

LIS 550: Information in Social Context
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Chrystal Springs Public Library Report

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1. Introduction

The Board has asked us to review the propriety of the Chrystal Springs Public Library's (the "Library") map-selling venture. At issue are certain actions taken by the Library's Director (the "Director") and others in reproducing sections of topographical maps (the "topo maps") originally produced by professional cartographers. The Library's purpose in producing the copies of the topo maps was to finance much needed additions to its children's collection.

The Library had been receiving requests for copies of topographical maps from visiting hikers and mountain climbers for years before it decided to produce and market them. To capitalize on these requests, the Library not only provided the topo maps, but the Director paid to have them enhanced—making them even more attractive and desirable as hiking aids. Eventually the library had a four product line: the original, unaltered photocopy of the maps (the "B&W maps"), the maps with helpful "Heloise" hints on the back (the "Heloise maps"), the watercolored maps (the "WC maps"), and the light-weight, 3D plastic maps (the "3D maps").

The first main area of concern for the library involves the error in one of the original topo maps that had been "faithfully copied" by the Library. The map showed the elevation of a mountain (the "Fateful Mountain") as 1,200 feet lower than its actual height. On three separate occasions people were injured while relying on the topo maps. In the first one, an amateur (the "amateur") using a B&W map, fell on what he thought was "a shorter, less steep mountain." The second incident involved a family (the "family") using a 3D map who became lost on the same mountain and contracted hypothermia as a result. The third accident resulted in a fatality when a hiker/pilot ("Mr. HP"), navigating with the aid of the 3D map late at night, crashed his plane into the Fateful Mountain. The Library would like to know if it can be held liable for any of these injuries.

Another problem concerns copyright violations that may have occurred. The Library is uncertain whether it needed to obtain permission for its uses of the topo maps. As the original maps were altered into the four products, several parties contributed to their content and appearance. The Library would like to determine who owns which components of each of the maps.

Doubts have also arisen over the ethics and propriety of the Library's action in engaging in a commercial venture. The Board is rightly concerned over where to place the responsibility for any ethical violations. Also, local merchants (the "merchants") have complained that the Library has engaged in retail robbery by usurping the merchants' market for similar products—in effect using the merchants' own tax dollars to steal their business. The Library would also like to determine whether or not its actions violated professional ethics in any way.

2. Liability

Can the Library be held liable for the injuries sustained by the hiker, the family, and Mr. HP? To answer this question, two theories of liability should be considered: negligence and strict liability.

2.1 Negligence

The theory of negligence hinges on several factors, all of which must be present in order for negligence to apply. These factors include the notion that the Library owed the injured parties a duty and breached that duty and also that there was a causal link between the Library and the injuries. Other issues that should be examined include the consideration of joint or severable tortfeasors, contributory negligence, and assumption of risk.

2.1.1. Duty and Breach

The first issue to be addressed is whether the Library assumed a duty of care in publishing and distributing the maps. As to the first two incidents, this question can be answered by asking whether it was foreseeable that hikers would use the maps for guidance while hiking in the region. The answer is yes: with “years” of requests for just such maps from the mountaineering community it would be hard to deny the Library’s awareness of this intended use, even with the B&W maps. The maps covered a 200 mile radius around the Springs and the initial printings, while limited, were still of a sufficient quantity to ensure that hikers requesting copies were well supplied. Any doubt of the Library’s awareness was completely erased when the Library then also targeted a national climbing and hiking audience by placing advertisements in trade and recreational magazines. The success of these ads led to the Director’s subsequent decision to craft the 3D map, which was even more accessible to hikers.

Given these facts one conclusion is inescapable: it was foreseeable that hikers would employ the Library’s maps near the Springs while hiking, and that this use was within the zone of foreseeability. Since both the amateur and the family were lost hiking while relying on Library maps, the Library owed them a duty of care.

Did this duty of care extend to Mr. HP, who was injured while navigating his plane out of the airport using a 3D map late at night? If the scope of duty is narrowly construed, the Library would have no responsibility towards this potential plaintiff. To put the question another way, would the ordinary, average reasonable person living in the Springs have anticipated that hikers might rely on the 3D map as an aeronautical navigation aid? Unlike the many actions taken by the Library to encourage sales of the maps to hikers, there are no facts indicating that the Library intended the maps to be used by pilots. Would it be foreseeable that hikers visiting the Springs would also be pilots? Maybe, but given the mountainous region, it is doubtful that the zone of foreseeability would extend to this scope—particularly when the rules governing air

traffic, pilot safety and pilot licensing are so rigorous about the appropriate standard of care for pilots.

On the other hand, if the scope of the Library's duty is viewed broadly (i.e. that it is foreseeable people will rely on relief maps to gauge the height of mountains), then a court might find that a duty extended to people such as Mr. HP. After all, why create a detailed 3D map and not expect people to use it to determine the elevation of the mountains depicted, especially when great lengths have been taken to illustrate height? Under this view, it is also foreseeable that injury would result if Fateful Mountain was inaccurately portrayed. A mountain is not a molehill; a miscalculation of scale of that size could have disastrous consequences, as indeed it did for Mr. HP.

If a duty of due care existed, was that duty breached? The answer lies in whether the Library's actions are deemed to be unreasonable or fail to conform to the standard of reasonable care. The nature of the Library's action in creating the B&W maps was simply to faithfully reproduce maps originally produced by the U.S. Army Corps of Engineers, the U.S. Geological Survey and the National Geographic Society. Was it unreasonable for the Library to assume, as it apparently did, that the maps were accurate or did it have an independent obligation to investigate? It would seem that since the Library has no expertise in cartography or in geography, any investigation it may have performed would not necessarily have uncovered the defect. There also exists the likelihood that such a novice investigation could have unknowingly introduced more human errors into the process, given the Library's ignorance of the two disciplines.

Is it unreasonable to rely on the experts the U.S. government has designated as the nation's official cartographers and surveyors? The question begging to be asked is, "if you can't count on them to get it right, who can you count on?" The average, reasonably prudent person would probably say the National Geographic Society. Founded in 1888, it has become "the largest nonprofit scientific and educational institution in the world," renowned for the quality and diversity of its maps (National

Geographic Society, 2003). Applying the standard of reasonable care, it would be entirely conceivable that an ordinary, reasonable person of normal intelligence would rely on the two governmental agencies and the Society for cartographic accuracy and not conduct further inquiry.

However, a court could find that the Library stood in a different position regarding its 3D maps. First, depending on the timing of the accidents, the Library may have become aware of potential map defects when the amateur was injured. This would have considerably altered its duty of care since the ordinary reasonable person would not have seen hypothetical risks, but a very real, injured person. Had this occurred, the Library's failure to issue a recall of all outstanding maps, or to immediately publish a warning notice of possible elevation errors at the very least, would clearly have been a breach of duty.

Second, the nature of the Library's actions in producing the 3D maps may have enlarged the scope of its duty. By significantly enhancing the topographical features and providing hiking and safety tips, opinions and contributions of others, the Library essentially packaged the 3D map as part of a total hiking "kit." This type of packaging could have easily created (and been intended to create) an impression that the Library was holding itself out as having independently evaluated, or caused to have appraised, the validity and accuracy of all the information it chose to include in the 3D map. That expertise was part of the value calculated into the purchase price. If this was the case, such a duty could be breached by the failure of the Library to deliver on the promise, i.e. a totally reliable hiking experience "kit."

2.1.2. Causation

There is no doubt that all three incidents resulted in damages; the issue is whether any of the parties' damages were actually, or proximately, caused by the Library's action. The initial question is whether the amateur and the family were in fact hiking on the Fateful Mountain. The amateur got lost on what he "believed was a shorter, less steep

mountain" and the family got lost "on the same mountain." This ambiguity is troublesome. Did the amateur believe the mountain was shorter and less steep than Fateful Mountain as depicted on the B&W map or shorter and less steep than the real Fateful Mountain? If he believed the former, this may very well be another mountain entirely and there would clearly be no factual link between the Library's breach of duty, if any, and the harm done.

If the hiker and family were basing their perceptions of height and grade on the B&W and 3D maps, and they were climbing Fateful Mountain, then more questions are presented. The first is whether "but for" the Library's conduct of misrepresenting Fateful Mountain the parties would not have gotten lost. Without knowing more about the nature of these peoples' confusion, it seems unlikely that erroneously depicting Fateful Mountain's elevation (as opposed to its girth or other dimensions) could cause someone to get disoriented, but stranger things have been known to happen. It seems more likely that the Library's action might be found to be a substantial factor in bringing about their misfortune. In either event, a causal connection would be established.

Mr. HP presents different issues. What factual connection is there between using the 3D map to negotiate around Fateful Mountain late at night, presumably in the dark, and his collision? In other words, if you can't see Fateful Mountain to begin with, then how can you possibly be relying on the map to indicate its elevation? On the other hand, if Mr. HP studied the 3D map scrupulously before takeoff and paid close attention to his other navigational gear, particularly his compass, a causal connection could be established.

If actual cause is within the realm of possibilities, was his collision with Fateful Mountain within the scope of the risk the Library assumed in producing and marketing the 3D map? At the very least one would have doubts about the remote connection between the Library making and enhancing a map intended to benefit and be used by hikers and Mr. HP's use of it in such a serious undertaking as navigating a plane. One is a casual, leisurely pursuit; the other can be, as it was, a life and death situation (in a similar vein,

where is the social utility of allowing Mr. HP to rely on the rather amateurish 3D map for flight navigation instead of more precise and appropriate aeronautical charts and flight aids?). Proximate cause under these circumstances may be a difficult hurdle.

2.1.3. Joint and Several Tortfeasors or Who's on First

Another important issue is that of determining responsibility for the faulty elevation depiction. Since it is unclear who actually authored the map in use for either the B&W map or the 3D map, it is impossible to determine who should be accountable for inaccuracy. Is it the fault of the U.S. Army Corps of Engineers, the U.S. Geological Survey or the National Geographic Society? Once authorship is established, the appropriate organization should be notified that it may be considered jointly and severally liable. Additionally, an entire negligence analysis would be required to determine the scope of the authoring organization's duty and whether it was in fact breached. With the government entities there may also be some issues of sovereign immunity.

2.1.4. Defenses

There is a real possibility that the doctrine of comparative negligence applies in this context. If the Library is found to have been negligent, should not the original perpetrator of the mistake also bear some of the damages? The Library in this perspective could be viewed as an innocent bystander. It did not create the mistake and was certainly not in a position to discover it. Do we as society want to encourage sloppy cartography by experts in the field, particularly those relied upon by the U.S. government? This aspect deserves to be explored.

Some contributory negligence issues also need to be dealt with. The hiker and the family got "lost" while relying on the maps; were they relying solely on the maps to determine their whereabouts? If there were other visual clues or if they had other navigational aids at their disposal that they choose not to employ, reliance on the maps might have been misplaced and hence unreasonable. As for the family using the 3D

map, if it contained any other handy hints for navigation and they chose to ignore them, they did so at their peril. Another factor that could come into play is the footwear and apparel the parties were wearing at the time. Were the amateur's shoes sufficiently sturdy and activity appropriate for hiking Fateful Mountain, or did poorly designed or outworn footwear contribute to his fall? Likewise, did the family dress appropriately for the weather on the day they decided to roam round Fateful Mountain, or did they dress in flimsy, summer weight clothing knowing snow was in the forecast? These issues require attention.

Lastly we come to Mr. HP. In Mr. HP's case there is simply no doubt that he was either contributorily negligent (at best) or assumed the risk (at worst). Would an ordinary, average pilot take off late at night in a mountainous region such as the Springs, relying solely on the 3D map for the elevation, and apparently the location as well, of Fateful Mountain? Conventional wisdom dictates that these are not the actions of a reasonable man; surely his plane was equipped with appropriate flight instrumentation. If not, what was he doing taking off after dark?

Assuming that Mr. HP had the correct instrumentation and aeronautical charts and instead chose to rely exclusively on the 3D map, not only would he appear to be negligent, a solid argument could be made that he assumed the risk of becoming a Fateful Mountain fatality. He knew Fateful Mountain was out there; he had the 3D map. He knew he had no visual perception and that his instruments could provide him with the most accurate readings of his altitude and presumably of Fateful Mountain's elevation. Nonetheless on that night he decided to throw caution to the wind and wing it. This should be labeled bad judgment barring any recovery under the circumstances.

2.2. Strict Products Liability

The theory of strict liability differs from that of negligence in that it can apply even in cases where there is no fault or blame. Can the Library be held liable for the dissemination of their faulty maps under the products liability law? To answer this

question, several issues need to be examined in each instance an injury occurred. Was the information provided a “product” rather than a service? Are maps “information products” according to strict liability law? Did the Library manufacture and publish the maps? Strict liability will apply if, and only if, the court can answer in the affirmative for all three of these questions.

2.2.1. Services vs. Products

Strict liability only applies to products; it does not apply to services. Therefore, it is important to examine whether or not the maps produced by the Library can qualify as services.

Are maps services? In the article “Strict Liability for the Dissemination of Dangerous Information?,” John Gray asserts that a comparable point was argued by Jeppesen & Co. in the case *Salomey v. Jeppesen & Co.* Jeppesen, the publisher of aeronautical charts used by pilots making approaches to airports, claimed that, “on analogy with services given by doctors to their patients or architects and engineers to their clients, its approach was `a service rather than a product and that the paper the map was printed on was merely the method by which the information was conveyed to subscribers.” (Gray, 1990).

The Second Circuit panel rejected this argument because services are tailored to the needs of a particular client. Even though Jeppesen’s charts contained data that was similar to that provided by individually tailored service arrangements, “the mass production and marketing of these charts requires Jeppesen to bear the costs of accidents that are proximately caused by defects in the charts” (Gray, 1990).

The maps produced by the Library are also mass produced and mass marketed. The fact that the Library has an entire product line ranging from photocopied B&W maps, to the Heloise maps, to the WC maps that are sent out for printing, and to the plastic 3D maps, attests to their mass production. The Library also posts signs in its facility and pays for small advertisements in national mountain climbing and hiking magazines,

which demonstrates that the Library is attempting to market the maps as well. Given these circumstances, it is highly likely that none of the maps produced by the Library will qualify as “services.”

2.2.2. Information Products

Are maps information products? In the vast majority of cases, the courts have refused to apply strict liability to “information.” Publications currently enjoy a broad range of constitutional protection:

Even if tort policy might justify product liability treatment, the first amendment may bar it. In *Walter v. Bauer*, the court criticized application of the products theory to a science textbook because of “the chilling effect it would have on the First Amendment.” The court queried, “Would any author wish to be exposed to liability for writing a topic which might result in physical injury, e.g., how to cut trees; how to keep bees?” (Gray, 1990)

Thus, the courts have refused to hold books, textbooks and most other printed media liable for strict liability violations.

Aeronautical charts, however, have proven to be the exception to the rule. In the document “Liability and the Media: Defensive Strategies,” Chadbourne and Park quote a section of the *Restatement (Third) of Torts* which states: “one area in which some courts have imposed strict products liability involves false information contained in maps and navigational charts. In that context, the falsity of the factual information is unambiguous and more akin to a classic product defect” (Chadbourne & Park, 2001).

One of the primary reasons that aeronautical charts are strictly liable is that they invite reader reliance and are inherently dangerous if inaccurate. This point was made by the court in the case *Fluor Corp. v. Jeppesen & Co.*, which involved a plane that crashed because the aeronautical chart failed to give the correct height for a mountain. The court stated that “...it would be difficult indeed to conceive of a salable commodity with more inherent lethal potential than an aid to an aircraft navigation that, contrary to its own design standards, fails to list the highest land mass immediately surrounding a landing site” (Gray, 1990).

The maps produced by the Library are also navigational aids that invite reader reliance. Since hiking maps are more similar to aeronautical charts than textbooks or encyclopedias, they are more likely to be considered information products under strict liability law. However, hiking maps are inherently less dangerous than aeronautical charts. Given the courts' reluctance to impose strict liability on information, it is difficult to say whether or not the maps produced by the Library would be considered information products for the purposes of strict liability. Even if the maps *were* considered information products, the Library would also have to be considered the maps' manufacturer or publisher for strict liability to apply.

2.2.3. Library as Publisher/ Map Manufacturer

Did the Library manufacture or publish the maps? Since the Library produced four different maps, this question may be answered differently depending on the map in question. However, if the Library simply republished inaccurate information, then it may be immune from strict liability.

A similar question was raised in the case *Brocklesby v. United States & Jeppesen & Co.*, in which Jeppesen used inaccurate data that was provided by the United States government in the manufacture of its maps. Jeppesen argued that it is "unfair to hold a chart manufacturer liable for accurately republishing a government regulation" (Gray, 1990).

The court agreed with Jeppesen on this point; it would be unfair to hold a publisher liable for simply republishing information that was inaccurate in the first place. The court used the following example to illustrate its point:

...if, for example, a trade journal had accurately published the government's instrument approach procedure in text form and a pilot had used the procedure as printed in the journal, the journal would be immune from strict liability. (Brocklesby, 1985)

However, the court disagreed with Jeppesen about whether its maps were simply republished or if they were *distinct products* from the data provided by the federal government. The court argued that the charts were indeed unique products:

Jeppesen's charts are more than just a republication of the text of the government's procedures. Jeppesen converts a government procedure from text into graphic form and represents that the chart contains all the necessary information...indeed, Jeppesen's charts are distinct products. As the manufacturer and marketer of those products, Jeppesen assumed the responsibility for insuring that the charts are not unreasonably dangerous for their intended use. (Brocklesby, 1985)

The Library has four different types of maps in its product line. Since no one was injured while using the Heloise or WC maps, strict liability is not an issue for those maps. The B&W and 3D maps may be vulnerable to strict liability, though, since people were injured while using those maps.

As noted, the B&W maps were photocopies of maps that had been produced by the U.S. Army Corps of Engineers, the U.S. Geological Survey and by the National Geographic Society. Given the *Brocklesby* case, one has to wonder whether or not photocopied maps are distinct products from the maps that were photocopied in the first place. If not, then the publisher of the original maps may be held liable, not the Library. In the *Brocklesby* case, one of the important factors cited by the court was that Jeppesen converted text into graphic representations. This is not an issue for the Library; both information products at issue are graphical representations. However, another important factor cited by the court is that Jeppesen marketed its maps as products. Since the Library marketed its B&W maps by placing advertisements in magazines, it is unclear whether or not the court would find the Library liable for these maps.

On the other hand, the 3D maps produced by the Library are more eligible candidates for products liability. Although these maps were originally based on maps published by the U.S. Army Corps of Engineers, the U.S. Geological Survey and by the National Geographic Society, the Library had added quite a few additional features. The 3D

maps were in color and came with narratives about the trails from local hikers in an attractive booklet. Since the Library took two-dimensional maps and converted them into another form—three-dimensional maps—it is much more likely that strict liability would apply for these maps.

3. Copyright

Violations of copyright law have serious consequences pursuant to the governing federal regulations, U.S. Code Chapter 17, sections 502 and 503. A court may order that the material in question be confiscated and destroyed, and the violating party may have to pay actual and statutory damages to the copyright holders. This section serves two purposes:

- (1) To determine which interested parties could file plausible actions against the library claiming copyright violations, and
- (2) To explore any possibilities that the library's uses of the maps could be permissible under law.

3.1 Interested Parties

Since the topo maps came from at least three parties, determining the source of each map is crucial for determining whether copyright law was broken. The publications of government and private organizations are treated very differently under the law. Another complication arises from the fact that there are also three parties associated with the Library who may legally own the copyright to portions of the maps: the writers of the narratives, the watercolorist, and the company or artist who created the relief effects.

3.1.1 Government Agencies

Section 105 of title 17 of *United States Code* states that "Copyright protection under this title is not available for any work of the United States Government..." Section 101 of title 17 of *United States Code* states that "A work of the United States Government is

a work prepared by an officer or employee of the United States Government as part of that person's official duties." The United States Geological Survey (USGS) is a division of the US Department of the Interior and a federal agency. The United States Army Corps of Engineers (USACE) is a corps of the US Army, a federal agency if ever there was one. Therefore, works of the USGS and USACE are not granted any copyright protection. This is confirmed on the USGS website, which states that

USGS-authored or produced data and information are in the public domain...We will identify material we use from sources outside of USGS, and request others do the same when using information published by USGS. Credit can be provided by including on the page (or via a link to a credits page) a citation... (USGS, n.d.)

The Library did not violate copyright by copying USGS or USACE maps, but in the future should consider citing the source of the information on any maps they provide as a courtesy.

3.1.2. The National Geographic Society

The National Geographic Society (NGS) holds copyright on their maps as stated by their website: "Our images are copyrighted either by a photographer, or by the National Geographic Society." The NGS classifies all maps as images. Therefore, in all of the Library's maps that contain portions of NGS maps, the rights to those portions belong to the NGS or any copyright holders that the NGS represents, such as photographers, cartographers, and artists.

The NGS allows some uses of its images (including maps) without requesting permission from the Society:

The Society has no objection to the reproduction of its images for educational purposes provided that the following criteria apply:

- (1) Images are used one time only, in a noncommercial educational setting. (One oral report, one written report, or one day of educational display is allowed by a single student or teacher for a single class.)
- (2) No fees are charged for your presentation using the images.
- (3) Images are not reused, further reproduced, or distributed.
- (4) Images are destroyed at the conclusion of the project.

(5) Images are not to be scanned for use on a Web page or with any online service or application. (National Geographic Images Collection, n.d.)

In order to determine if the Library's use of the NGS maps falls within these guidelines, it is necessary to examine them each in turn:

The hikers appear to be coming to the Library to buy maps to assist them in their recreational activities, not expressly for educational purposes. The actions of buying and selling indicate a commercial enterprise. The sale of the topo maps is a continuous activity, not a "one time only" use. The Library is clearly outside the boundaries of the first criteria.

Since selling the maps can be interpreted as charging a fee for presentation and they were reused, reproduced, and distributed by the Library, the second and third criteria are not met.

Whether or not the majority of the maps end up in the trash after a hiker's vacation is irrelevant. When purchasing a map, a buyer assumes ownership of the map and may choose to keep it as a souvenir or use it again in the future. Thus, the Library activities do not match up to the fourth criteria because it cannot guarantee destruction of the maps after their purpose has been met. It is impossible to determine if the fifth criteria was met without knowing more about the Library's use of the maps in any online applications. Given that the other criteria were not satisfied, it is not relevant.

Under the circumstances the Library's reproduction of the maps was not in accordance with the rules of the NGS for use without permission. Unless the library paid for the licensing of the National Geographic maps, its actions may have violated their copyright protections.

3.1.3. Narrative Writers

Under the 1976 Copyright Act as amended (title 17 of the *United States Code*), a work is protected by copyright from the time it is created in a fixed form. In other words, when a work is written down or otherwise set into tangible form, the copyright

immediately becomes the property of the author who created it. If no formal agreement was made regarding whether the narrations were for hire and the writers were not employees, then the default copyright goes to each writer from the moment their narration was fixed in writing.

Narratives written by local hikers and mountain climbers were included with the Heloise, WC, and 3D maps. U.S. code chapter 17, section 201(b) states that:

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

Therefore, if these narratives were made as a work for hire, then the Library holds copyright on this portion of the maps. According to *United States Code*, chapter 17, section 101:

A “work made for hire” is—

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

If the writers were Library employees and the work was within the scope of their employment, the Library would have a protected copyright interest. Otherwise, unless the Library obtained a signed contract from each writer agreeing that the narratives were a work for hire, the copyright of the narratives belongs to the writers.

There is no evidence in the guidelines of *Circular 9* that works volunteered gratuitously for a particular project by non-employees are subject to different regulations than paid works. Consequently, arguing that when the authors gave their narratives to the Library they relinquished their copyright would be difficult to prove, if, as noted, the writers did not explicitly state their intent to relinquish the copyright.

Since the details of the agreement between the Library and the writers are not known, no conclusion can be made about the Library's vulnerability to any copyright infringement claims that may be initiated by the writers.

3.1.4. Watercolorist and Relief Artist

It is known that the library paid a single watercolorist to add color to the WC maps and that a company or individual transformed the WC maps to the 3D maps. Many of the issues surrounding the writers of the narratives also apply to these parties. Even if the artists were Library employees, it is unlikely that their actions in regard to the WC and 3D maps will be recognized as being within the scope of employment. The same work for hire analysis would hold; unless the artists and the Library had signed contracts that specifically stated that their contributions to the maps would be works for hire, then the artists may hold those portions of the copyright.

3.2. Use of Materials

Depending on the nature of the Library's use of the materials and the nature of the materials themselves, there are four possible ways to defend at least some of its actions. Possible defenses include that the copyright of the materials had expired, the Library was operating within the laws of fair use, the Library was operating within the allowable parameters for libraries and archives, and that any of the alterations to the maps only reproduced the factual content of the copyrighted materials.

3.2.1. Copyright Duration

Works that have been in existence for a certain amount of time fall into the public domain. Different lengths of time apply depending on when the work was published and if the copyright was ever renewed. These regulations are outlined in U.S. Copyright *Circular 15t*. (U.S. copyright, n.d.). The Copyright Amendments Act of 1992 and the Sonny Bono Copyright Term Extension Act of 1998 have both amended the 1976 Copyright Act in ways that affect the copyright of the topo maps, most of which

were created between 1904 and 1976. Works published before January 1, 1923 have fallen into the public domain, but works published after that date could still be protected by copyright if there was a renewal by registration, or automatically under Public Law 102-307. The conditions of the law are complicated, requiring detailed analysis of the original copyright date and renewal status of each map. If this analysis leads to the conclusion that one of the maps in question is in the public domain, all uses of that particular map would be legal.

3.2.2. Fair Use

Another way that the Library may have legally used copyrighted material is if its actions fall within fair use regulations. The four criteria for determining fair use are stated in section 107 of title 17, *United States Code* as follows:

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character if the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

In regard to the purpose of use, the Library is in a bit of a grey area. As a public library, it is a non-profit educational institution—but it was selling the topo maps for a price above their production cost. As defined in section 101 of title 17, *United States Code*, “the term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.” According to this definition, the Library’s actions were for financial gain. The character of use is a strike against it; maps were being copied and printed systematically in large batches, not just upon an isolated request by a patron. Also, the topo maps were being used for recreational, not scholarly, purposes.

What exactly is the nature of the topo maps? Maps fall under the domain of copyright law. According to the U.S. Copyright Office:

...copyright protects original pictorial, graphic, and sculptural works, which include two-dimensional and three-dimensional works of fine, graphic, and applied art. The following is a list of examples of such works: ...cartographic works, such as maps, globes, relief models. (USCO, 2002)

However, maps have lighter protections than other works. In a landmark Supreme Court case, *Feist v. Rural*, 499 U.S. 340 (1991), it is stated that:

The 1976 Act explains that copyright extends to "original works of authorship," 17 U.S.C. 102(a), and that there can be no copyright in facts, 102(b). A compilation is not copyrightable per se, but is copyrightable only if its facts have been "selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." 101. Thus, the statute envisions that some ways of selecting, coordinating, and arranging data are not sufficiently original to trigger copyright protection. Even a compilation that is copyrightable receives only limited protection, for the copyright does not extend to facts contained in the compilation. 103(b).

Since maps are essentially graphical compilations of facts, the facts in a map would not be copyrightable under the analysis of the *Feist* case. The other component of a map that needs to be considered is the manner of graphical expression of those facts. When produced according to cartographic standards, a map possesses a low degree of creativity. As long as the maps were in a format that had not been originated by their makers, then they are only "thinly protected" under copyright law (Gasaway, 2002). This gives the library a stronger argument that their actions were protected under fair use.

As for determining the scale and proportion of the Library's use, it is unknown what portions of the original maps were used. If the Library only copied a section of a larger map, its actions are more likely to fall under fair use than if the entire work as a whole had been copied and distributed.

The effect of the Library's actions on the potential market for the works is also unknown at this time. If in the last six years the original maps were available for sale, then the

market and value of that work would have decreased due to the library's actions, negatively affecting the Library's claim to fair use. However, if the original maps were not available for sale during the past six years, the Library's claim to fair use is increased. The artists and photographers associated with the NGS are a strong lobby and require licensing of their work for reproduction—and a portion of the profit from the sale of those reproductions. The artists and photographers also have a strong interest in promoting only high quality reproductions of their images because low quality reproductions may degrade the perceived and, therefore, the actual value of their work.

In summary, the applicability of fair use to the Library's actions depends upon multiple unknown variables. Based on what is known at this time, the Library's actions are neither a blatant breach of copyright nor a perfect example of fair use, but could be determined by a court to fall outside the scope of fair use.

3.2.3. Rights of Libraries to Copy

Although the Library's actions may not be legal under the fair use law, libraries and archives do have special rights to reproduce copyrighted works. These are described in section 108 of title 17, *United States Code*. This section states that the rights do not apply to pictorial, graphic, or sculptural works and section 101 of the same title states that "Pictorial, graphic, and sculptural works include...maps". The Library's actions, therefore, are not covered by the rights in section 108.

3.2.4. Creation of Derivative Works

The Heloise, WC and 3D maps that were altered by the library from the copyrighted originals, although not exact copies, are also addressed under copyright law. These maps were altered through the addition of the hiker's commentaries, the colorization by the watercolorist and the transformation from two-dimensional maps into full-scale relief. This concept is defined under Section 101 of title 17, *United States Code*, which states that:

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

According to this definition, these maps may qualify as derivative works. Section 106 of title 17, *United States Code* states that:

“Subject to sections 107 through 121, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:
(1) to reproduce the copyrighted work in copies or phonorecords;
(2) to prepare derivative works based upon the copyrighted work;”

Therefore, the library’s creation of derivative works would be a flagrant breach of copyright law if not for the decision in the Feist case, i.e. that maps enjoy only slight protection under the law. The 3D map might be held to be legally created because just the uncopyrightable facts from the original map were reproduced. The argument for the WC map is not clear because it has only added color, preserving the graphical components of the original map. The Heloise map, simply annotated with the hiker’s commentaries, preserves entirely the graphical component of the original.

3.3. Conclusion

This review has identified possible copyright violations associated with the copying and distribution of graphic or textual material for which the Library has not received permission to copy. Specifically, this potential exists for all maps that are not authored by the Library or by the Federal Government (such as the USGS and the USACE). Further distribution by the Library of any map including graphics or text originating from NGS, the writers of the “helpful hints”, or the watercolorist would not be prudent without conforming to the guidelines outlined above. If the Library does not have permission to copy graphics or text from an author, the Library may wish to examine whether its copying and distribution falls within fair use guidelines. Sales of maps

containing unlicensed copyrighted material for any purpose is harmful to the Library's interests, since selling the maps may be considered a commercial enterprise.

4. Ethics

Unlike intellectual property and liability, ethics have no written rules which apply to everyone. Ethics are a system of tenets that guide our actions on a social and on an individual basis. Everyone has a set of internal rules for what he or she will or will not do; the study of ethics is to a large extent the discussion of the unifying principles underlying these rules. In the article "Ethical Principles and Information Professionals: Theory, Practice and Education," Livia Iacovino defines ethics as

...the study of the principles of human conduct or human actions. These actions must serve a purpose, which constitutes part or the whole of the moral agent's intention doing what he or she does. Ethics are about the way we behave and the values that we hold. (Iacovino, 2002)

Ethical principles and judgments are often reflected in law, but law neither is nor should be ethics. Not only are ethics much more complicated and varied than can be codified in any body of law, law arises differently and with a different purpose. According to Iacovino, codified law "focuses on actions and outcomes rather than values" (Iacovino, 2002). The difference between law and ethics is somewhat like the difference between liability and accountability. Law is about what happens. Ethics is about why, and those reasons will differ from person to person and from situation to situation.

This section will discuss whether or not the Library behaved unethically by examining its profit-making motives, its copying of maps and the consequences of its actions towards the local business community. These discussions will be framed in terms of professional ethics and in terms of various ethical perspectives such as utilitarianism, relativism and deontological approaches. The section will conclude with a discussion of who, if anyone, is accountable for the Library's actions.

4.1 Is the Library's Commercial Venture a Violation of Professional Ethics? If so, is the Violation Mitigated by the Library's Altruistic Motives?

4.1.1 The Library Mission Statement

As pointed out by Mary Anne Craft in the article "Public Library Business Ventures—Risks, Rubs and Revenue," the content of the Library's mission statement is crucial:

The library's mission should drive all the library's activities, including business ventures. For a library whose mission includes an educational function or "formal learning support" according to the ALA planning process (Himmel and Wilson, 1998) the managing of school libraries could be considered the means of both supporting and extending the library's mission to new audiences. (Craft, 1998)

We are completely in the dark when it comes to the type of language contained in the Library's mission statement. Assuming it has provisions that sanction the retail map operation, the Library's activities were within the ethical scope of its defined responsibilities.

4.1.2 The American Library Association Code of Ethics

Some guidance for answering this question is provided by the Code of Ethics of the American Library Association. The first principle states that "we provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access..." (American Library Association, 1995). It is understandable that hikers should pay more than a nominal fee for the Heloise, WC and 3D maps; their features are crafted specifically for handy use on the trails. However, charging hikers for copies of the B&W maps may be viewed as non-equitable service or access. Why should hikers have to pay more for a copy of the B&W maps than non-hiking patrons would have to pay for copies of other documents? What is not clear from the facts is whether the money collected was voluntarily donated by the hiking public or if the Library had established set fees for any or all of the maps. Obviously, this particular issue would not be a problem if the Library's stated policy was

that any money paid over and above the cost of copying is at the discretion of the donor.

The sixth principle states that “we do not advance private interests at the expense of library users, colleagues, or our employing institutions” (American Library Association, 1995). This statement lends some helpful context. By independently deciding to emphasize the children’s collections needs over other collections in the Library, has the Library in effect advanced its own agenda at other patrons’ and colleagues’ expense?

The thought also finds some support in the preamble to the principles where this language is found: “...we are members of a profession explicitly committed to intellectual freedom and the freedom of access to information. We have a special obligation to ensure the free flow of information and ideas to present and future generations” (American Library Association, 1995). The use of the word “present” generation is significant. To the extent that the Library has chosen to focus on the needs of the children, to the detriment of the adult population, there may be an ethical issue. On the other hand, if the Library’s map offerings are seen to spur a recreational interest in hiking for the public at large, it could be said that the activity serves to further the Library’s legitimate interests.

The underlying theme of these principles is one of public access and equity. This theme is echoed in the eighth principle which states that “we ... do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources” (American Library Association, 1995). If the aim of the Library is to provide “freedom of access to information,” then it could be argued that the sale of the maps exceeds the Library’s mission and mandate. Libraries are in the access and education business, not the retail sale of maps business.

4.1.2 An Ethical Theoretical Analysis

Over the six-year period of the map program, the revenue generated by the Library has created “a small, but steady stream of funds into the book acquisition budget for the

children's room." Depending on the theory employed, this laudable outcome may impact the decision making process.

For example, under a utilitarian approach, the consequence of an action must be weighed in determining the value of an action. Using this type of cost-benefit analysis, how does the Library fare? No one will deny society's interest in educating its citizenry or that the earlier this process starts the better for all. It is hard to argue with the Library's choice of action since it is now a proven formula for accomplishing this goal.

What has the cost been to the Library patrons and the Springs as a whole? There is admittedly no direct financial impact to the Library. The program is self supporting. However, there must necessarily be an impact on non-financial resources. Surely the Director's oversight of such a popular project is causing harm to other programs neglected as a consequence of time devoted to the maps and their marketing strategies. This statement is never truer than now with the threat of potentially energy-draining lawsuits looming large in the future. That brings up the potential indirect fiscal hit. Anyone engaging in a commercial venture has to anticipate potential lawsuits as a cost of doing business, especially in the litigious environment that is America today. Is a "small but steady stream of funds" worth the Library's potential exposure in a lawsuit?

A similar result occurs when the circumstances are viewed from a relativist's perspective. In a capitalist society such as the United States, enterprising and novel approaches to revenue generation are considered worthy and valuable, especially when they grant the public coffer some relief. However, where the potential exits for a negative cash flow due to a proliferation of litigation, any perceived value to the Library's resourcefulness would quickly evaporate. A different outcome might be possible in times of greater prosperity with a citizenry less given to frivolous and not so frivolous lawsuits.

A duty-based deontological point of view would hold that the issue to be examined is whether the Library has some type of "categorical imperative"—its own moral obligation

to fulfill in offering its services to the public. In essence the ALA's code of ethics is an attempt to codify this theory; it does not look to the ends to justify the means but deals with the "honor" of the means. Based on the preceding discussion in section 4.1.2, the likelihood of the Library's retail activities being viewed as honorable is slim.

An analysis of the Library's conduct pursuant to the right-based deontological approach yields the same consequence and highlights one of the difficulties of that approach. The Library has the right to do what it considers best to advance the public's unfettered access to information. It has chosen to build the children's collection by selling the topographic maps to other patrons, who have the conflicting right to equitable information service and access to information. It may be a challenge to justify the Library's action in light of the greater scheme.

4.1.3 A Proposed Equitable Solution

The Library may want to investigate the formation of a non-profit charitable Friends of the Library Organization by its more civic-minded patrons. This would avoid the ethical issues posed by the nature of the publicly funded Library and may circumvent some of the fall-out from the litigation. It would also help allay possible threats to the Library's tax-exempt status posed by the use of a paid employee to market the maps (Craft, 1998). Lastly, it would ensure that the Library's constituents supported the venture, erasing any concern that public funds might be jeopardized given the perception of the Library as a money making, self supporting organization.

4.2 Does the Library's Copying of Maps Violate Professional Ethics?

From a general, philosophical perspective, the ethical basis of copyright is unclear. In his article "Intellectual Property and Copyright Ethics," Mark Alfino conducts a historical and ethical discussion of copyright, outlining some arguments both for and against copyright, whether absolute or limited. In ethical terms, copyright results in an "ethical tension between individual and social values" (Alfino, 1991), specifically between the

right of a copyright holder to the products of her labor and the interest of society in freely accessible information.

Alfino argues that a utilitarian justification for copyright is persuasive in spite of its paradoxical nature. The free exchange of information allows people's ideas to inspire others, while the prospect of gain motivates people to produce and publish more ideas, therefore leading to more exchange and inspiration. Copyright holders have the limited right to profit from their production, as long as their work is available for access and use by others. This is the ethical basis for limited copyright which has been codified in law.

4.2.1. The American Library Association Code of Ethics

Does the copying of maps violate professional ethics? The Code of Ethics of the American Library Association is a good starting point for answering this question. In section four of the Code, it simply states that "we recognize and respect intellectual property rights" (American Library Association, 1995). Whether or not the Library violated any copyright laws (as discussed in the section three of this report), the Library may have behaved unethically when it copied the maps. This depends on several factors, such as whether the Library asked permission to use the maps and the ethical perspectives that are used to view the actions.

4.2.2 Permission

Assuming that copyright has an accepted ethical value, the next question is whether or not the Library obtained permission from copyright holders to reproduce and sell copies of their intellectual property—in this case, maps. If permission was asked and obtained, then there is no ethical conflict, since the interests of both copyright holders and the information-needy public have been met. On the other hand, if permission was not requested, or if it was requested and refused, then the interests of copyright holders have been violated in order to fulfill the interests of the Library and of the hiking public.

4.2.3 An Ethical Theoretical Analysis

In a deontological, rights-based ethical framework, the ends do not justify the means. Copyright holders have a right to control the circumstances under which their work is used. If the Library copied the maps without obtaining permission, doing so was clearly a violation of ethics. No matter what good might come from copying the maps, that good can never justify a violation of anyone's rights.

Utilitarianism, on the other hand, seeks the greatest happiness for the greatest number of people. While it is always impossible to consider every consequence of a particular action, especially with foresight rather than hindsight, it is sometimes reasonable to claim that one course of action produces significantly more or less happiness than another. In this case, there are three possible courses of action for the Library to take with respect to copying maps: a) copy the maps with permission from the copyright holders, b) without permission from the copyright holders, refuse to copy the maps, or c) copy the maps without permission.

Of these three options, the first is unquestionably the one which produces the most happiness, not only for the copyright holders and for the map-needy hikers but for the librarians' consciences as well. The Library might have to raise its prices slightly to cover the cost of licensing fees, but hopefully the maps would still be affordable. Comparing the latter two options is harder, since it weighs the happiness to be gained by the copyright holders in being paid for their intellectual property against the happiness to be gained by the hikers in obtaining maps from the library and by the children of the town in using the new resources, paid for by hiking tourists when they bought the maps. Thus, although utilitarianism would dictate that obtaining permission to copy the maps is the better course, it offers no great answers about whether copying is better than not copying when permission is withheld.

As explained above, limitations on copyright have a utilitarian justification. Rewarding producers of intellectual content and then limiting those rewards effectively stimulates production, resulting in greater happiness for society as a whole. Accordingly, if a

scholar or novelist were to use one of these maps in the production of a book, that use would be consistent with the purposes of copyright ethics. On the other hand, a hiker who uses the same map and then throws it away at the end of the day has not produced anything as a result of his trip. He has not given anything back to society and consequently has no right to "fair use" as defended by the ethics of copyright.

4.2.4 Library Policy: Individual vs. Systematic Copying

Another aspect of the ethics pertaining to copyright in this situation is the issue of individual vs. systematic copying, as defined by "fair use" guidelines in United States law. As Alfino argues, "the social value of free access to information is embodied in public lending practices developed during the free public library movement and in "fair use" guidelines..." (Alfino, 1991). The policy instituted by the Library with respect to lending and copying has both an ethical foundation and a duty to uphold those ethics, regardless of law, although law has a foundation in the same values pertaining to copyright. What is the Library's policy with regard to copying materials, and what should the policy be?

One important aspect of copying is the distinction between individual and systematic action. If a hiker comes into the Library, finds a map, photocopies it, and takes it with him on his trip, the cumulative effect of his action is very low. He only copies one map, for personal use, with no intention of affecting the original market for the map. This kind of use is allowed by current understandings of "fair use." However, what if a librarian locates the map and makes the photocopy for him? What if there are so many hikers coming in that the librarian no longer bothers mounting a search for maps and simply photocopies the same one every time? What if the Library starts copying the maps in batches? Each of these steps creeps further from individual use and into the realm of systematic copying. At each step, the copying becomes less defensible as "fair use," because the cumulative effect on the market for the copyrighted maps becomes greater. Although the hikers may be using the maps individually and thus ethically, the

Library's mass copying of the maps is systematic and thus has an ethically reprehensible effect upon the market for those hiking maps.

4.3 Does the Library Have a Moral Obligation to the Complaining Local Merchants?

This section will examine the effects of the Library's map venture in order to determine if the Library acted unethically towards local businesses. Whether or not the Chrystal Springs community is in support of private funding for libraries and viewing the issue from various ethical perspectives help to provide a framework for the discussion.

4.3.1 The Springs Community

Whether or not the Library acted in a morally irresponsible manner towards the local merchants depends largely on the Springs community. Mary Anne Craft poses an important ethical question for all would be library entrepreneurs: "does the library's community hold strongly to the value that public libraries must be supported by public funds (a legacy attributed to Andrew Carnegie)?" (Craft, 1998).

If the Chrystal Springs community is one with a strong anti-tax sentiment in which its entire public infrastructure is privately funded, then the library's map venture fits right in with the community values. In this case, the complaining merchants are less likely to "have a leg to stand on." However, if the community believes strongly that "public libraries are a public good and must be supported by public funds" (California Library Association, 1997), then the Library's actions are less likely to be viewed favorably by the community and may be unethical.

4.3.2 An Ethical Theoretical Analysis

In the utilitarian tradition of ethical analysis, how the library went about procuring more money for the children's room is less important than the happiness produced, compared to other courses of action. Therefore, whether or not the local merchants' rights were

violated is not a consideration. Did the benefits gained from the sale of the maps outweigh any possible negative financial impacts on the local merchants?

The answer to the question depends on the community of Chrystal Springs. If the community has a relatively young population with a proliferation of children, then the number of happy children will likely outnumber the number of unhappy map merchants. However, if the Springs is primarily a retirement community with relatively few children but with an abundance of map vendors to cater to the hiking tourists, then the number of unhappy map merchants will probably be in the majority. In this case, the sale of the maps may not be justified.

A less visible consequence of the Library's actions could entail the loss of business for local retailers, which in turn could weaken the fabric of the community's financial sector. This consequence would substantially weaken the utilitarian justification for the library's actions. This type of cost-benefit analysis becomes especially difficult when considering the impacts of map sales to the children of local business owners. The difficulty of attempting to analyze the costs and benefits in this type of situation illustrates one of the weaknesses of the teleological approach.

The contrasting deontological tradition is based on duty to others and on obligation to do right; the ends do not justify the means. The Library has a duty to respect the rights (and therefore the business interests) of the local entrepreneurs. However, the library also has a duty to the children of the community who deserve a new reading room. Here, again, conflicting interests highlight the difficulties with the deontological approach. Which duty should take precedence?

Another aspect of the deontological tradition, as Iacovino points out, is that "the moral worth is not in what will be accomplished but in the agent's intention" (Iacovino, 2002). The Library certainly did not set out to harm the local business community by taking away customers from other merchants. Given this view, the Library is less culpable ethically.

4.4 Who is Morally Responsible for the Library's Unethical Behavior?

The number of people involved in the creation, production and dissemination of the maps makes this question particularly difficult to answer since it obscures the line of responsibility. In her article "Accountability in a Computerized Society," Helen Nissenbaum describes this particular dilemma as a "problem of many hands." Since responsibility is "characteristically understood and traditionally analyzed in terms of a single individual," mishaps that are the work of "many hands" are particularly difficult to analyze—especially since "its most salient and immediate causal antecedents do not converge with its locus of decision making" (Nissenbaum, 1997).

However, this does not mean that *no one* is at fault for any unethical behavior committed by the Library. This section will focus on three groups of people involved with the current situation in order to determine who was responsible, whether in part or in whole: the Director, the librarians at the front desk who sold the maps, and non-librarians who were hired to assist with the maps.

4.4.1 The Director

Of all the people involved in the current "map crisis," the Director seems to be most directly responsible. After all, the whole idea of mass-producing and selling the B&W maps to raise money was the Director's idea. It was also the Director's idea to create the Heloise maps by adding narratives from local hikers.

We do not know if it was the Director's idea to create the WC maps and the 3D maps or to place advertisements in national hiking magazines. Nonetheless, these events occurred while he (or she) was at the helm of the Library. Since these actions occurred in very public venues—a national magazine and the library itself—it seems hard to believe that the Director could claim to be ignorant of their existence.

The recent accounting scandals at Enron and WorldCom have prompted an increased focus on corporate accountability and provide a helpful comparison. Legislation prompted by the scandals now requires "the principal executive officer or officers and

the principal financial officer or officers, or persons performing similar functions” to certify that all information contained in accounting reports is accurate and true (Sarbanes-Oxley Act, 2002). Although a public library is a vastly different institution from an international energy-trading company, the over-arching ethic that *the person at the helm of an institution is responsible for what happens while he or she is in charge* applies to both situations. The degree of accountability, of course, depends on the situation.

4.4.2 The Librarians at the Front Desk

Were the librarians at the front desk morally obligated to raise the alarm if they felt that the Library was acting irresponsibly? Although it is unclear if the Library had its own Code of Ethics, examining the Codes of Ethics from other institutions may provide a helpful framework for the discussion of moral responsibility.

The Association for Computing Machinery (ACM) Code of Ethics and Professional Conduct counsels its association members about how to approach this issue. According to the code:

In the work environment the computing professional has the additional obligation to report any signs of system dangers that might result in serious personal or social damage. If one’s superiors do not act to curtail or mitigate such dangers, it may be necessary to “blow the whistle” to help correct the problem or reduce the risk... Before reporting, all relevant aspects of the incident must be thoroughly assessed. (Association for Computing Machinery, 1992)

By analogy to this code of ethics, if one of the librarians knew that the Library’s actions were potentially harmful and chose not to raise an alarm, then the librarian’s inaction could be partially to blame. The degree of moral responsibility depends on a number of factors. Did the librarian raise the alarm but was ignored by her superiors? Was the librarian afraid to “blow the whistle” because of potential negative repercussions? Was the librarian completely ignorant of any ethical wrongdoing in the first place? If so, should she have been aware of this potential because of her professional status in the

institution? All of these factors would have to be considered in weighing the degree of responsibility.

4.4.3 Non-Librarians who were Involved with the Maps

Several other people were involved in the production of the maps. These folks included the person hired by the Library “to handle the photocopying, mailing and accounting” of the maps, the hikers who contributed narratives to the Heloise map and the watercolorist. These people all had one thing in common: they were not professional librarians, but were hired by the library to help create, produce or disseminate the maps.

Were these folks morally obligated to raise an alarm if they felt as if something was amiss? If any of these people also happened to be professional librarians, then it seems reasonable to hold them to the same degree of accountability as the librarians who worked at the Library. However, for the folks who did not also happen to be professional librarians, it seems unreasonable to hold them to the ALA Code of Ethics or other codes of ethics designed for information professionals.

4.4.4. Conclusions

Although the “many hands” problem does obscure who is directly responsible for unethical behavior—especially behavior that results in tangible harms—Nissenbaum asserts that “we ought not conclude therefore that the harms were mere accidents.” When many people are involved in an institution that behaves unethically, “determining their degree of responsibility would require that we investigate more fully their *degree* of causal responsibility, control and fault” (Nissenbaum, 1997).

So, what should be done once it is decided who should take part in bearing responsibility for the Library’s unethical behavior? The ACM Code of Ethics provides a helpful clue:

Well-intended actions, including those that accomplish assigned duties, may lead to harm unexpectedly. In such an event the responsible person or persons are obligated to undo or mitigate the negative consequences as much as possible. (Association for Computing Machinery, 1992)

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