

**Summary Report for DALNET: Participation in the  
Institute for Legal and Ethical Issues in the New Information Era (ILEI),  
May 20-26, 2000, University of Wisconsin-Milwaukee**

Report Date: July 17, 2000

The ILEI's goal for participants, as stated by its creators, was to enable attendees to "gain an awareness of changing legal and ethical issues affecting academic libraries, archives, and museums in the new information era." As a DALNET representative, I attended fourteen lectures, two workshops, and one tour of the University of Wisconsin-Milwaukee's Archives and Special Collections Departments to meet the stated goal. This report summarizes the content of the ILEI lectures and workshops I attended. With it, I offer to present more complete information, conclusions, and handouts about any of the listed issues at future DALNET meetings, forums, or workshops.

Relevant topics were grouped into six categories:

- Part I: Working with the Collection
- Part II: Special Issues in Museum Collection Management
- Part III: Working with Patrons
- Part IV: Ethical Challenges
- Part V: Copyright and Other Ownership Issues
- Part VI: Implementation of Legal and Ethical Concepts

**Part I - Working with the Collection**

- A. *Deeds of Gift: Caressing the Hand that Feeds*, presented by Robert Vanni, General Counsel and Assistant Secretary to New York Public Library. Vanni's presentation aimed to "demystify the legalities of drafting clear and thoughtful deeds of gifts." Deeds of gifts, according to Vanni, should: be standardized whenever possible, clearly identify parties involved, contain "whereas" clauses to explain history and motives of people involved in the transaction, and clearly state the interest in the material that is being donated, especially in terms of intellectual property rights. It is useful to have the donor agree as to how the collection will be referenced in finding aids and to agree on any access restrictions from the start. The institution should also make clear its own rights, and may wish to restate and/or expand its usual copyright reproduction rights.
- B. *The Appraiser and the Appraisal: What Makes a Book Valuable?*, presented by Andrew McLean, Professor, Department of English, University of Wisconsin-Parkside. McLean described three types of book appraisals: the type dealers perform for themselves when buying inventory for resale; the type that places value on donated material at what the IRS terms "fair market value"; and the type initiated for insurance purposes, which deems the "replacement value" of the items (usually higher than a fair market value). Librarians may find McLean's descriptions about what

makes one book different from another interesting, as it includes information about book papers, bindings, limited printings, illustrations, editions, and conditions.

- C. *The Rights and Privacy and Publicity in Personal Information and Persona Contained in Library, Museum and Archive Collections, Materials, Exhibits and Displays*, presented by Tomas A. Lipinski, Co-Director and Assistant Professor, Center for Information Policy Research, University of Wisconsin-Milwaukee. Two legal concepts were addressed: the right of privacy and the right of publicity as each might apply to the collections or holdings of libraries, museums and archives. Lipinski described possible grounds for action for the two legal concepts, and then outlined whether actions usually would or would not succeed in typical scenarios. He concluded that institutions that provide access to information relating to individuals need to know basic legal concepts regarding privacy and publicity, and they need to be aware that they may have an increased potential to “run afoul” of these interests in today’s publicity-hungry environment.

## **Part II - Special Issues in Museum Collection Management**

Note: The two workshops that are described below were on a different “breakout track” than the one I followed. Therefore, I can only offer the handouts and basic information from these two workshops, not detailed conclusions.

- A. *Legal and Ethical Foundations of Museum Collecting Policies*, paper by Marie C. Malaro and presentation by Ildiko DeAngelis, Associated Professor, Museum Studies Program, George Washington University. Handouts explain how museum professionals can learn to use the law and ethical codes in a more positive way as it relates to what they should collect and how they should management their collections.
- B. *Collections Management: Hypothetical Cases for Discussion, Acquisitions, De-accessions, and Loans*, presented by Ildiko Pogany DeAngelis, Associate Professor, Museum Studies Program, George Washington University. DeAngelis presented four hypothetical cases involving ethical and legal dilemmas for those who manage museum collections.

## **Part III - Working with Patrons**

- A. *Legal Issues Involved in the Privacy Rights of Patrons in Public Libraries and Archives*, presented by Tomas A. Lipinski, Co-Director and Assistant Professor, Center for Information Policy Research, University of Wisconsin-Milwaukee. Information regarding the history and current status of laws surrounding patrons’ privacy rights was presented, along with interesting new developments regarding electronic tracking, data collection and communication, state confidentiality statutes, and the rights of students in educational library and archive settings. Different states treat different libraries as “public” institutions, and also have different laws covering various types of records, e.g. circulation records vs. patron registration records. They

may also have different exceptions to non-disclosure, such as court orders, library administration needs, and forms of consent. Educational institutions have additional privacy concerns due to the Family Educational Rights and Privacy Act of 1974 (FERPA, which in general covers the release of student records to third parties). Lipinski concludes that institutions should make sure they know the traditional laws that “protect the record of patron use of public library material and services,” and that “developing practices suggest the protection of personal information in digital or web environments will expand.” He reminds us we need to be aware of the shortcomings of existing law. He recommends: “...careful review of a state’s particular statutes in conjunction with the implementation of supplementing privacy policies.”

- B. *The Legal Responsibility to Offer Accessible Electronic Information to Patrons with Disabilities*, presented by Mary Minow, Attorney, Disability Rights Advocates, Adjunct Professor of Library Law School of Library of Library and Information Science, San Jose State University. The Americans with Disabilities Act (ADA) requires “state and local governments and places of public accommodation to...ensure effective communication with individuals with disabilities...” Minow reminded us in her presentation that this also applies to web sites and other electronic means of information “communication,” as long as this does not impose an “undue burden” or “a fundamental alteration in the nature of ...services.” She argued that adopting Electronic and information technology accessibility standards, as outlined by WWW Consortium (W3C)’s Web Accessibility Initiative (WAI), would be the least institutions could do to ensure compliance with ADA.
- C. *Seven Levels of Safety: Protecting People in Public Buildings*, presented by Bruce A. Shuman, Adjunct Professor, Texas Woman’s University, School of Library and Information Science. Shuman addressed the need for institutions to develop coherent security policies, “consisting of preparations and countermeasures to enhance building security.” He outlined seven distinct levels of security for public buildings as potentially dangerous places, and offered steps that libraries in particular could use to be prepared and ready to defend themselves against violent incidents.

#### **Part IV: Ethical Challenges**

- A. *The Bout of the Century?: Information Ethics Vs. E-Commerce*, presented by Marsha Woodbury, Lecturer, Department of Computer Science, University of Illinois at Urbana-Champaign. Woodbury’s lecture contained mainly personal anecdotes about ethical decisions and dilemmas she had made in her life and the ways these could be analogous to current-day situations faced by computer and information professionals. Her main conclusion was that library and information managers should complete ethics courses as educational requirements, and that our professional associations should continue to develop and update our codes of ethics in the new information era.
- B. *Information Ethics: Its Demarcation and Application*, presented by Johannes J. Britz, Professor, School of Library and Information Science, University of Pretoria, South

Africa. This three-part lecture, as described by Professor Britz himself, focused on: "ethics, the ethical decision-making process and the demarcation and defining of information ethics; ethical principles and norms applicable to the ethical decision-making process; and examples and illustrations about how the ethical decision-making process can be applied by information professionals to...users' right to privacy." While this lecture was very philosophical and theoretical, it also concluded with some practical guidelines that could be following when handling private and personal information about patrons.

- C. *Organizing Ethics in Archives, Museum, and Libraries: Challenges and Strategies for Meeting Ethical Responsibilities*, presented by Elizabeth Buchanan, Co-Director and Assistant Professor, Center for Information Policy Research, University of Wisconsin-Milwaukee. Organizational ethics, as compared to professional ethics, were defined and discussed, including strategies that could be used to develop codes of organizational ethics in our institutions. To do so, issue definition and evaluation, and action/inaction evaluation and implementation are important considerations.

#### **Part V: Copyright and Other Ownership Issues**

- A. *Copyright for Libraries, Museums and Archives: The Basics and Beyond*, presented by Shelly Warwick, Assistant Professor, Graduate School of Library & Information Science, Queens College, City University of New York. This lecture presented copious amounts of copyright information, including the history of copyright laws, theories about copyright, facts about current U.S. copyright laws, etc. Specific topics addressed were: terms of protection, rights of copyright owners, registration and notice (after 1989, works do not have to be registered nor do they have to include a copyright notice); what's not protected? (ideas, concepts, processes and procedures, facts, works of U.S. government); idea/expression dichotomy (only a work's expression is protected, not the idea of the expression), rights of first sale of object (first sale exception allows libraries to circulate materials), fair use (four factors considered: purpose, amount taken, nature of work, effect on market or value of work); special exceptions for libraries and educators (Section 108 of the 17 U.S.C. exceptions to rights of authors, including right to provide copies of out-of-print materials, up to 3 copies for purposes of preservation or security, reproductions can be in different formats, getting Circular 21 from U.S. Copyright Office); CONTU Guidelines (Commission on New Technological Use of Copyrighted Works, e.g. providing libraries with ability to request no more than 6 copies per year from the last 5 years of any periodical title, etc.), and more.
- B. *Copyright Protection and Technological Reform of Library Services: Digital Change, Practical Applications, and Congressional Actions*, presented by Kenneth D. Crews, Associate Dean of the Faculties for Copyright Management, Indianapolis University School of Law IU School of Library and Information Science. This lecture addressed Section 108 and the CONTU Guidelines in more detail, especially as they applied to given library scenarios. It further examined the Digital Millennium

Copyright Act (DMCA), enacted by Congress in 1998, which permits some digital reproduction and distributions, and the ways that this act did not address new technological innovations very well. Crews recommends that librarians need to keep “current with developments in their own field and with developments in the copyright law,” and to act as agents “giving the law practical meaning” in complex and changing library services.

- C. *Legal Issues Involved in the Design, Construction and Use of Web Sites in Libraries, Museums and Archives: Lessons from the Web Site Linking, Trespass and Other Controversies*, presented by Tomas A. Lipinski, Co-Director and Assistant Professor, Center for Information Policy Research, University of Wisconsin-Milwaukee. Lipinski discussed many issues related to the use of web sites in library, museum and archives settings, focusing on linking technology and the ways that linking can raise issues of trespass, trademark, copyright and defamation issues. He notes that “recent litigation suggests that in the same way that unauthorized photocopying or otherwise reproducing the work of another in the analog world may infringe copyright, such authorized reproduction (posting or framing) in a digital or web environment will also be considered infringement.” His conclusion is more a list of recommended rules to follow when linking to other sites within our library catalogs.
- D. *Legal-Technological Regulation of Information Access*, presented by David Rice, Professor of Law, Roger Williams University, School of Law (Bristol, RI). Professor Rice provided complex information about intellectual property foundations, copyright vs. patent laws, the new protection market (“contractual and technological regulation of use as a copyright enforcement supplement or substitute”), and technological regulation of use and access (WIPO Treaties and the Digital Millennium Copyright Act focusing on conduct regulations rather than devices regulation). He finds the trends related to all of these issues troubling, in that they serve to “maximize the commercial value of digital information and related technologies through means that prohibit innovative use or development of new technology by others.”

#### **Part VI: Implementation of Legal and Ethnical Concepts**

- A. *Getting Started: Legal and Ethical Resources*, presented by Jane Colwin Director of Public Services, Wisconsin State Law Library. An easy-to-follow presentation that described primary and secondary resources for legal information about copyright laws and cases.
- B. *Designing, Drafting and Implementing New Policies*, presented by Claire Weber, Legislative Reference Bureau, City of Milwaukee. A practical presentation of issues involved in designing, drafting and implementing new policies. Weber concentrated on value of definitions, drafting rules, policy structures, time descriptions, and wording and grammar pitfalls.

- C. *Agents of Change: Planning, Communication and Implementation Strategies*, presented by Thomas Walker, Director, School of Library & Information Science, University of Southern Mississippi. This was a very short presentation that discussed corporate culture and overcoming resistance to change. Walker stressed that participants can have a “positive impact on changing policies and practices by taking a visible and active role in decision making.”

**Comments:** The Institute helped me understand the importance of codifying policies and procedures within DALNET, especially as they relate to legal and ethical issues surrounding our services, resources, and development plans. In some areas, DALNET considers policy implications very diligently, but in other areas, DALNET could improve its practices by becoming better informed and deliberate. DALNET forums, meetings, or workshops periodically addressing at least major legal and ethical issues would keep us aware of new laws, standards, trends, and technology that may have an impact on our consortium’s policies and decision-making.

Respectfully submitted,  
Adriene Lim