

E. Reserve Collection

Definition

Many academic libraries ensure access to required reading materials for entire classes of students through reserve collections. Reserve lists supplied by the faculty usually consist of books and journal articles.

Pertinent sections of the law

Entire books rarely present copyright problems because the library usually provides one or more copies of the book rather than photocopies of it. However, copyright problems are created when faculty members ask for multiple copies of journal articles or small portions of monographs.

Section 108 does not affect reserve collections.

Section 107 specifically states that reproduction of a copyrighted work for teaching, including multiple copies for classroom use, is not an infringement of copyright if the particular case constitutes fair use. Four factors must be considered in determining whether a particular case is fair use: (1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and the 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 the value of the copyrighted work. An interpretation of fair use in educational situations ("Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals," [Appendix B]) was drawn up by representatives of authors and publishers, educators, and librarians. It should be stressed that the purpose of the guidelines is to state the minimum and not the maximum standards of educational fair use. The guidelines are not intended to limit the types of copying that are permitted under the standards of fair use and may be subject to changes in the future.

Under the guidelines, multiple copies may be made by or for the teacher for classroom use or discussion if the copying meets the tests for "brevity," "spontaneity," and "cumulative effect," and if each copy includes a notice of copyright.

Brevity is defined as either a complete article, story, or essay of less than 2,500 words or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less; but a minimum of 500 words is allowed in all circumstances. For example, in a work of 800 words, the guidelines will permit 500 words to be excerpted even though this amounts to over 60% of the work.

To meet the test of spontaneity the copying must be done at the request of the teacher, and the decision to use the copyrighted work must be so close to the time needed that it would be unreasonable to expect a timely reply to a request for permission to copy from the work.

To meet the cumulative effect test: (1) the material copied must be for only one course in the school; (2) not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term; and (3) there shall not be more than nine instances of multiple copying for one course during one class term.

Part three of the guidelines specifically prohibits the following:

- (1) copying used to create, replace, or substitute for anthologies, compilations, or collective works;
- (2) copying of consumable materials, such as workbooks, exercises, and standardized tests;
- (3) copying used to substitute for the purchase of books, periodicals, or publisher's reprints;
- (4) copying directed by "higher authority," such as the head of the school system; and
- (5) repeated copying of the same item for the same teacher from term to term.

Common practices

Every library must evaluate its present reserve room practices and determine whether they meet the criteria for educational fair use under section 107.

Reserve collections often exist because providing a copy for all members of a class would be prohibitively expensive or unreasonable. Suppose all tests for the guidelines are met: still, making 100 copies of a three-page article for 100 students would be unreasonable and impractical; but making ten copies accessible to the same number of students for classroom purposes through a reserve collection is practical, reasonable, and defensible under section 107.

Faced with going beyond the guidelines, there are several options for either the reserve librarian or the faculty member: (1) ask for permission from the copyright holder to copy the materials; (2) request reprints from the authors; (3) buy extra issues of the journals containing the articles; or (4) purchase the needed copies from a licensed document delivery service.

Record keeping

For future review and modification of the law and guidelines, reserve collection librarians should compile data on how their practices have been modified by the new law. Examples of useful types of information include: (1) lists of former practices believed to be prohibited by the law; (2) the number of times items were not placed on reserve because to do so would exceed fair use; (3) the types of alternatives used, the number of times each was used, and the estimated cost in time and in money for each instance.

F. Computer Software

Definition

Restrictions on the use of computer software are far from uniform. In general, the library does not have the right to receive and use Unauthorized copies of software, or to make unauthorized copies of software for others. Clearly, the outright reproduction of computer software without authorization violates the U.S. copyright law. However, the copyright status of computer programs and databases remains troublesome, and it is likely that specific provisions will have to be written into the law to clarify the application of conventional copyright doctrine to computer software.

In the meantime, the following comments, excerpted from a memorandum circulated at the Massachusetts Institute of Technology, may prove useful.*

1. Copyright unquestionably covers programs in flow chart, HIPO, or source language form. Whether it covers the transformation of a program from one of these into the other or from one source language into another is less clear, as is the question of how a program should be considered to be infringed.

*See Appendix I, page A-29.

APPENDIX B.

Agreement on Guidelines for Classroom Copying in Not -For-Profit Educational Institutions with Respect to Books and Periodicals.

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2233. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

— Guidelines —

I. SINGLE COPYING FOR TEACHERS:

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

II. MULTIPLE COPIES FOR CLASSROOM USE:

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; **provided that:**

- A. The copying meets the tests of brevity and spontaneity as defined below:
and,
- B. Meets the cumulative effect test **as** defined below;
and,
- C. Each copy includes a notice of copyright.

DEFINITIONS

Brevity:

- i. Poetry: (a) A complete poem if less than **250** words and if printed on not more than two pages or (b) from a longer poem, an excerpt of not more than 250 words.
- ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of **500** words.
[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]
- iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- iv. "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and

containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity:

- i. The copying is at the instance and inspiration of the individual teacher, and
- ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect:

- i. The copying of the material is for only one course in the school in which the copies are made.
- ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- iii. There shall not be more than nine instances of such multiple copying for one course during one class term;

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. PROHIBITIONS AS TO I AND II ABOVE:

Notwithstanding any of the above, the following **shall** be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:

- a. substitute for the purchase of books, publisher's reprints or periodicals;
- b. be directed by higher authority;
- c. be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

AGREED

March 19, 1976

AD HOC COMMITTEE ON
COPYRIGHT LAW REVISION

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