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## copyright in the library

### Reserving works for limited use -- generally

#### Fair use

Libraries, like individuals, have rights under [17 U.S.C. Section 107](#) ("Section 107") to make fair uses of copyrighted works.<sup>1</sup> Most commonly they exercise these rights in one or another form of what used to be called the Reserve Room.

#### Reserving works for limited use

Teachers often make supplemental reading assignments or recommend additional readings that all their students can not complete given normal loan periods. Placing the reading materials on reserve gives each student time-limited access, but sometimes even severe restrictions on the loan period will not guarantee full access. The students need more copies. Faculty members may provide their own copies or ask the library to make or acquire additional copies.

Since the Reserve Room is an extension of the classroom, its copying must conform with fair use principles. There is no part of Section 108 that addresses this kind of copying. Complying with fair use is not an easy task because fair use can be hard to understand. For example, **Section 107** explicitly cites the practice of making multiple copies for classroom use as an example of fair use, but the provision also requires the user to consider at least the famous "four factors" that are stated in the statute before deciding whether a particular use is fair:

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 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.

*Not very helpful, are they?*

Still at one time universities thought they knew what fair use was. Now, however, these commonly held beliefs have been challenged by several lawsuits over the scope of fair use.<sup>2</sup> These lawsuits raise serious concerns.

The discussion of Reserve Room operations that follows (see links below) will rely on a basic assumption: if a faculty member could lawfully prepare coursepacks comprising photocopies of six articles from different periodicals and one chapter from a book without permission,<sup>3</sup> those same materials can be placed on reserve, making a more conservative use of the fair use right. Similarly, however, for any set of materials that would not be fair use in a coursepack, we should get permission to make copies for reserve use. In the analyses that follow, we will see how the exercise of this right changes in print, audio, still image, video and electronic multimedia media.

#### Footnotes:

<sup>1</sup> 17 U.S.C. Section 107 (f)(4) ("[Section 107](#)" generally), which protects certain library reprographic and distribution activities, explicitly preserves any rights libraries may have under [Section 107](#). Fair use rights may be different from and/or more extensive than rights under Section 108.

<sup>2</sup> *Addison-Wesley Publishers Co., Inc. v. New York University*, (settled out of court); *Basic Books, Inc. v. Kinko's Graphics Corporation*, 758 F. Supp. 1522 (S.D.N.Y. 1991); *American Geophysical Union v. Texaco, Inc.*, 802 F.Supp.1 (S.D.N.Y. 1992); 37 F.3d 881 (2nd Cir. 1994); *Princeton University Press v. Michigan Document Services, Inc.*, 1996 WL 54741 (6th Cir. 1996) [WITHDRAWN]; 1996 FED App. 0357P (6th Cir.). These cases concern faculty prepared "coursepacks" containing supplemental reading materials for students and research copies (*Texaco*).

<sup>3</sup> Discussion in [Fair use: Reserve rooms for print copies](#) explains the basis for this assumption and how such activities on our campuses may be different from the activities of commercial for-profit copy shops. The range of opinion on this issue is broad, however. Some universities advise their on-campus copy centers that coursepacks containing single chapters from books, single articles from journals and no more than a few charts, graphs or illustrations would generally qualify as fair use for the first semester of use by the same professor for the same class. Requests beyond these would require either a more involved fair use analysis or permission from the publisher. Others believe that all reserve uses require permission if it can be easily obtained, for example, from the Copyright Clearance Center. Others believe that substantially all educational uses are fair. For a fuller discussion, see "[Fair use of copyrighted materials.](#)"

## The subjects in this series include:

### Fair Use (Section 107)

- Reserving works for limited use, generally
- Print copies in the reserve room
- Reserve rooms for images, audio and audiovisual works
- Providing access to electronic copies
- Library copying for patrons and for the library's collection

### Library reproduction and distribution (Section 108)

- Archiving
- Patron requests
- Unsupervised copying, news programs and contractual limitations on acquisitions
- Interlibrary loan

### Other

- Scholarly communication
- The digital library
- Licensing access
- Is your library an Internet service provider under the DMCA?

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