Interview with Laura Gasaway

For podcast release
Monday, September 15, 2014

KENNEALLY: If you’re confused about copyright, then you’re beginning to understand the problem. When authors and publishers face thorny questions on ownership, rights, licenses and enforcement, they now have the answers right in their pockets.

Welcome to Copyright Clearance Center’s podcast series. I’m Christopher Kenneally for Beyond the Book. From the basics of copyright protection to the challenges of the digital environment, the Pocket Copyright Guide for Publishers, published by Unlimited Priorities, has 122 pages of responses to copyright’s persistent questions. Concise and comprehensive, you can rely on every reply, because the author respects balance as the first principle of copyright.

She joins me now from Chapel Hill, North Carolina. Laura Gasaway, welcome to Beyond the book.

GASAWAY: Thank you so much, Chris. I’m delighted to be with you.

KENNEALLY: Well, we’re looking forward to chatting with you about your new book.

We’ll tell people about your background. Laura Gasaway is the Paul. B. Eaton Distinguished Professor of Law Emeritus at the University of North Carolina Chapel Hill School of Law. For the U.S. Copyright Office and Library of Congress, she co-chaired the Section 108 Study Group concerning exceptions to copyright for libraries and archives from 2005 until 2008. And she is also a past president of the American Association of Law Libraries.

And Laura Gasaway, you’re known to the world as Lolly, so we will call you that for our podcast here. And Lolly, I want to start by asking you about where this book came from and really making the point, as you do in your introduction, that copyright is the lifeblood of publishers. But sometimes, here at Copyright Clearance Center, we speak to publishers – and indeed authors – who don’t realize that. It’s almost as if farmers didn’t know that milk comes from cows.

GASAWAY: Good analogy, Chris. You’re exactly right. I had been doing some copyright consulting work with Unlimited Priorities, which is a consulting firm for medium and small publishers. And in doing this work, Iris Hanney, who is the president of Unlimited Priorities, said something to me that publishers often did not know about copyright. And I was absolutely stunned. Just as you were indicating,
one would think they would know everything about copyright, since it is the very
heart of their business.

And out of this work and discussions with Iris came the idea for me to do some
whitepapers on copyright law for publishers. And as we began to get that project,
and I wrote about three of them, somewhere – not from me, but from somewhere at
UP – the idea for creating an electronic guide that then could also be in print was
developed.

And that’s how the book came about – fairly different from the way my other
scholarly books have come about.

KENNEALLY: Well, it’s very interesting because, you know, increasingly in our age
that seems so focused on copyright, authors, publishers, photographers – everybody
– have to enter into some kind of contract where questions about rights and who
owns the copyright are of utmost importance. And so the need to be familiar with
these issues is really a business need.

GASAWAY: It is absolutely a business need. And, you know, I think there’s also a
recognition that very large publishers are going to have in-house counsel and
usually in-house copyright counsel. But a small or medium publisher is going to
contract out their legal work, and so they really don’t have anyone to rely on in
house to help with these issues.

And so that was, hopefully, something that this pocket guide could provide was sort
of the basic information to get them started. And I hope, out of that, they know
when they do need to consult a lawyer for some of these agreements that are
becoming increasingly important in the world of digital publishing especially.

KENNEALLY: Right. And people look for answers on the Internet to absolutely
everything – from their cancer care to copyright. And I think what we should stress
for people is that Laura Gasaway, a distinguished professor of law at the University
of North Carolina Chapel Hill School of Law, is indeed what everyone else claims
to be – and you are an expert on copyright.

And I mentioned in the introduction the point here about balance. Often the kinds
of things you find online are skewed one way or the other – to the people who are
using the copyrighted material or to the copyright holders themselves. And
copyright really is about balancing each of those particular sides’ rights.

GASAWAY: You’re absolutely right. I have been distressed when I’ve heard publishers
state that they get to control totally how their work is used – and I have to say, no,
that’s not true – and then when I hear users and libraries saying, well, everything is
fair use, and we can do what we want with it.
And you just kind of think, you know, look – we’re in a capitalistic society, where copyright is a business, publishing is a business, and we run on that principle. How do you think that works if it’s free to take and free to use?

And also, on the other side, we’re not an authoritarian government where you get to control every single thing that happens with something you have made available to the public through publication.

So I have always believed that balance is the most important part of copyright and that we all need to pay attention to balance.

KENNEALLY: Right. And these particular principles apply not only to books and to journal articles and newspapers, but to all manner of material that falls under copyright – and in particular, photography, audiovisual works, sound recordings, of course. How difficult has that become today to be able to obtain the permission that’s necessary for the use of these works?

GASAWAY: It is difficult. And one of the major reasons is that we do not have a single copyright clearance agency. I mean, we certainly have had CCC for many years for print and increasingly moving into some other media to help us with that. But we don’t have one single clearance mechanism. And so, for a user or a publisher trying to get clearance, it is very confusing to know where to go.

And that’s one of the things I tried to do in the book is to give some starting points – like if you’re wanting permission to digitize this type of work, here’s where you start. If you’re looking for including a clip from a sound recording in a work, here’s a place to start. And as I said, it’s not easy. It is complicated – and likely to be come more so, I’m sorry to say.

KENNEALLY: Well, unfortunately, I think you may be right. And getting permission for those kinds of works is a bit like pulling a thread. It just keeps going and going and going because, in a sound recording, for example, you would have copyright to the composition itself. You might have copyright to the recording itself. And there may be other layers of rights that need to be cleared.

GASAWAY: Absolutely. The musical arrangement can have a separate copyright from those others – from both the underlying composition and the sound recording – absolutely.

And the other thing that we need to really identify is that, with the sort of digital age, we are going to see more and more works where there is a sound recorded embedded in what we would have called a book. Because that book is available digitally, you can have it read, and that music can be playing. We know that
photographs get embedded. But we’re seeing other types of works – and perhaps
video clips will be embedded in these works.

And so, where we used to have these separate categories that were so clear, I think
the ability to pull this material together in a digital format and make it available that
way is sort of changing our ways of looking at what’s available, how to use it and
again how to get permissions. We would like to have it simpler rather than more
complicated.

KENNEALLY: Well, we are chatting right now with Lolly Gasaway. She is the author
of the Pocket Copyright Guide for Publishers, just out from Unlimited Priorities
publishers.

And, you know, Lolly, you make a point about trying to make things as easy as
possible. So when we describe the situation, it must sound daunting to people
listening, but I suppose your advice, at the end of the day, is that it’s worth the
effort – that really you can kind of pierce through the fog and get the clarity you’re
looking for.

GASAWAY: Absolutely. And as I said, that was one of the real goals for this pocket
guide was to give people the starting place, to give them the background so that
they can then go from there.

You know, there’s a lot of material published about copyright, not only on the
Web, but hundreds of books. But some of them are so long and so detailed that
they are really only digestible by another lawyer. And my goal was to make this
work digestible by – for publishers. That was truly the goal for this work.

KENNEALLY: Well, it’s funny – you hear about pocket guides to all kinds of things,
and none of them fit in your pocket. I want to tell listeners that this pocket guide
actually does fit in your back pocket, so you could, I suppose, carry it around the
office if you needed to.

GASAWAY: (laughter) That’s right.

KENNEALLY: But Lolly Gasaway, what are some of the developments in copyright
that you find particularly interesting and perhaps a bit confounding, even for people
who are experts? I mean, so we have kinds of licenses today that didn’t exist 10
years ago – for example, Creative Commons licenses.

GASAWAY: Yes, we do. And I think there is a recognition, which is odd to some
people, but that some types of authors – especially a lot of academic authors – are
not very interested in the economic return for their work, but their goal is to make
their work available to the world. And I think that is a real change for us to have a mechanism.

And that’s – in a way, Creative Commons is dealing with that by letting us have licenses or create licenses that say to people, you are free to use my work – or you’re free to use my work but, if you do so, you must give me attribution – or you’re free to use my work, but no changing of that work – and give me attribution.

And those are very different kinds of licenses than we used to see. I mean, I can certainly remember the days when it was an all or nothing. You simply gave the publisher all the rights in order to get published – even rights that they did not need.

And today those rights are being divided many more ways, and authors are retaining more of those rights for the ones that the publisher does not need – you know, like the publisher doesn’t need the ability to update the work – the author needs that – or for the author to use it in his or her own teaching or research.

So we’re seeing some real changes happening in the world of licensing – that’s for sure.

KENNEALLY: Right. And to the point of balance, though – so while there are certain types of licenses – Creative Commons licenses among them – that open up copyrighted material to use without permission, many publishers – many authors – are still looking to enforce and protect the rights they have. But does that mean they have to go to court over it?

GASAWAY: No. It really doesn’t. One of the things that I’ve always tried to make clear to the publishing world is that, you know, most people are in good faith and they want to seek permission – but that fees have to be reasonable and response needs to come from the publisher. When a publisher doesn’t respond at all to a request, then the requester is sort of left with, well, do I go ahead and take a chance or do I just not use the work?

And so it’s a balance, but it’s being reasonable on both sides too. And most of the time, things can be worked out outside of the court system, which is a good thing, because our court system is very bogged down and very slow.

KENNEALLY: And very expensive too.

GASAWAY: Yes.

KENNEALLY: And I know that that can be something which puts many people off. They’re really afraid of going to the poorhouse along with going to the courthouse.
KENNEALLY: Well, finally, Laura Gasaway – author, again, of the *Pocket Copyright Guide for Publishers* – give us a prediction or two. You predicted one point – and I think we can rely upon it as a given – that these things are going to get more complicated.

Can you tell us more about what you think may happen? For example, there’s an effort under way – the Register of Copyright has said she would like to see copyright reform and a new copyright act. How likely are we to see that anytime soon?

GASAWAY: Well, you know, when the 1976 Copyright Act passed, within just two to three years after that, I remember being asked – when did I think we would get another new act? And I always said not in my lifetime. But now we are actually seeing some movement in Congress. Of course, it is stalled now, getting ready for the midterm elections. At least the House Subcommittee on Intellectual Property has really begun to hold hearings and move on this.

It is such a complicated issue that I think everyone is a little bit afraid of what might come out of Congress. It’s very interesting, because this is not a partisan issue – one of the few things that we don’t have that is a partisan issue right now – but copyright reform is not.

I think we do need to reform the Copyright Act. I think we need to rethink it and not just make minor changes. Clearly the most important changes are going to be to modernize it for the digital world. But we also need to just simply go back and look at some of the underlying concepts and see if those are right – if we need to make changes now.

And we are seeing other countries beginning to do this. Canada has done it in recent times, and other countries are looking at it too. So we’re not alone in the world in having to recognize that, even though our copyright act is not that old – 1976 – it is dated because of what has happened with the development in digitization and the whole computer revolution. None of us foresaw how quickly it was going to go or in what ways.

So I think we will see some change. Whether it’ll be a whole new act – no one really knows. But I think it’s worth trying. I think I would like to see the act simplified rather than made more complicated. We’ve made some mistakes, I believe, in recent amendments by putting things in the act that are really regulatory in nature rather than underlying legal concepts.
But who knows? Congress seems to be marching to its own tune right now, and we’ll see what happens. But I don’t think it will be until after the elections, certainly, before we’ll see any movement again.

KENNEALLY: Well, if and when those changes come to the Copyright Act, we’ll expect to see an update for your book.

GASAWAY: Oh, yeah.

KENNEALLY: But until then, we have the first edition of the *Pocket Copyright Guide for Publishers*, published by Unlimited Priorities. And we have been chatting today with the author, Laura Gasaway, who is the Paul Eaton Distinguished Professor of Law Emeritus at the University of North Carolina Chapel Hill School of Law. And Lolly Gasaway, thanks so much for joining us on Beyond the Book.

GASAWAY: Thank you so much for talking to me, Chris.

KENNEALLY: Beyond the Book is produced by Copyright Clearance Center, a global rights broker for the world’s most sought-after materials, including millions of books and e-books, journals, newspapers, magazines and blogs, as well as images, movies and television shows. You can follow Beyond the Book on Twitter, find us on Facebook and subscribe to the free podcast series on iTunes or at beyondthebook.com.

Our engineer and co-producer is Jeremy Brieske of Burst Marketing. My name is Christopher Kenneally. For all of us at Copyright Clearance Center, thanks for listening to Beyond the Book.

END OF FILE