

FLICC newsletter

Nos. 210/211 • Fall 2004/Winter 2005

ISSN 0882-908X

FLICC/FEDLINK Executive Director Susan M. Tarr Retires

After serving more than 10 years as the executive director of the Federal Library and Information Center Committee (FLICC) and as director of FEDLINK (Federal Library and Information Network), Susan M. Tarr has retired from federal service. "I have had a wonderful 30 plus years working for the Library of Congress. During my FLICC tenure, I have also had the privilege of supporting many federal agencies indirectly through the FLICC and FEDLINK memberships," said Tarr.

"I have had a wonderful 30 plus years working for the Library of Congress," said Susan M. Tarr

Tarr's work with the federal information community was tireless. At the beginning of her tenure as executive director, she led the FLICC membership and Executive Board in the development of a succinct mission statement for FLICC, as well as the "Vision 2000" statement for federal libraries and informa-

tion centers. With an invigorated mission in hand, she worked tirelessly to benefit federal libraries and information centers and enhance the profession.

Her next step was to develop a baseline for the community. Tarr worked closely with the FLICC Survey

[see page 8, col. 1](#)

inside:

[See page 2](#)

Board Talk
Susan M. Tarr

[See page 4](#)

Joint Spring Workshop

[See page 6](#)

2004 FLICC Awards

Presented

[See page 10](#)

General Counsels Forum
Fair Use

Mendenhall New Interim Executive Director

Kathryn Mendenhall, the chief of the Library of Congress (LC) Cataloging Distribution Service (CDS), is serving as interim executive director of FLICC/FEDLINK. When asked by LC to take on the collateral duty, Mendenhall was delighted at

the opportunity and eager to work with the FLICC/FEDLINK membership. "The missions of both organizations are quite complimentary. FLICC's dedication to fostering excellence in federal libraries and

[see page 3, col. 1](#)

BOARD TALK

Farewell

After 10 years as the Executive Director of FLICC and the Director of FEDLINK, I will be heading for retirement and graduate school.

I have had a wonderful 30 plus years working for the Library of Congress; during my FLICC tenure, I have also had the privilege of supporting many federal agencies indirectly through the FLICC and FEDLINK memberships. It has been a real joy! In fact, one of my reasons for retirement is that I do not see any place in the profession I would rather be than right here, but after 10 years, it is time to move on.

In December, I spoke at the graduation ceremonies of the University of North Carolina School of Information and Library Science. What an interesting time for these students to be entering the field of librarianship! More than 30 years ago when I finished my MLS, the excitement centered around automated cataloging and bibliographic utilities. I wrote my Masters thesis on the *latest* development: automated acquisitions! Now we take OCLC and integrated library systems for granted (well, almost—unless you have recently upgraded your ILS).

I remember a very forward-thinking “data processing” professor who asked us to circle matching words and synonyms in a short article manually and count them up in categories to assess whether automated indexing of full-text was both feasible and useful. Yes, there were those anticipating automated full text way back then when keyword indexing was still in its infancy. But what was not anticipated was the speed and capacity of computers to store full text, nor the telecom-

munications facility to pass information of all types around the world in seconds.

The future we were only glimpsing 30 years ago is here and advancing beyond anything we conceived of then. Computer and telecommunication technology has brought desktop delivery of information for our clients. We have become license negotiators rather than book buyers, deliverers of specific content rather than print product providers. This is all very liberating, if daunting.

Once the packaging becomes irrelevant, librarians have the opportunity to meet our clients’ information needs precisely (and save them lots of time) by closely tracking their responsibilities and their research and anticipating their requirements. Thirty years ago, I learned the primacy of the “reference interview.” Now librarians are sitting on research and

project teams, providing targeted resources when (or before) they are needed. As integration of desktop tools with desktop information delivery becomes a reality, librarians must know not only what information the client needs but also how he/she plans to use the information. This client-librarian partnership goes way beyond the reference interview, and hooray for that!

This has been an exciting 30-year ride and at some levels I will miss the challenges. But I am ready to move to the other side of the research equation and become a researcher for a while (new challenges). I know that I leave federal information clients in excellent hands. Federal librarians form an awesomely talented and dedicated community.

Keep up the good work—your government needs you! ■



Susan M. Tarr led FLICC and FEDLINK for more than 10 years.

Named the chief of CDS in 2004, Mendenhall had been acting chief since 2001 and had also served as acting chief of CDS in 1997. In 2000 she served as acting assistant chief of LC's Motion Picture, Broadcasting, and Recorded Sound Division (MBRS).

CDS's commitment to sharing LC's vast bibliographic resources with the global information community can only reinforce the efforts of information professionals worldwide," said Mendenhall.

Because both FEDLINK and CDS operate as cost-recovery programs within LC, "these programs offer libraries, information centers and other information providers access to the best products and services efficiently and cost effectively," said Mendenhall.

Mendenhall came to LC in 1977 as part of the LC Intern Program and later became a customer services analyst in CDS. In 1980 she joined Battelle Columbus Laboratories in Washington, D.C. to implement library research and system development projects. By 1984, she became head of Systems and Research Services at the University of North Carolina, where she managed automated systems supporting bibliographic and administrative functions of the university's Health Sciences Library. Mendenhall returned to LC in 1985 and re-joined the staff of CDS, working as a project



Kathryn Mendenhall

leader and user liaison to develop and market a new MARC distribution services and electronically produced print products.

Named the chief of CDS in 2004, Mendenhall had been acting chief since 2001 and had also served as acting chief of CDS in 1997. In 2000 she served as acting assistant chief of LC's Motion Picture, Broadcasting, and Recorded Sound Division (MBRS), when the MBRS chief was reassigned to begin planning for construction of the National Audio-Visual Conservation Center in Culpeper, Virginia.

Over the past 15 years, she has overseen the development of virtually all CDS products and services. In recent years she provided leadership in the transition of the division to a smaller, more cost-effective business operation.

Mendenhall holds a bachelor's degree in French from the University of North Carolina, Chapel Hill and master's degrees in library and information science from the University of North Carolina, Chapel Hill, and in French from Middlebury College in Vermont. ■

"The missions of both organizations are quite complimentary. FLICC's dedication to fostering excellence in federal libraries and CDS's commitment to sharing LC's vast bibliographic resources with the global information community can only reinforce the efforts of information professionals worldwide."

Joint Spring Workshop Tackles Taxonomies, Ontologies and the Semantic Web

Strategies, struggles and successes in organizing data characterized the presentations at the 2005 Joint Spring Workshop at the Library of Congress Madison Building. The event, cosponsored by DC Special Libraries Association (DC-SLA), the DC Library Association (DCLA), FLICC and the Law Librarians' Society of Washington, DC (LLSDC) and chaired by Anne Marie Houppert (DCSLA), drew more than 130 attendees.

"People don't want to wait for their vocabulary...In organizations, terminology is needed before 'literature' establishes warrant."

—Joseph Busch, Taxonomy Strategies

The day began with Taxonomy Strategies founder Joseph Busch, who designs indexing schemes for organizations. He informed attendees that Dublin Core is now being widely used by non-librarians—namely, by companies that have come to realize that they need metadata to structure their information. Busch also addressed several taxonomy-related myths with regard to companies' needs, including the idea of literary warrant. "People don't want to wait for their vocabulary," he said. "In organizations, terminology is needed before 'literature' establishes warrant."

An essential goal is to maintain quality of metadata as we increase the scope of our coverage.

—Denise Bedford, World Bank Group

Next up was Denise Bedford, whose duties at the World Bank Group include management of the Group's Thesaurus and core metadata strategy. She outlined the idea of a "service-oriented architecture" (SOA) that allows for data driving what looks like new Web sites from one's metadata repository and

where changes can be populated programmatically. She detailed the World Bank's "enterprise functional architecture," and how it is addressing the challenges of capturing metadata from various databases. An essential goal, she asserted, is to maintain quality of metadata as we increase the scope of our coverage. A key mission should be the promotion of semantic interoperability among ontologies and an integration of classification schemes and thesauri.

Visualizations give us an overview yet also help us navigate a specific region, much the way maps do.

—Ramana Rao, Inxight

Making the case for visualization tools was Ramana Rao, chief technology officer and founder of Inxight. He demonstrated several applications for content visualization, including a "hyperbolic tree," a way of viewing large hierarchies that can be extremely valuable for organizing one's company taxonomy. Visualizations, he asserted, give us an overview yet also help us navigate a specific region, much the way maps do. We can use visualization, he maintained, to help with information-access problems.

To move toward a semantic Web, "Websize" value spaces and their member terms must be persistently and uniquely identified.

**—Stuart Sutton,
University of Washington, Seattle**

Stuart Sutton, associate professor in the Information School at the University of Washington, Seattle, and the director of education digital library initiatives in the Information Institute at Syracuse University, discussed the thesaural structure of education-level vocabu-

lary and the challenges involved in developing vocabularies that accommodate different languages. To move toward a semantic Web, he explained, "Websize" value spaces and their member terms must be persistently and uniquely identified, formally declared by means of a scheme language, and made Web-available by being published. He also discussed the idea of "metadata registries," where schemas and metadata instances could be pulled together.

The differences between free-text and artificial languages includes how our ability to retrieve things depends on how someone has classified them.

—Dan Dabney, Thomson/West

After lunch, Dan Dabney, senior director for taxonomies and subject access research at Thomson/West, discussed the variety of coding schemes in common use. He used specific examples from the law to illustrate the differences between free-text and artificial languages, including how our ability to retrieve things depends on how someone has classified them. He also asserted that an indexing language should not contain headings that are not needed to describe entries in one's collection.

The question isn't if, but how much, and the train is moving forward in the form of semantic Web technologies.

—Jim Hendler, the University of Maryland, and the Maryland Information and Network Dynamics Laboratory.

The semantic Web is already upon us, stated Jim Hendler, professor at the University of Maryland, College Park, and the director of semantic Web and Agent technology at the Maryland Information and Network Dynamics Laboratory. The question isn't if, but "how much," and the train is moving forward in the form of semantic Web technologies, he said; RDF, RDFS, and OWL are stable and their

implementations are maturing, with data integration now identified as a multi-billion-dollar worldwide market.

How we can make knowledge in taxonomies explicit so computers can understand them.

—Mike Daconta,
Department of Homeland Security

The final speaker, Mike Daconta, metadata program manager for the Department of Homeland Security, was concerned with how we can make knowledge in taxonomies explicit so computers can understand them. He discussed the relationships among nodes, as well as the "is-a" relation, which is what most people think when they think of taxonomies. He also explained the logical implications of using formal taxonomies, including how transitive relations allow categorization roll-up.

Many thanks to the members of the 2005 Joint Spring Workshop Committee who helped pull this insightful program together: Laura Hjerpe, Treasurer (DCLA), Anna Bohlin (FLICC), Carla Evans (LLSDC), Dave Pachter (FLICC), Eileen Rourke (DCSLA), and Bill Tuceling (DCLA). ■

FLICC Newsletter

The FLICC Newsletter is published by the Federal Library and Information Center Committee. Suggestions of areas for Federal Library and Information Center Committee attention or items appropriate for inclusion in the FLICC Newsletter should be sent to:

FLICC Newsletter

Federal Library and Information Center Committee
The Library of Congress—Adams Bldg., Room 217
101 Independence Ave., SE, Washington, DC 20540-4935
Email: fliccfpe@loc.gov

Web Site: <http://www.loc.gov/flicc/>

FLICC Executive Director's Office

Phone: (202) 707-4800
Fax: (202) 707-4818

FEDLINK Fiscal Operations

Phone: (202) 707-4900
Fax: (202) 707-4999

Interim Executive Director

Kathryn Mendenhall

Editor-In-Chief

Robin Hatziyannis

Contributing Writer

Jennifer Agresta (DCSLA)

Editorial Assistant

Mitchell Harrison

Photographs Contributed By

Robin Smith

The Federal Library and Information Center Committee was established in 1965 (as the Federal Library Committee) by the Library of Congress and the Bureau of the Budget to foster excellence in federal library and information center services through interagency cooperation and to provide guidance and direction for the Federal Library and Information Network (FEDLINK).

Federal Libraries and Information Centers, Librarians and Technicians Win FLICC Awards



The Federal Library and Information Center Committee (FLICC) has announced the winners of its national awards for federal librarianship to recognize the many innovative ways federal libraries, librarians and library technicians fulfill the information demands of government, business, scholarly communities and the American public.

FLICC honored the award winners at the 22st Annual FLICC Forum on Federal Information Policies on March 24, 2005 at the Library of Congress in Washington, D.C., where they received their awards from the Librarian of Congress, Dr. James Billington. Their names will also remain on permanent display in the FLICC offices at the Library of Congress.

Federal libraries and staff throughout the United States and abroad competed in three award categories for the seventh annual FLICC Awards. The following are the winners.

2004 Federal Library/Information Center of the Year

Large Library/Information Center (with a staff of 11 or more federal and/or contract employees)

The Dudley Knox Library at the Naval Postgraduate School, Monterey, California is recognized nationally as a leader in the delivery of government and defense information. They provide an information rich environment for both the Naval Postgraduate School's student body and the greater Department of Defense worldwide. The library is also noted in Fiscal Year 2004 for looking forward and taking initiatives that bring a critical mass of content directly to the center of Navy work including the development of special collections and bibliographies, including the creation of a Homeland Security Digital Library, the provision of extensive virtual reference services and a significant exhibit on D-Day that raised the visibility of the library not only within the local agency but nationally. Dr. Maxine Reneker, the associate provost for Library and Information Resources and Captain Steve Linnell, representing Naval Education and Training, accepted the award for the library.



Dr. Tatiana Belabratova, library director, Edwards Air Force Base, CA (center right), and Michael Bensen, director, 95th Services Division (center left), accepted the award for small Library/Information Center of the Year with Kathryn Mendenhall, interim executive director, FLICC, and the Librarian of Congress, Dr. James H. Billington.

Small Library/Information Center (with a staff of 10 or fewer federal and/or contract employees)

The Edwards Air Force Base Library, Air Force Material Command, Edwards Air Force Base, California, is recognized for the innovative services and superior customer services it offered in Fiscal Year 2004. The library has demonstrated its ability to combine creativity and ingenuity to meet the needs of its military and civilian customers and the overall mission of its agency. The library incorporated five new special collections, launched Edwards Air Force Base first Web page, created 126 thematic bibliographies and completed a renovation of the facility and of the entire library collection. Dr. Tatiana Belabratova, the library director and Michael Bensen, the director of the 95th Services Division, Edwards Air Force Base accepted the award for the library.



Dr. Maxine Reneker, associate provost for Library and Information Resources, Dudley Knox Library at the Naval Postgraduate School, Monterey, CA and Captain Steve Linnell, Naval Education and Training, accepted the award for large Library/Information Center of the Year.

2004 Federal Librarian of the Year

Barbara D. Wrinkle, Chief of the Air Force Libraries Branch at the Air Force Library and Information System, received the award for her dedication to providing the best possible information services to military personnel and their families around the world. Known for her vast knowledge and professional expertise, she is a top performer, a strong library advocate, a knowledgeable mentor and an outstanding leader. In Fiscal Year 2004 she made major contributions to the revised Department of Defense (DoD) Library Strategic plan, the DoD Instruction for Morale, Welfare and Recreations libraries and to a number of library assessment tools. She also saw to the full implementation of the Air Force Library's Web-based central purchasing, financial management and reporting system which led to savings of more than nine million dollars, and initiated the implementation of a library resource center on the Air Force Web Portal.



Barbara D. Wrinkle (right), chief of the Air Force Libraries Branch at the Air Force Library Information System San Antonio, TX, accepts the award for Federal Librarian of the Year with Colonel Timothy J. Hanson, agency commander, HQ Air Force Services, San Antonio.

2004 Federal Library Technician of the Year

Mary Alice B. Mendez, the library technician at the Defense Language Institute - English Language Center Library at Lackland Air Force Base, Texas, received the award for her dedication to service excellence in support of the mission of the Defense Language Institute-English Language Center Library during Fiscal Year 2004. As the sole staff member of the library, she not only carried out the normal duties of a technician but also the duties typically performed by a professional librarian, including collection development, acquisitions, cataloging, reference and interlibrary loans. As a creative problem solver, she employed her talents to support a variety of customer focused activities that reinforce the library's successes. ■



Mary Alice B. Mendez (right), library technician at the Defense Language Institute—English Language Center Library at Lackland Air Force Base, Texas, received the award for Federal Library Technician of the Year accompanied by Patricia Henry-Arnold, Librarian at Defense Language Institute.



2005 Competition Begins This Summer

Information on the 2005 awards program will be announced later this summer. For the latest information on the awards, interested parties may refer to the FLICC Web site, <http://www.loc.gov/flicc/awards.html>, where information regarding 2005 nominations will be posted on the "What's New" section as soon as it becomes available.

At the beginning of her tenure...she led the FLICC membership and Executive Board in the development of a succinct mission statement for FLICC, as well as the "Vision 2000" statement for federal libraries and information centers.

Working Group, the U.S. Census Bureau and the National Center for Educational Statistics (NCES) to conduct and analyze results from the 1994 census of federal libraries and information centers. Then she focused federal library attention on performance metrics by sponsoring policy fora, workshops on measuring performance, and partnering with SLA and ARL for an institute on benchmarking and measuring performance. In 2004, she initiated a team project for graduate students in the University of Maryland Masters of Information Management Degree Program to deliver recommendations for a performance metrics toolkit and a formula for "return on investment" for federal libraries and information centers.

Reinforcing the Profession

Tarr also seized an opportunity, in conjunction with the Library of Congress General Counsel's Office, to develop the General Counsels' Forum, a quarterly round table discussion between library directors and attorneys from federal agencies to enhance mutual understanding of legal issues affecting federal information services. With education and communication a cornerstone of her leadership, she also produced 10 annual information policy fora, featuring speakers from Alvin Toffler to Senator Ted Stevens and

Congresswoman Pat Schroeder to NBC Executive Lawrence Grossman. She also encouraged the expansion of the FLICC Education Program to offer three times the number of programs offered in 1995.

Throughout her tenure, Tarr represented federal information service to the government, the private sector and academia. She spoke for the federal library community at various federal, association and business fora, including NCLIS hearings in 2001 and meetings with Senate committee staff developing the E-Government Act of 2003. Here she also led the nomination process to select federal library leaders to participate in the Office of Management and Budget's (OMB) E-Government Committees for E-Government Act implementation.

"The future we were only glimpsing 30 years ago when I was in library school is here and advancing beyond anything we conceived of then. Computer and telecommunication technology has brought desktop delivery of information for our clients. We have become license negotiators rather than book buyers, deliverers of specific content rather than print product providers. This is all very liberating, if daunting," said Tarr.

In early 2003, Tarr established a working group of librarians within and outside the Department of Homeland Security (DHS) to

Her next step was to develop a baseline for the community...Then she focused federal library attention on performance metrics...She initiated a team project for graduate students in the University of Maryland Masters of Information Management Degree Program...developed the General Counsels' Forum...produced 10 annual information policy fora.

***“The future we were only glimpsing 30 years ago when I was in library school is here and advancing beyond anything we conceived of then.*”**

help this large new agency provide professional information services to its 180,000 staff members. She encouraged and ultimately convinced DHS managers to create a position at headquarters to coordinate information services and to fund a virtual reference pilot delivered through their agency intranet. She also assigned FEDLINK staff to collect data necessary to set up enterprise-wide licenses for their major commercial database services in DHS’s first year of operations.

As a champion for federal information professionals, Tarr first saw to the publishing of the FLICC Personnel Working Group Paper on qualifications for 1410 Librarian positions and negotiated with Office of Personnel Management (OPM) for the elimination of an OPM test as substitute for Masters of Library Science. She also assisted the group in updating qualifications published on OPM’s Web site and in convincing OPM to make the modifications.

In 1998, she initiated a government-wide awards program which to date has recognized eight Librarians of the Year, six Library Technicians of the Year and 10 Libraries/Information Centers of the Year.

Building a Business Infrastructure

With tenacity and perseverance, Tarr structured the FEDLINK program to ensure that all federal libraries and information centers had

not only the best products and services available, but that those products and services were available at the best possible price.

She began with a five-year effort to develop the justification for and the achievement of the passage of a law to make FEDLINK a revolving fund, which came to fruition within the Library of Congress Fiscal Operations Improvement Act of 2000. With the new law in place, she also worked with the Government Accountability Office’s interpretation of the new statute and was able to restructure the entire program for deployment in Fiscal Year 2002. Based on revolving fund opportunities, Tarr streamlined and enhanced FEDLINK general business practices by creating alternatives to the interagency agreement, extending end-of-year deadlines and developing the Direct Express program for online database services.

With her vision, Tarr also developed FEDLINK’s first five-year business plan in 1997 and then revised the FEDLINK Business Plan for 2002-2006 under the revolving fund. She established research-based cost accounting for FEDLINK pricing in 1997 and saw to the creation of FEDLINK’s first five-year basic ordering agreements for cataloging services and preservation services. Tarr also led the way for FEDLINK “consortium buys” and enterprise-wide licensing for commercial

[see page 16, col. 1](#)

***“During my FLICC tenure, I have also had the privilege of supporting many federal agencies indirectly through the FLICC and FEDLINK memberships,” said Tarr.*”**

General Counsels Forum Gets Answers About Fair Use

In February 2004 the FLICC/General Counsels Forum gathered for a thorough discussion of fair use issues and how federal libraries and information centers can work within the law to meet the needs of their patrons.

David Carson, the general counsel for the U.S. Copyright Office, and Robert Kasunic, a principal legal advisor for the U.S. Copyright Office, began

...the dividing line between “public performance” and “private performance” has been set in the courts. Section 106(4) provides the copyright owner with the exclusive right to “perform the copyrighted work publicly.” This section 106 performance right does not extend to private performances.

the sessions with a presentation on the specifics of the Copyright Law. (FLICC Newsletter, Spring/Summer 2004—<http://www.loc.gov/flicc/pubs/fn0402.pdf>).

The following July, FLICC/General Counsels Forum continued the Fair Use discussion in a question and answer format. Kasunic moderated the session. The questions featured in the session are in bold type; Kasunic’s answers follow each question.

If we allow inmates in our federal correctional facilities to view entertainment videos individually at a carrel with head set in the library, are we in violation of copyright if we do not acquire a public performance license?

This is not really a question of fair use, but rather a question of where the dividing line between “public performance” and “private performance” has been set in the courts. Section 106(4) provides the copyright owner with the exclusive right to “perform the copyrighted work publicly.” This section 106 performance right does not extend to private performances.

To perform a work ‘publicly’ is defined in the Act as:

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any

device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times. 17 U.S.C. §101 (1976).

The facts presented in the question do not fit neatly into this definition. It is unclear from the facts whether physical copies of DVDs or tapes are distributed or whether the works are transmitted from a central location to the carrels, but for assessment of the nature of the performance, that doesn’t appear to matter.

There are some analogous cases addressing whether private rooms in stores are public or private performances and the general rule has been that since these are ‘open to the public,’ the performances are public and require a performance license. *See, e.g., Columbia Pictures Industries, Inc., v. Redd Home Inc.*, 568 F. Supp. 494 (W. D. Pa 1983) *aff’d* 749 F.2d 154 (3d Cir, 1984) and *Columbia Pictures Industries, Inc., v. Aveco, Inc.*, 612 F. Supp. 315 (M.D. Pa. 1985) *aff’d* 800 F. 2d 59 (3d Cir. 1986).

A case dealing with hotel rental came to a different result. One court found that a hotel’s rental of both videodiscs and rooms containing players constituted a private performance by patrons viewing the works because the hotel was primarily providing living accommodations

and only incidentally including rental of video-discs to interested guests. *Columbia Pictures Industries, Inc., v. Professional Real Estate Investors, Inc.*, 866 F.2d 278 (9th Cir. 1989).

While a prison may be more like a hotel than a store (and at the same time, dissimilar to both), the carrel setup may be more risky than the viewing in the prisoner's private residence in the prison. In the case of a prisoner watching the movie in a cell, the situation would fall closer to the established video store model that is premised on a private performance than the first sale doctrine. Using a screening room or carrel may bring the use closer to a public performance, despite the fact of the one-at-a-time nature of the performance.

If the use is deemed to be a public performance, all of the factors would tend to weigh against such an use being considered a fair use. The entertainment purpose of the performance, the use of a creative work, the performance of the whole work, and the likely adverse effect on the market would make a performance license appear to be the prudent course.

What should someone at a federal educational institution do when the school(s) in question have interpreted fair use to mean that anything we want to do must be fair use because we're a school? They cite the "Guidelines" when questioned about using the same articles year after year, or reprinting three out of five chapters as handouts year after year.

The Guidelines (Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals) are part of the legislative history of the Act and create a "safe harbor" for uses deemed to be fair.

A school teacher who uses the same photocopied material year after year probably does not meet the spontaneity test, and copying three out of five chapters of a book would appear to far exceed the brevity test.

The Guidelines (Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals) are part of the legislative history of the Act and create a "safe harbor" for uses deemed to be fair. Expressly, the Guidelines are

narrower than the permissible scope of fair use since they represent the "minimum and not the maximum

standard of educational fair use." They include limits on the amount and number of times works can be used and include the factors of spontaneity, brevity and cumulative effect.

A school teacher who uses the same photocopied material year after year probably does not meet the spontaneity test, and copying three out of five chapters of a book would appear to far exceed the brevity test.

Note: Other types of guidelines have been proposed, but have not been uniformly adopted. (For more information, the links below contain the two negotiated agreements on guidelines that were incorporated into the 1976 Act's legislative history:

<http://www.musiclibraryassoc.org/Copy-right/guidebks.htm> and <http://www.musiclibraryassoc.org/Copy-right/guidemus.htm>.

Are there any cases or circumstances where a federal agency is relying upon fair use to

post copy-righted material to the agency's public website?

We are not aware of persistent posting of third party content where the sole justification for the posting copyrighted content is fair use. Indeed, it would generally be unusual to rely on

see page 12, col. 1

fair use as the basis for making an entire copyrighted work available to the public on a continuing basis. A more likely scenario would be a case of exceptional circumstances where the display of a work (or works) serves a crucial and productive public purpose. In such a situation, it would be advantageous for the use to be as limited in scope as necessary and limited to the duration reasonably necessary to achieve that purpose. In addition, agencies should attempt to minimize the effect on the market as much as possible, e.g., by employing protection measures or reducing the quality of work. To the extent that fair

...the posting of "traditional" copyrighted material (i.e., works that are prepared for commercial exploitation) on an agency's website will usually be a risky proposition.

use is relied upon by agencies, all of the factors should be considered and efforts should be made, to the extent possible, to support the weight of fair use under each factor. Fair use should not be based solely on the nature of the user, but rather an assessment of the particular set of facts – the user, the noncommercial public purpose, the necessity of the use of the particular works, the type of work used, the amount used, and the reasonableness of the use in relation to the copyright owners' interests. Fair use should generally be reserved for the exceptional case. Reliance on fair use for the posting of "traditional" copyrighted material (i.e., works that are prepared for commercial exploitation) on an agency's website will usually be a risky proposition. There are frequently alternatives to the intended use, e.g., hyperlinks, permission, new authorship, etc. Be sure to assess why fair use is necessary and why alternatives will not suffice.

What is the "best practice" for posting copyrighted materials on a public website that the agency had otherwise distributed to the public in hard copy form relying on fair use? Does the fact that the Internet results in a broader and less controllable distribution weigh against using that medium?

Hard copy distribution or loan of hard copies lawfully owned by an agency could be exempt from liability under section 109(a) – the first sale doctrine – without reliance on fair use. The reproduction of hard copies of copyrighted works, however, would not be included within the first sale doctrine's limitation on the right of distribution. Such reproduction of hard copies may be a fair use in appropriate circumstances, but not in all circumstances.

Placing a copyrighted work on a public website involves a reproduction and therefore is not within the scope of the first sale doctrine. Providing such

world-wide access to the copyrighted work also vastly increases the potential harm to the market of the work, if such a market exists. All of the factors would have to be considered before posting a copyrighted work on a public website – the purpose or need for this widespread use, the type of work (a comment submitted in a RM would be more likely to weigh in favor of use under this factor than an published or unpublished article), the amount used, and the effect on the market or potential market for the work. While all of the factors must be considered, the effect on the market resulting from Internet distribution is a critical determination. If there is a reasonable market for the work, it would be prudent to seek the permission of the author, if feasible under the circumstances.

What is the Copyright Office's view on placing comments and other copyrighted material in rulemaking dockets and posting them on electronic rulemaking dockets? Is there an implied license? If we know a comment includes a third party's copyrighted work, do we rely on our immunity from contributory infringement? Does fair use play a role in the analysis?

It is always better to obtain an express license rather than relying on an implied license. If an agency knows that it will be placing comments online, it makes sense to notify commenters of this fact prior to submission, e.g., in the Federal Register

Notice. Additionally, if forms are submitted online, it is possible to obtain express agreement to posting the submissions, e.g., a checkbox, a click-through agreement or other form of assent.

When placing materials online, the Copyright Office has also advised those who comment to redact any personal information, from the comment itself, that the commenter may not want posted, e.g., phone number, address, email address, etc.

In the case of third party copyrighted works included in a comment, the Copyright Office has redacted material, where such third party material was identifiable, prior to posting the comment on the website. In those cases, we have either inserted a note indicating the redaction of material believed to be third party copyrighted material, or additionally, inserted a link to an Internet location containing that material if it is offered by the copyright owner on the Internet.

If the third party material is deemed necessary to include in the material posted for some reason, an analysis of all the factors must be considered. If it is questionable whether the use is a fair use under the factors, permission should be sought from the copyright owner. Making the submission together with the third party material available for inspection on the premises of the agency, rather than online, would tend to increase support for the fair use defense; the more limited the distribution, the less likely there will be a detrimental effect on the market for the

Providing such world-wide access to the copyrighted work also vastly increases the potential harm to the market of the work, if such a market exists.

work. But the purpose of the use must be considered as well and if there does not appear to be a reasonable need for the use of the third party material in the comment, such superfluous use will

be of little support for the agency's further redistribution.

Can a Federal agency library provide a copy of a copyrighted work to persons who make a FOIA request for it? To persons who walk into the library and ask for a copy to be made for them? Can these copyrighted works be placed on an agency's website if they are frequently requested? What case law or Federal policy has addressed these issues?

To begin with, it is unlikely that most of the material within a Federal agency library is an "agency record." FOIA does not provide authority to provide material that is not an agency record and thus a book in the collection of an agency library is not FOIA-able unless there is a reason that it constitutes an "agency record." Since most published works are publicly available, there is no obligation to provide such publicly available material through the FOIA process. Further, the harm to the market for a

copyrighted work that may result from an agency making a copyrighted work freely avail-

If the third party material is deemed necessary to include in the material posted for some reason, an analysis of all the factors must be considered.

able, particularly if that practice were to become widespread (e.g., placed on a website), would not be a result that is consistent with the Copyright Act. For works that qualify as an agency record, there may be a tension between the Copyright Act and the FOIA, FOIA contemplates document reproduction as a means of effectuating public access and plainly requires more than mere document inspection.

[see page 14, col. 1](#)

GENERAL COUNSELS FORUM, from pg. 13, col. 2

Additionally, since almost any non-U.S. Government document is capable of being protected by federal copyright law, it is necessary to determine under what circumstances the copyright status of a work may be exempt under FOIA.

Under FOIA, courts have concluded that the Copyright Act cannot be considered a “nondisclosure” statute triggering Exemption 3 status and, thus, entitle copyrighted documents to automatic protection under the law. Therefore, to withhold a copyrighted work located in agency files, the agency has to determine whether there is

another FOIA exemption that applies. The Department of Justice, which provides agency-wide guidance on FOIA matters, suggests that agencies examine the applicability of Exemption 4 when contemplating the disclosure of copyrighted materials. FOIA Exemption 4 pertains to trade secrets and confidential, commercial or financial information. One of the elements to examine under Exemption 4 is the effect disclosure of the record would have on its “commercial value.” Like the fourth factor in the fair use analysis, an agency must assess the effect that FOIA disclosure would likely have on the copyright owners potential market. This determination must be made on a case-by-case basis. If Exemption 4 does not apply, DOJ’s position is that an agency’s release of copyrighted materials under FOIA is a “fair use.”

For more information on the interrelationship between copyrighted materials and FOIA, see the DOJ’s Office of Information and Privacy FOIA Update: http://www.usdoj.gov/oip/foia_updates/Vol_IV_4/page3.htm.

When is it better to look to the TEACH Act and when is it better to look to fair use?

If a specific exemption in the Copyright Act may apply to a particular use, it is preferable to

rely on a specific exemption before resorting to the fair-use limitation, because the outcome of a fair-use claim is often uncertain.

Do both the trainer and the trainee have to be government employees or can the government train non-government people under the TEACH Act?

Trainees have to be government employees or officers, unless they are enrolled in a course which is involved with the government in some way. [As a caveat, if the government trainer wants to transmit to non-

governmental persons, it would appear that the trainer would have to meet the requirements for an “accredited non-profit educational institution.”]

What should we tell users when they create a digital repository of copyrighted works under license for training purposes?

A “repository” needs to be assessed on a case-by-case basis to determine the scope of the licenses for the works included within it. Licenses can contain limitations that could limit claims of fair use. Agencies should be careful about how they use repositories and where contract terms are applicable, whether those terms are met by the conditions for use of the repository. Agencies should also consider their intended uses before entering into the contractual limitations contained in licenses.

Are there any ways to incorporate fair use clauses in licenses?

Licenses and terms of use are contracts specifying permitted uses for a particular fee. Unlike ownership of a work, which implicates many exemptions to the exclusive rights of

Like the fourth factor in the fair use analysis, an agency must assess the effect that FOIA disclosure would likely have on the copyright owners.

copyright owners, licenses limit access or use for an agreed upon price, an amount that is generally less than the full purchase price of a work. For example, if you don't want to pay thousands of dollars for use of an entire database when you only need access or use of a portion of the database, a license covering the needed portion for a lower price may be preferable. If you are paying a cheaper price for a limited use, then it would be unusual for a licensor to include a provision that authorizes uses beyond the specific terms of the license, such as fair uses of the work.

To the extent that such a provision can be negotiated, probably for an additional fee, it would be beneficial for the licensee to obtain such a concession, or to limit the terms of the license to particular uses that would not otherwise be exempt.

Should we be concerned about the *Tasini* case [*New York Times Co., Inc. v. Tasini*, 533 U.S. 483 (2001)]?

That case addressed whether a publisher with rights to a contribution to a collective work in print could put the contribution in an electronic database without obtaining additional permission for the electronic use. The Supreme Court said no. Newspapers often either require the grant of these electronic rights or refuse to publish a freelance author's work. It makes sense to consider this issue in contractual negotiations.

Is scanning of printed books an infringement?

Scanning a book still under copyright protection would be an infringement of the

reproduction right. If an exemption applies, e.g., § 108, such reproduction may be made within the terms of the exemption. Without an exemption, then a fair use analysis would

require consideration of all of the factors. An additional consideration would

be the reason why scanning a printed book is necessary, particularly if a work is commercially available. Convenience alone would certainly not suffice to exempt such digital reproduction.

One of the elements to examine under Exemption 4 is the effect disclosure of the record would have on its "commercial value."

What about the Federal Records Act? Agencies have an obligation to retain federal records, but there is no provision regarding security. What about keeping backups of records?

The Copyright Office suggested some changes to the Copyright Act for prudent backup practices that might include copyrighted works. Congress did not act on that recommendation in the § 104 Report. Currently, the only provision in the Copyright Act that exempts backups is section 117 that allows backup of a computer program by an owner of that program. For other types of works, fair use would provide the only exemption that would cover the backup of a copyrighted work. For "works" that would most likely constitute "agency records," such as comments or filings, it is very likely that

fair use would encompass prudent security measures. Yet, where legal obligations conflict, agencies must do

their best to meet multiple obligations with caution and reasonableness. ■

Scanning a book still under copyright protection would be an infringement of the reproduction right. If an exemption applies, e.g., § 108, such reproduction may be made within the terms of the exemption.

In 1998, she initiated a government-wide awards program which to date has recognized eight Librarians of the Year, six Library Technicians of the Year and 10 Libraries/Information Centers of the Year.

online database services and she initiated a partnership between the Library of Congress and OCLC for creation of the QuestionPoint virtual reference system.

Dedication to Education and Library Science

Tarr received her B.A. degree summa cum laude from Westminster College in Pennsylvania, her M.L.S. from the University of North Carolina, Chapel Hill, and her M.A. in political science from the George Washington University in Washington, D.C. Upon her retirement, Tarr has returned to academia to pursue a masters in a theological study program at the Wesley Theological Seminary in Washington, D.C.

Beginning her tenure at LC as a special recruit in the LC Intern Program 1974-75, Tarr

worked in the Congressional Research Service (CRS), the former Processing Services Department and the former Constituent Services Department. She became Executive Officer of the Processing Services Department in 1983 and from 1986 to 1994, served as the Chief of the Cataloging Distribution Service (CDS) of the Library of Congress.

Tarr recently received the 2003-2004 FAFLRT Achievement Award from the Federal and Armed Forces Libraries Roundtable, a unit of the American Library Association, and the 2004 Distinguished Alumni Award by the School of Information and Library Science Alumni Association at the University of North Carolina, Chapel Hill. This summer she will be presented with honorary membership in the Special Libraries Association at their Toronto meeting. ■

FEDERAL LIBRARY AND INFORMATION CENTER COMMITTEE

LIBRARY OF CONGRESS
101 INDEPENDENCE AVE. S.E.
WASHINGTON, D.C. 20540-4935

**FIRST-CLASS MAIL
POSTAGE & FEES PAID
LIBRARY OF CONGRESS
WASHINGTON, D.C. 20540
PERMIT No G-103**

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

FLICC Newsletter
ISSN 0882-908X

If you wish to be removed from the mailing list for this publication, check here [] and return this page to the above address. If a change is required, enter correction on the address label and return.

If you wish to be added to the mailing list for this publication, check here [] and return this page to the above address.
