

A study on copyright issues and electronic reserve

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Abstract

Legal issues present important and unusual challenges for academic librarians. Despite the ways in which legal regimes such as free speech, intellectual property protection, privacy, and contract law often shape library practice, few librarians may have substantial graduate-level training in this area. As a result, decisions with legal implications are often made (particularly by front-line librarians) with an incomplete understanding of the nuanced issues involved.

To support day-to-day operations, many libraries generate policies—“framework[s] within which individuals can exercise judgment”—for library practice within specific legal areas.

Establishing best practices for interpreting and adhering to copyright law is especially difficult in the context of electronic reserves (e-reserves) services.

Keywords: Copyright Law, E-Reserves, Library Network, Policies.

Introduction

Copyright is a legal right created by the law of a country that grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the creator e.g. the photographer of a photograph or the author of a book to receive compensation for their intellectual effort.

Many institutions are quickly adopting electronic methods for sharing reserve content with students. These “e-reserves” - ranging from electronically scanned paper documents to other content that originates in electronic format such as online journal articles - are typically made available to students through an academic department Web site, a course management system or a library network. These systems usually require password authentication and enable students to electronically download and locally print the reserve material. Establishing best practices for interpreting and adhering to copyright law is especially difficult in the context of electronic reserves (e-reserves) services.

Both law and practice in this domain are less established than in many other areas of copyright law such as first sale or archival activities. For library practice within specific legal areas, privacy policies, copyright policies, licensing policies and the like can be invaluable tools, initially crafted by legal experts and then put into practice by librarians and staff on a day-to-day basis; however, the content and structure of policies can vary substantially from institution to institution, particularly in cases where a model policy, proposed by a professional organization such as the American Library Association, is absent. Further, institutions may have limited or idiosyncratic access to policies from other institutions, making it difficult to conduct a systematic review of peer institutions’ policies in order to share information or establish a coherent set of best practices.

Reserves and electronic reserves (e-reserves) provide a way for instructors to share content with students. This content often includes class notes along with copyrighted materials such as books, book chapters, journal articles and other works purchased by your institution's library. With e-reserves content is posted electronically and available to students online.

Traditional Paper Reserves

Materials placed on traditional reserve are available to cases.

While the Copyright Act does not specifically address library reserves, standards do exist for paper-based reserves. These standards are based on the Copyright Act's fair use provision.

The Library Association has endorsed the following standards for sharing copyrighted material through paper-based reserves:

1. The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course, taking into account the nature of the course, its subject matter and level.
2. The number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same materials.
3. The material should contain a notice of copyright.
4. The effect of photocopying the material should not be detrimental to the market for the work. In general, the library should own at least one copy of the work.

Electronic Reserves

Unless it is covered by fair use, public domain or another specific copyright exception, anything posted to an electronic environment requires copyright permission prior to posting. The "first use is free" standard invoked by many libraries is not part of the Copyright Act or any subsequent rulings or provisions.

In short, both groups recommend that academic institutions explore a range of e-reserve practices and select a combination that illustrates respect for the law and the institution's overall position on copyright rights. When evaluating practices, the institution should also consider its dual role as both a copyright holder and a user of others' copyrighted works. Whatever guidelines your institution chooses to adopt, Copyright Clearance Center's compliance solutions provide quick and easy copyright permission, ensuring the lawful use of content in e-reserves and other types of use.

Following is a summary of e-reserve policies possessing comprehensive copyright practices.

- E-reserve materials should be limited to small portions usually single articles or chapters, or less of copyrighted works.
- E-reserves should not be used as a substitute for the purchase of books or subscriptions, or other materials required for educational purposes.
- In a situation where a course-pack would require copyright permission, e-reserves in the same context (instructor, course) would also require copyright permission.
- If the material does not pass the fair use test in paper, it will not pass the fair use test in electronic format.
- When switching from paper use to electronic use permission must be obtained for the material in the new format.
- Copies of materials placed on e-reserve should be made from originals—either printed materials or authorized copies - owned by the institution or instructor.
- E-reserves should be accessible (by password or other control) only by the students in a single class, faculty and staff associated with the class, and the administrator or IT person responsible for maintaining e-reserves.
- E-reserves for a particular class should be taken down or made inaccessible at the end of that term of the class.
- Materials on e-reserve should contain both the copyright notice from, and a complete citation to, the original material.
- Digital licenses between content providers and academic institutions must be carefully reviewed to determine the extent material may be used in an e-reserve context.

Applying Fair Use in the Development of Electronic Reserves Systems

For decades libraries have provided access to materials selected by faculty that are required or recommended course readings in a designated area of the library, with materials available to students for a short loan period and perhaps with additional restrictions to ensure that all students have access to the material. Libraries have based these reserve reading room operations on the fair use provisions of the Copyright Law.

Within the past decade many libraries have introduced electronic reserves (e-reserves) systems that permit material to be stored in electronic form rather than storing photocopies in filing cabinets. Depending on the particular electronic reserves system, student access may occur in the library or remotely. Students who wish to have a copy of the reading can print it

from the e-reserves systems rather than having to take the original volume to a photocopy machine.

The number of electronic resources licensed by libraries has increased significantly over the past decade. The licenses to these resources often include the right to use them in e-reserves systems. In such cases, no permission is required and a fair use analysis is unnecessary.

To ensure, however, that electronic content is effectively incorporated into e-reserve systems, there must be cooperation among library staff acquiring the digital resources and those managing e-reserves operations. They must work together to be certain that the license agreements do not preclude rights to make materials available through e-reserves systems, and that no one pays additional permission fees for uses already covered by a license.

As a result of the increase in licensed electronic resources, the percentage of print materials requested and digitized for e-reserves is diminishing. E-reserves practices for these materials vary widely and are influenced by institutional organizational structures, the information and technology infrastructure, manpower, demand, and the copyright law. The factors described below demonstrate a range of considerations when implementing fair use for e-reserves. They also distinguish the approach librarians are entitled to take when determining whether a use is fair from the approach librarians must take when determining whether a use falls within another statutory exemption. For example, Sections 108 (the library reproduction exemption) and 110 (exemption for public displays and performances including the TEACH Act) mandate a "checklist" approach: if a proposed use fails to comply with any condition, prohibition, or exclusion, the exemption does not apply.

Electronic Reserve Service Guidelines

Through its electronic reserve (e-reserve) service, Northwestern University Library provides access to course materials in support of the University's academic and teaching mission. Access to e-Reserve is provided to enrolled students in each specific class primarily through Blackboard. Resources are available one for the academic quarter of the course.

Several types of course materials can be requested for e-Reserve, including book excerpts and journal articles. Exams, class notes, and other unpublished original works created by the requesting faculty member are also candidates for e-Reserve.

The University Library's guidelines for providing access to copyright-protected materials, through its e-Reserve service are derived from the fair use provisions of the *U.S. Copyright Act of 1976* (Title 17 of the *United States Code*). Section 107 of the *Copyright Act* expressly permits fair use of copyrighted materials for teaching, scholarship, and research. Such educational copying does not require the payment of a royalty or the permission of the copyright owners, provided that the circumstances of the use are fair as determined by a consideration of four factors specified in Section 107:

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 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.

For each item requested to be made available, Reserve staff will make a case-by-case assessment, but for efficiency will follow the general guidelines set forth below.

General Guidelines

When scanning excerpts of a book for courses through its e-Reserve service, the Library's reserve staff will limit the portion of any single book scanned and made available to a chapter or two, but no more than 15% of an entire book.

Reserve staff will scan and make available a single article from a particular issue of a periodical e.g. Journal or newspaper.

For instructors who seek to use an item that does not meet the general guidelines stated above, Reserve staff will seek permission from the appropriate copyright holder or agent (such as the Copyright Clearance Center) and pay any associated fees, if reasonable.

Any item in the public domain can be scanned in its entirety for e-Reserve upon request.

For library-licensed resources, unless expressly contractually forbidden, a stable or durable link to an electronic item will be used for access to e-Reserve materials.

For library-licenses resources that do not provide DOI, stable or durable URLs and other like technical capabilities and do not contractually forbid e-Reserve use, Reserve staff will convert the electronic item to a PDF and post it for class access.

Requesting Items

Request e-reserve items through the Course Reserves tool under Library Resources in Blackboard/CMS course sites.

Please provide full citations for all items submitted, including the source (book or journal).

To guarantee timely processing of items, please submit item requests at least three weeks before the needed date. Processing materials (and obtaining copyright clearance, if applicable) may take a considerable amount of time.

Specify the dates by which each item should be available to your students. Please note that we cannot process all your course readings at the beginning of term. Three week lead time is best.

Please indicate if a document has been used in Electronic Reserve during a past quarter, as archive files can be reactivated.

All e-reserve documents will be automatically deactivated at the end of the term.

Access to E-Reserve

Access e-reserve through the Course Reserves tool under Library Resources which is found in Blackboard/CMS course site. Reserve is NOT responsible for the construction or support of Blackboard pages; technical support for Blackboard/CMS is handled through Academic & Research Technologies.

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