

## The Copyright Act and Photocopying at Mears Library

### I. Introduction

The faculty and staff of the University of Sioux Falls may use photocopied materials to supplement research and teaching. In many cases, photocopying can facilitate the mission of the University of Sioux Falls to educate students in the humanities, sciences, and professions. Also to facilitate the mission of Mears Library to support the University curriculum by providing convenient, effective access to books and other information resources. The photocopying of copyrighted materials is a right granted under the copyright law's doctrine of "fair use" which must not be abused. This will explain the Mears Library policy concerning the photocopying of copyrighted materials by faculty and library staff. Please note that this policy does not address other photocopying which may be permitted under sections of the copyright law, e.g., 17 U.S.C. 108.

Copyright is a constitutionally conceived property right which is designed to promote the progress of science and the useful arts by securing for an author the benefits of his or her original work of authorship for a limited time. U.S. Constitution, Art. 1, Sec. 8. The Copyright statute, 17 U.S.C. 6101 et seq. implements this policy by balancing the author's interest against the public interest in the dissemination of information affecting areas of universal concern, such as art, science, history and business. The Copyright Act defines the rights of a copyright holder and how they may be enforced against an infringer. Included with the Copyright Act is the "fair use" doctrine which allows, under certain conditions, the copying of copyrighted material. While the Act lists general factors under the heading of "fair use" it provides little in the way of specific directions for what constitutes fair use. The law states:

17 U.S.C. 107. Limitations on exclusive rights: Fair use.

Notwithstanding the provisions of section 106, the fair use of copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, **for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.** 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 of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of 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.

The purpose of this policy is to provide the faculty and staff of the University of Sioux Falls with an explanation of when the photocopying of copyrighted material in our opinion is permitted under the fair use doctrine for research, classroom, and library reserve photocopying.

This library does not condone a practice of photocopying instead of purchasing copyrighted works where such photocopying would constitute an infringement under the Copyright law, but it does encourage faculty members to exercise good judgment in serving the best interests of students in an efficient manner. Faculty should attempt a "selective and sparing" use of photocopied, copyrighted material and secure permission to photocopy copyrighted works when

such copying is beyond the limits of fair use. It is the policy of the library that the user (faculty, staff or librarian) secure such permission whenever it is legally necessary.

## II. Unrestricted Photocopying

- A. Un-copyrighted published works (some restrictions apply)
- B. Published works with expired copyrights (dates of expiration vary – check with librarian)
- C. Unpublished works  
Unpublished works, such as theses and dissertations, may be protected by copyright.  
Check with the librarian.
- D. U.S. Government publications (with possible exceptions)

## III. Permissible Photocopying of Copyrighted Works

### A. Research Uses

An instructor may make a single copy of any of the following for scholarly research or use in teaching or preparing to teach a class:

1. a chapter from a book;
2. an article from a periodical or newspaper;
3. a short story, short essay, or short poem, whether or not from a collective work;
4. a chart, diagram, graph, drawing, cartoon or picture from a book, periodical, or newspaper.
5. the inability to obtain another copy of the work because it is not available from another library or source cannot be obtained within your time constraints;
6. the intention to photocopy the material only once and not to distribute the material to other;
7. the ability to keep the amount of material photocopied within a reasonable proportion to the entire work (the larger the work, the greater amount of material which may be photocopied).

### B. Classroom Uses

An instructor may distribute photocopied material to students in a class without the publisher's prior permission, under the following conditions.

1. the distribution of the same photocopied material does not occur every semester;
2. only one copy is distributed for each student which copy must become the student's property;
3. the material includes a copyright notice on the first page of the portion of material photocopied;
4. the students are not assessed any fee beyond the actual cost of the photocopying;
5. faculty should adhere to brevity standards. Under those standards, a prose work may be reproduced in its entirety if it is less than 2500 words in length. If the work exceeds such length, the excerpt reproduced may not exceed 1000 words, or 10% of the work. In the case of poetry, 250 words is a suggested maximum. Faculty members needing to exceed these limits should not feel hampered and should attempt a "selective and sparing" use of photocopied, copyright material.
6. the photocopying practices should not have a significant detrimental impact on the market for the copyrighted work. 17 U.S.C. 107(4).
7. restrict use of an item of photocopied material to one course and not repeatedly photocopy excerpts from one periodical or author without the permission of the copyright owner.

### C. Library Reserve Uses

At the request of a faculty member, the library may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with guidelines similar to those governing formal classroom distribution for face-to-face teaching. The library believes that these guidelines apply to the library reserves to the extent they function as an extension of classroom readings or reflect an individual student's right to photocopy for his or personal scholastic use under the doctrine of fair use. In general, librarians may photocopy materials for reserves for the convenience of students both in preparing class assignments and in pursuing informational educational activities which higher education requires, such as advanced independent study and research.

If a request calls for only one copy to be placed on reserve, the library will photocopy an entire article, or an entire chapter from a book, or an entire poem. Requests for multiple copies should meet the following guidelines:

1. the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course.
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 material, 17 U.S.C. 107(1) and (3).
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.) 17 U.S.C. 107(4).

In addition, a faculty member may also request that multiple copies of photocopied, copyrighted material be placed on reserve if this is insufficient time to obtain permission from the copyright owner.

### D. Uses of Photocopied Material Requiring Permission

1. repetitive copying: The classroom or reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright, 17 U.S.C. 107(3).
2. copying for profit: Faculty should not charge students more than the actual cost of photocopying the material, 17 U.S.C. 107(1).
3. consumable works: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner, 17 U.S.C. 107(4).
4. creation of anthologies as basic text material for a course. Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyrighted owners, 17 U.S.C. 107(4)

## IV. Fair-Use Guidelines for Electronic Reserves

### Introduction

The library has established reserve operations for articles, chapters from books and other materials that support the instructional requirements of specific courses. Electronic reserve systems allow storage of electronic versions of materials that students may retrieve on a computer

screen, and from which they may print a copy for their personal study. When materials are included as a matter of fair use, electronic reserve systems should constitute an ad hoc or supplemental source of information for students, beyond a textbook or other materials. If included with permission from the copyright owner, the scope and range of materials is potentially unlimited, depending upon the permission granted. Although fair use is determined on a case-by-case basis, the following guidelines identify an understanding of fair use for the reproduction, distribution, display, and performance of materials in the context of creating and using an electronic reserve system.

Making materials accessible through electronic reserve systems raises significant copyright issues. Electronic reserve operations include the making of a digital version of text, the distribution and display of that version at workstations, and downloading and printing of copies. The complexities of the electronic environment, and the growing potential for implicating copyright infringements, raise the need for a fresh understanding of fair use. These guidelines are not intended to burden the facilitation of reserves unduly, but instead offer a workable path that educators and librarians may follow in order to exercise a meaningful application of fair use, while also acknowledging and respecting the interests of copyright owners.

The guidelines address only those materials protected by copyright and for which the institution has not obtained permission before including them in an electronic reserve system. The limitations and conditions set forth in these guidelines need not apply to materials in the public domain—such as works of the U.S. government or works on which copyright has expired—or to works for which the institution has obtained permission for inclusion in the electronic reserve system.. License agreements may govern the uses of some materials. If an instructor arranges for students to acquire a work by some means that includes permission from the copyright owner, the instructor should not include that same work on an electronic reserve system as a matter of fair use.

#### A. Scope of Material

1. In accordance with fair use (Section 107 of the U.S. Copyright Act), electronic reserve systems may include copyrighted materials at the request of a course instructor.
2. Electronic reserve systems may include short items (such as an article from a journal, a chapter from a book or conference proceedings, or a poem from a collected work) or excerpts from longer items. “Longer items” may include articles, chapters, poems and other works that are of such length as to constitute a substantial portion of a book, journal, or other work of which they may be a part. “Short items” may include articles, chapters, poems, and other works of a customary length and structure as to be a small part of a book, journal, or other, work even if that work may be marketed individually.
3. Electronic reserve systems should not include any material unless the instructor, the library, or another unit of the educational institution possesses a lawfully obtained copy.
4. The total amount of material included in electronic reserve systems for a specific course as a matter of fair use should be a small proportion of the total assigned reading for a particular course.
- 5. Class notes and lectures and power point presentations will not be part of course reserves.**

#### B. Notices and Attributions

1. On a preliminary or introductory screen, electronic reserve systems should display a notice, consistent with the notice described in Section 108(f)(1) of the Copyright Act. The notice should include additional language cautioning against further electronic distribution of the digital work.

2. Materials included in electronic reserve systems should include appropriate citations or attributions to their sources.

#### C. Access and Use

1. The electronic reserve system is structured to limit access to students registered in the course for which the items have been placed on reserve, and to instructors and staff responsible for the course or the electronic system.
2. The appropriate methods for limiting access will depend on available technology. Solely to suggest and not to prescribe options for implementation, possible methods for limiting access may include one or more of the following or other appropriate methods:
  - a. individual password controls or verification of a student's registration status; or
  - b. password system for each class; or
3. Students are not charged specifically or directly for access to the electronic reserve system.

#### D. Storage and Reuse

1. Permission from the copyright holder is required if the item is to be reused in a subsequent academic term for the same course offered by the same instructor, or if the item is a standard assigned or optional reading for an individual course taught in multiple sections by many instructors.
2. Material may be retained in electronic form while permission is being sought or until the next academic term in which the material might be used, but in no event for more than three calendar years, including the year in which the materials are last used.
3. Short-term access to materials included on electron reserve systems in previous academic terms may be provided to students who have not completed the course.

#### V. How to obtain permission

When a use of photocopied material requires that you request permission, you should communicate complete and accurate information to the copyright owner. The American Association of Publishers suggests that the following information be included in a permission request letter in order to expedite the process:

1. Title, author and/or editor, and edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.)
6. Whether or not the material is to be sold.
7. Type of reprint (ditto, photography, offset, typeset).

The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question.

The process of granting permission requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed. In some instances, the publisher may assess a fee for the permission. It is not inappropriate to pass this fee on to the student who receives copies of the photocopied material.

**The Copyright Clearance Center also has the right to grant permission and collect fees for photocopying rights for certain publications. Libraries may copy from any journal which is registered with the CCC and report the copying beyond fair use to CCC and pay the set fee. A list of publications for which the CCC handles fees and permissions is available from CCC on-line. The library does this as a service to our faculty if copyright permission has not been granted. Faculty must indicate if copyright permission has or has not been granted on the completed reserve slip that must accompany all reserve and e-reserve requests along with permission granted to charge the department. The completed reserve slip must be signed and dated by the instructor making the request.**

**Complete Copyright : An Everyday Guide for Librarians by Carrie Russell published by the American Library Association, 2004. p. 193-198, 209-211.**