Copyright & Electronic Reserve

Morris Library Reserves uses the ARL Intellectual Property and Copyright Committee Statement developed by Georgia Harper and Peggy Hoon as the guideline for copyright in Electronic Reserve.

Applying Fair Use in the Development of Electronic Reserves Systems, November 2003

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 (Section 107). [1]

Within the past decade many libraries have introduced electronic 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.

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.

Section 107's four-factor fair use test takes a fundamentally different approach: it simply directs that libraries assess overall whether a use is fair by considering the character of the use, the nature of the work to be used, the amount used in proportion to the whole and the impact on the market for the work. There is no fair use checklist, and there is no need to import from other sections of the law the detailed checklists of conditions, prohibitions, and exclusions that characterize their approach. Librarians balance their own interests with the copyright owners'
interests. This summary illustrates ways in which libraries can apply fair use criteria in the development of best practices for e-reserves.

- **First Factor: The character of the use.** Libraries implement e-reserves systems in support of non-profit education.
- **Second Factor: The nature of the work to be used.** E-reserves systems include text materials, both factual and creative. They also serve the interests of faculty and students who study music, film, art, and images. Librarians take the character of the materials in the overall balancing of interests.
- **Third Factor: The amount used.** Librarians consider the relationship of the amount used to the whole of the copyright owner's work. Because the amount that a faculty member assigns depends on many factors, such as relevance to the teaching objective and the overall amount of material assigned, librarians may also consider whether the amount, even the entire work, is appropriate to support the lesson or make the point.
- **Fourth Factor: The effect of the use on the market for or value of the work.** Many libraries limit e-reserves access to students within the institution or within a particular class or classes. Many use technology to restrict and/or block access to help ensure that only registered students access the content. Libraries generally terminate student access at the end of a relevant term (semester, quarter, or year), or after the student has completed the course. Many e-reserves systems include core and supplemental materials. Limiting e-reserves solely to supplemental readings is not necessary since potential harm to the market is considered regardless of the status of the material. Libraries may determine that if the first three factors show that a use is clearly fair, the fourth factor does not weigh as heavily.

**Summary**

While there is no guarantee that a practice or combination of practices is fair use, such certainty is not required to safely implement e-reserves. The law builds in tolerance for risk-taking. Section 504(c)(2) of the Copyright Act provides special protection to nonprofit libraries, educational institutions and their employees. When we act in good faith, reasonably believing that our actions are fair use, in the unlikely event we are actually sued over a use, we will not have to pay statutory damages even if a court finds that we were wrong. This demonstrates Congressional acknowledgement of the importance of fair use and the importance of our using it!

**Exceptions for Instructors in U.S. Copyright Law**

- [Use this simple wizard to help you determine if a resource and how you wish to use it comply with copyright law](http://www.lib.uiuc.edu/help/exceptions). It was developed by the American Library Association's Office of Information Technology Policy.
Copyright Procedures

- Complete books will not be scanned into electronic reserves.
- Materials which do not require copyright permission include the exams, syllabi, and lecture notes of the instructor placing material on electronic reserves, government publications, a single journal or magazine article used for one semester, a single book chapter used for one semester, works of art used for one semester, or material for which the professor or instructor owns copyright.

Source URL (retrieved on Apr 7 2016 - 8:34pm):
http://www.lib.siu.edu/ereserves-copyright

Links: