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2010

## Handcrafted Collaborative Copyright

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### Recommended Citation

Ann Bartow, Handcrafted Collaborative Copyright, 11 N.C. J.L. & Tech. 405 (2010),  
<http://digitalcommons.pace.edu/lawfaculty/807/>.

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## HANDCRAFTED COLLABORATIVE COPYRIGHT

*Ann Bartow* \*

### I. INTRODUCTION

It is a great pleasure to write this essay paying tribute to Dean Laura Gasaway's tenacious and fearless information access advocacy.<sup>1</sup> If I had to sum up her approach to copyright law in one quotation that I am hereby manufacturing on her behalf, it would be: "If all of the parties affected by copyright laws could simply be honest, reasonable, and fair, everyone would benefit and prosper."

Although she has collected many other titles such as Director, Professor and Dean, I always think of Dean Gasaway as, first and foremost, a librarian. I was one of those nerdy little kids who spent a lot of time amidst the stacks while growing up, so at an early age I noticed, as an empirical matter, that librarians tend to be a superior class of people. The job isn't glamorous or particularly well paying, but for some folks librarianship seems like more of a calling than an occupation, and Dean Gasaway is incontrovertibly among them. She is the kind of person you just know will be able to answer your reference question, no matter how complicated or arcane it is.

She also has a wonderful sense of humor. I will never forget hearing her utter this immortal phrase after someone made a reference to the statistic that there are more public libraries than McDonald's restaurants in the United States:<sup>2</sup> "Would you like fries with that?" is not an appropriate question to ask when a patron

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\* Professor of Law, University of South Carolina School of Law, and fortunate beneficiary of Dean Gasaway's mentoring and friendship for almost 15 years.

<sup>1</sup> I am pleased to know her as Lolly, but will use her given name and formal title within this tribute.

<sup>2</sup> New Jersey Library Association, Library Trivia, <http://www.njla.org/presskit/trivia.html#6> (last visited Mar. 10, 2010).

wants to check out a book.” And she once suggested that if libraries were forced to monitor the use of photocopy machines on behalf of publishers, patrons might require a cadre of volunteer oral historians to conduct research. Despite her demonstrable familiarity with the benefits and challenges that digital technologies pose for information dissemination, she has so far declined to refer to herself or anyone else as a “cybrarian,” at least publicly, demonstrating her impeccable judgment.

But it is her efforts to inculcate a more collaborative approach to copyright law that I most value and admire.<sup>3</sup> Her scholarship, her service to the profession, and her life’s work generally politely but firmly, promulgates an alternative copyright universe in which the public interest is always a primary consideration and in which publishers view libraries as pragmatic allies, rather than as institutional threats to their profits and business models.

Professor Margaret Chon has noted:

In a New Yorker cartoon somewhat less famous than the one captioned “On the Internet, no one knows you’re a dog,” three men are standing at the end of a very long pipe. Instead of being circular, it is C-shaped. One of the men says, “I’m afraid, Inspector, this means that everybody and everything in the country has been copyrighted.”<sup>4</sup>

It is not funny, because it is true.<sup>5</sup> In 2003 Dean Gasaway published an essay entitled “America’s Cultural Record: A Thing of the Past?” In it she presciently drew attention to threats to the preservation of literary and cultural artifacts shortly before Hurricane Katrina horrifyingly illustrated the profound vulnerability of irreplaceable works. Libraries work in everyone’s interest when they make duplicates of important works and

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<sup>3</sup> This is distinct from collaborative copyrightable creativity. See, e.g., Suw Charman & Michael Holloway, *Copyright in a Collaborative Age*, MEDIA CULTURE J., May, 2006, <http://journal.media-culture.org.au/0605/02-charmanholloway.php>; Margaret Chon, *New Wine Bursting From Old Bottles: Collaborative Internet Art, Joint Works, And Entrepreneurship*, 75 OR. L. REV. 257 (1996), available at <http://cyber.law.harvard.edu/metaschool/fisher/joint/links/articles/chon.html> (last visited Mar. 10, 2010). The implicit values of both meanings of the term are congruent.

<sup>4</sup> See Chon, *supra* note 3.

<sup>5</sup> Okay, it’s an exaggeration, but it sure captures the current intellectual property zeitgeist.

disseminate them geographically, so that a single disaster, even of large magnitude, cannot effectively remove works from the world's permanent collections. Copyright holders can benefit from library-based archiving because copies of works, which are out of print or distribution, may nonetheless be scarce even if they remain subject to copyright protection. Authors and their progeny benefit from expansive distribution of works for which there are few physical copies whether they remain copyrighted or not, in terms of sustaining the author's reputation and legacy. Readers benefit from whatever sustaining enrichment the works provide. Everybody wins, as Dean Gasaway persuasively explained.

She also encouraged the digital preservation of analog works within the work, observing that it was an efficient and inexpensive way to preserve content, provide increased search capabilities and lament copyright based opposition to it. Again she was prophetic, anticipating the controversies surrounding the Google Books Library Project, which provides as its stated goal:

The Library Project's aim is simple: make it easier for people to find relevant books—specifically, books they wouldn't find any other way such as those that are out of print—while carefully respecting authors' and publishers' copyrights. Our ultimate goal is to work with publishers and libraries to create a comprehensive, searchable, virtual card catalog of all books in all languages that helps users discover new books and publishers discover new readers.<sup>6</sup>

Access for everyone with an Internet connection, while “respecting” copyrights! It sounds like a librarian's dream! Google's unstated objective, however, is to profit from this endeavor. Copyright case law is populated with successful attempts to obtain through contracts what is not possible with copyright law, and to assert copyright power that is derived from “value added” embellishments upon public domain works. How Google plans to progress corporate ambitions without correspondingly undermining the public interests it purports to advance is unclear. Copyright policy makers are currently

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<sup>6</sup> Google Books Library Project, <http://books.google.com/googlebooks/library.html> (last visited Mar. 10, 2010).

navigating the shoals created by submerged agendas.<sup>7</sup> If the stakeholders can ultimately arrive at a successfully collaborative approach, it will be because Dean Gasaway has drawn them a map.

Dean Gasaway's collaborative approach to copyright law infused her work with the Section 108 Study Group.<sup>8</sup> She was a leader of this team effort, serving as co-chair<sup>9</sup> and boldly charting the Study Group's agenda.<sup>10</sup> Her advocacy on behalf of libraries and the people who benefit from them (*i.e.* every person walking this earth) was simultaneously powerful and measured. Her stated goal: "[T]o enable libraries, archives and museums to serve their users with digital technology while not unduly hampering the rights and both existing and potential markets of publishers and producers."<sup>11</sup> Her very astute concluding observation: Section 108 is poorly organized and confusing, and the library section is in particular needs to be amended, to simplify it "so that ordinary librarians and archivists could understand it . . . ."<sup>12</sup> Under her genial leadership, a comprehensive report was produced,<sup>13</sup> and the Section 108 Study Group launched a yet unfolding revolution, librarian style: methodical, thorough, and quiet.

As a feminist, I am generally wary of using gendered, stereotype-conjuring labels like "steel magnolia" to refer to women I admire. Yet that metaphoric descriptor blooms every time I watch Dean Gasaway's advocacy flower. She is a truly beautiful person inside and out, but if someone tries to trample her, the steel prevails, occasionally throwing off a few sparks in the process.

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<sup>7</sup> See, e.g., Library Copyright Alliance, GBS March Madness: Paths Forward for the Google Books Settlement, <http://www.librarycopyrightalliance.org/bm~doc/gbs-march-madness-diagram-final.pdf> (last visited Mar. 10, 2010).

<sup>8</sup> The Section 108 Study Group, <http://www.section108.gov/index.html> (last visited Mar. 10, 2010).

<sup>9</sup> Members of the Section 108 Study Group, <http://www.section108.gov/members.html> (last visited Mar. 10, 2010).

<sup>10</sup> Laura N. Gasaway, *Amending the Copyright Act for Libraries and Society: the Section 108 Study Group*, 70 ALBANY L. REV. 1331 (2007).

<sup>11</sup> *Id.* at 1356.

<sup>12</sup> *Id.* at 1355.

<sup>13</sup> SECTION 108, THE SECTION 108 STUDY GROUP REPORT (Mar 2008), available at <http://www.section108.gov/docs/Sec108StudyGroupReport.pdf> (last visited Mar. 10, 2010).

I have observed Dean Gasaway doing needlework as a creative outlet. Maybe that is why her collaborative approach to copyright law reform evokes the spirit of a community-quilting bee. One person builds consensus about the design. Beginners and experts sit around a table as equals to put the pieces together. There is stitching, there is bitching, and at the end, a valuable work of functional art.