS: You can ignore them and etc., etc. In the United States, there are no court cases on deep linking. There have been cases that have been settled out of court, and that's often what organizations are following and they're not deep linking because of those cases. So it really is up to your organization and in part, as Bill said, a risk assessment.

But I will tell you my own personal belief. I have a brand new Web page now, but before my website was completely hacked and disintegrated a few weeks ago, I had deep links in my own site for which I did not get permission. So for my situation at least, I felt comfortable.

But that's not to say you feel comfortable. I am my own corporation, and you have to go by your organization's policies. But that's an excellent example. If it's written in your copyright policy, everyone will know what's allowed and what's not.

And that's what you're trying to do. You're trying to have some sort of guidelines so it's easy, whether or not it's an exact interpretation of how the law will be or just a risk assessment and just trying to avoid a hassle like a letter saying, please – or not even please, just stop doing that. That's the role of copyright guidelines and a policy.

BURGER: Just a personal, not a legal, view on this. If publishers really want to prohibit deep linking, there are ways to dynamically generate URLs that essentially make it impractical for anyone to put a link that deep links. So, if they're really serious about it, there are ways to defeat it.

And I would also just point out that Google has more than a few deep links in their index, and I don't know how many of those letters they get.

CHU: Bill, rather than deep linking, let's – even on the public website, actually obtaining the article and make it available within your transaction reporting system, you can obtain those rights with pricing, correct? Isn't that the case?

BURGER: The right for what, John? I'm sorry.

CHU: To post articles on public (inaudible) Internet. I know intranet it's fine, but –

BURGER: Not in TRS. And we have another service where you can if the publisher has given us the permission to sell that right.

CHU: OK. Just want to – gentleman in the back, please.

M: I have a general question about – say my workers (inaudible) and there are publications we get, like compilations of standards, for instance, of various other organizations. And you have a copy (inaudible) license to use these (inaudible). In my book as a corporation standard (inaudible) standard, the – I (inaudible) fair use that you can make a copy in the book and the publisher's cover (inaudible) is included in the (inaudible) you can make a copy of that standard and (inaudible) for your organization (inaudible).

But if you buy the license to get (inaudible) that particular – say an individual standards same thing that's in that book. But there's various ways to get it. You get it from directly from, say, ASDN (sp?) or you can get it from one of the other vendors of text (inaudible).

But there's various formats of it and there's prohibitive license restrictions when you get it physically, but you also – if you get it in a paper book, you must – are you (inaudible) a fair-use distribution of that.

BURGER: This is one of those it depends or I don't know answers.

M: Is the Copyright Clearance Center licensed (inaudible)?

BURGER: We do have standards. Standards are – I can only say a little about this because I've only – in the last couple of days, I gather there's some interesting questions that have been coming our way about standards and so I need to go back and probably spend a little time with our attorney so that I can accurately represent how we deal with standards.

One of the issues with standards is that a standard is considered a full work under the terms of our license, and so it looks like just a little thing, but it is the whole thing. So I'd be happy to get more information to you on that. If you want to give me your card, I'll be happy –

M: Well, you have – if you're (inaudible) you have compilation books, then it's multiple standards (inaudible).

BURGER: Yes.

CHU: I'd like to ask a question. Lesley, would you like to comment on that that he had about standards?

HARRIS: No, because –

(laughter)

HARRIS: He's asking, I think, about the CCC license, so.

CHU: Can I ask a question? Back and forth, if I may. The next question has to do with what I (inaudible) a liberalization of copyright and as an example, again, I do apologize. This is more relevant for the pharmaceutical industry, specifically medicine.

How many of you did receive the handouts, this *NEJM* active use license? OK.

M: Reactive use.

CHU: Reactive use, I'm sorry. Thank you. How many of you know what *NEJM* is? *New England Journal of Medicine*, right? OK.

What happened was that – if you look at the date, it actually says February 15, 2007, already signed. And I had to sort of delete the company. It's not us, by the way.

In any event, there's a very interesting clause. How many of you have a *New England Journal of Medicine* site license? OK. Well, I believe many of you have site licenses to other publications, too, but *NEJM* is definitely one of the best clinical journals.

There's a clause in here which says basically if you have already a corporate license, then – I'm not going to read all the details, but it allows the license holder – in this case, any of us – to send out on a one-to-one basis – what does that mean? The consumer ask a professional pharmacist – ask questions. Well, Mr. Chu, (inaudible) drug X was – I understand it's published recently in the *New England Journal of Medicine* was this kind of a safety profile. I'd like to know more about it.

When we get that, we literally can immediately send out through PDF attachment e-mail, and the greatest thing about this is it's free, number one. Number two, it's global in scope. You can send to anywhere in the world. To me, that represents another enlightened publisher.

So my question to both Lesley and Bill is that, do you think the trend of the publishers is to allow this kind of more liberalized copyright?

BURGER: I think it's a more liberal license, not copyright. (inaudible) copyright. I think it's a – it looks on the face like a terrific thing and I think enlightened is a pretty good way to describe it, innovative.

But essentially what they're doing is what we try to do, is to meet those changing needs of content users. And so from what I can see here, it looks like a wonderful thing.

CHU: Lesley.

HARRIS: I agree. And I think the important thing here, too, is that often when you are offered different licenses – I don't know if this is true with CCC, but definitely any digital content licenses, if they don't meet your needs, you need to tell the vendor or publisher or database owner.

Many people or librarians come to me and say, oh, I didn't think it was negotiable. Well, as we all know, almost everything in life is negotiable, and whether you use the words negotiation, but just letting the other side know it doesn't work. I think we'll see more clauses that work to meet your needs.

And also, just in fairness for the other side and what Bill mentioned in his presentation, is publishers do have to make a living so they can continue to publish, so yes, they may be able to provide you with some free uses, but in their licenses, what they can provide you is the uses that you need for the money you're already paying them for.

CHU: Thank you. Lady in green, you had a question, please?

F: Actually, I had a comment.

CHU: Could you go to the microphone, please?

F: I'm the president of a consortium of standards users, right now particularly aerospace standards users, and all we deal with is standards. And while I'm not really sure exactly how CCC and standards work, when I talked with the SCOs, they really don't care if you have a CCC or not. They want you to pay for everything you buy from them.

As far as making copies, again, I would just say it's a matter of how much risk you want. You can look up under ASTM. One of their executives is John Pace (sp?). He's written a lot of information on digital rights management and they are introducing a lot of locking to their standards, so I would warn anybody on a standard, do not photocopy it and do not put it on your intranet and do not disperse it e-mail, because they are actively looking for people that are doing that, and they will give you a warning first, but I'd be just very cautious (inaudible) how much real risk you're going to take. But they're really working on the digital rights management.

CHU: Thank you. Did you exchange your business card with that gentleman?

F: Yes, I will. I do have a question for Lesley. Also, I've been to several of the copyright seminars that we've had here, and so far I've not heard anybody mention the word ITAR, which is a big buzzword with corporate America.

BURGER: What is it? Sorry?

F: It's called ITAR, I-T-A-R, and I can't remember what exactly those letters stand for, but it's international trade restrictions, and what that has to do with is if – especially in corporate America in the defense world, if you have some information that is not – it's not classified secret, it's not classified as protected, but if there is technical information that cannot – according to the laws of Congress cannot be distributed to certain countries.

So I just wanted to mention this for those of you that are corporate. It's another layer on top of copyright. I have to check every time I send – I've got employees that are in Korea and before I can send any information to my L3 employees in Korea, I have to check with our ethics officer simply because they are in Korea. They're in another country besides the United States.

So that adds an increasingly more complex layer on top of all the copyright laws underneath that.

CHU: OK. Miss.

F: Let me add a comment about the *New England Journal* (inaudible). Concept-wise, it's great, but look into the cost of it, because we tried to (inaudible) our institution. I'm a small medical library. And the cost just didn't fit into our budget to have that type of licensure. So we just (inaudible).

CHU: Yeah. Can I make a comment, sort of counterargument? We are a for-profit pharmaceutical company and we are obligated to respond to the questions from outside. That's why most of our companies have something called medical communications department. Rhya, right? You have it, too, right? The reason I'm pointing at is you told me you signed that license.

These departments are housed by Pharm Ds and MDs and they have the obligation to actually answer questions. And the librarians actually do online searching to support these clinicians, we call them. So that's one reason.

Another reason is most of our companies have something called MSLs, medical science liaisons. They are again from the MDs and they don't exactly go and sell, but they talk to – at the conferences, hospitals, anytime, anywhere about the drugs, size, safety, efficacy, compliance. And those people have indicated that when they receive these questions, even at the conference, if they can't immediately at their exhibit booths – like the ones (inaudible) from the copy because it's one on one, right?

The *NEJM* license does not allow for like, print 20 copies and distribute. That's not allowed. So I guess it has to do with the motivation and effect. I agree with you. It costs – it's very expensive, those medical communication staff, they get paid a lot. So it's a sort of different motivation and why we need to do that, the drug companies. Thank you.

Any other questions, please? Yes, ma'am.

BURGER: Do you as the university –

F: As a staff member.

BURGER: As a staff member of an academic institution who creates copyrighted materials?

F: (inaudible) course outlines.

BURGER: Course outlines?

CHU: Kinko.

(laughter)

BURGER: I'd have – I don't really know. I don't think I can answer that, because I don't necessarily know what the legal nature of your employment might be with the university, if you're a staff member or if you're a faculty. Are there general agreements that the university may have with its faculty and staff around ownership of those things?

Well, we know if a faculty member writes a book, the university typically does not own the copyright to the book. I would find that extraordinary if that happened.

F: (inaudible) my problem (inaudible) course outlines.

BURGER: Course out – right. So I don't know. I don't know why – again, I think you'd have to have a – you'd have to get some answer from the legal counsel of the university in that regard. I couldn't necessarily give you a legal opinion in that instance.

CHU: Lesley.

F: (inaudible) it seems like (inaudible).

HARRIS: I can deal with the principle generally. If the faculty member is an employee and part of the duties is to create course outlines and course material, then the university would likely own that content. But I can't say for sure because as Bill said, there might be other agreements in place. There might be a collective agreement. There might be a specific employment agreement. But as a general principle, any employee who creates something as part of their employee duties, that the owner of that content is the employer or the university.

CHU: That's kind of interesting, because with again, drug company, if a sales director comes out with an outline of a business strategy, no question who owns it. Not him.

HARRIS: Yeah. But it's like Bill said, if it's a book, that would likely be outside the scope of the duty, so you have to see what's within the scope of the duty and what's expected and when it's created, how it's created and all of that. So it's not a simple situation and it goes much back to my presentation, which it depends on all of the circumstances.

BURGER: And to the social norms of the academic environment where social norms are important.

CHU: Lady in pink, please.

F: (inaudible) like a (inaudible).

HARRIS: That's true.

F: (inaudible) just because it's on the Web doesn't mean that it's in the public domain, but I don't like *USA Today* and there's a thing that says e-mail this, is that implying that you agree to e-mail it to somebody else?

BURGER: It's implied that – it's explicit, not implied that they've given you permission through that service to e-mail, using that service, the link to a friend. And the reason they've done that is not because they don't care about their copyright on that article. They've done that because their business model has been structured around ad impressions, and so what that e-mail-to-a-friend tool generates is a link sent through e-mail, and if the recipient wants to view the article, they click on the link and a new ad impression is created for that new reader, so it facilitates *USA Today's* business model and since it's their content, they're certainly free to do that.

Now if you were to alternatively cut and paste the content from *USA Today* and send it in an e-mail via your Outlook e-mail client, that would be a very different matter because you're essentially robbing *USA Today* of that ad impression, which is how their business is set up.

F: And so it doesn't matter if I'm sending it to my attorney and he might try to send (inaudible). (inaudible) why he's going to read the article?

BURGER: You'd have to look at their terms and conditions. Some publishers might have different terms and conditions over sending content for professional or commercial uses versus personal uses, so I couldn't venture a guess. There might be some terms and conditions or there might not. But in general, they are trying to get ad impressions around that link.

CHU: Lesley, would you like to comment on that?

HARRIS: On that one, I agree. I would call it actually implied permission, but either way, you have permission there. You can't really use it in any other manner. Even though you can e-mail it to someone, you can't, let's say, post it on your intranet. It's a very specific use there.

CHU: We have time probably for about two or three more questions.

M: One, I think.

CHU: One? Sorry. Last question. Go ahead.

F: Well, she (inaudible).

CHU: Oh, yeah. Go ahead. Go ahead.

F: (inaudible)

BURGER: That's a technical question.

CHU: Oh, that's a technical question, yeah.

F: (inaudible)

CHU: Oh, then –

HARRIS: And you can also e-mail me and probably Bill directly if they're easier to find just by e-mailing us.

BURGER: Absolutely.

CHU: Any other brilliant question? Go ahead.

F: In our licenses, we (inaudible) what we call (inaudible) repertory that is involved. Is there anything that's not (inaudible) when we submit the rights to (inaudible) operate (inaudible) that those documents be (inaudible)? Any kind of a

(inaudible). So typically, we get copies of articles (inaudible) from document (inaudible). However, many times we're getting things from universities that are very unique publications and it's not always easy to nail down the rights holder. (inaudible) for minimal risk, but –

BURGER: If you have a CCC license, the regulatory submission is covered by our license.

F: Even if (inaudible)?

BURGER: If you acquired that – if you acquired – well, it has to be listed.

F: Yes, and some of these are not.

BURGER: Right. Some of them are obscure.

F: Yeah. They're very (inaudible).

BURGER: I understand, I understand. Right. OK. So I –

F: And probably the risk is minimal, but I didn't know if there was some kind of general –

BURGER: I don't know. It's not covered. I can appreciate the dilemma because the rights holder could be hard to find, or it could be orphaned.

HARRIS: Just before everyone leaves, if anyone does want to look at some copyright resources, some books I brought for non-lawyers, please come up when the session ends.

CHU: Thank you very much.

(applause)

CHU: Let's have a round of applause for the speakers.

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