



# Copyright and Course Reserves: Print Reserves

An ACRL eLearning Webcast

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# Today

- Introduction to copyright and print course reserves
- Seven ways works can lawfully be circulated via print reserve
- Additional considerations for course reserves
- Tips and best practices (and two more rights)
- Putting it all together

NOTE: Info vs. legal advice\*

Survey!

# Copyright and Course Reserves

## An Introduction

# Course Reserves

- Provide access to supplementary and required learning materials
- Usually via short-term access
- Three types
  - Print
  - Electronic
  - Media

# Benefits of Offering Reserve Services

- It's what we do!
- Help promote student success
  - Practicality
  - Affordability
  - Accessibility

# Considerations for Offering Reserve Services

- It's an investment of:
  - Time
  - Space
  - Staffing
  - Money
- Accessibility of reserve materials

# Copyright Considerations

- User rights found in the law support many library services, including reserves
- Law may seem complicated, but the basics are actually pretty easy to master and lead to an understanding of applications of user rights
- Copyright is only a detriment to our work if we choose to ignore these considerations or if we let fear of infringement limit the services we offer



# Copyright Basics – Securing Protection

- Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression
- Works of authorship include the following categories:
  1. literary works;
  2. musical works, including any accompanying words;
  3. dramatic works, including any accompanying music;
  4. pantomimes and choreographic works;
  5. pictorial, graphic, and sculptural works;
  6. motion pictures and other audiovisual works;
  7. sound recordings; and
  8. architectural works.

-17 U.S.C. 102

# Copyright Basics – Rights Granted

1. To make copies of the work
2. To prepare derivative versions
3. To distribute copies to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. To perform literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works publicly
5. To display literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work publicly
6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

-17 U.S.C. 106

# Copyright Infringement

- Exercising rights granted under Section 106 without the authorization of the rightsholder or in a way that does not fall within the scope of one of user rights found in the law

# With Print Reserve Services we ...

1. Distribute copies of works to the public via lending
2. May make our own copies of works
3. May prepare derivative versions

-17 U.S.C. 106

# Doing it Right

Seven Options for Lawfully Circulating  
Works via Print Reserve

# Option 1. First Sale Doctrine (17 U.S.C. 109)

Notwithstanding the provisions of section 106(3) [distribution right], the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

- NOTE: Special information/requirements for computer program found in 109(b)(1)(A) and 109(b)(2)(A)

# This Means

- Lawfully made copies of books, CDs, DVDs, Blu-rays, etc. we acquire from rightsholders or vendors can be circulated by libraries
- *Lawfully made under this title* - “the first two words of the phrase, ‘lawfully made,’ suggest an effort to distinguish those copies that were made lawfully from those that were not [e.g., pirated works] and the last three words, ‘under this title,’ set forth the standard of “lawful[ness]” that means the work was made “‘in accordance with’ or ‘in compliance with’ the [US] Copyright Act” ([Kirtsaeng v. John Wiley & Sons, Inc. 2013](#)).
- Essentially, a copyrightable work that is manufactured with authority of the rightsholder or their representative in a way that would grant them protection under U.S. copyright law will be considered lawfully made and subject to the first sale doctrine. This does include copies made abroad!

# Common Question (CQ): Circulating Personal Copies

- Generally, instructor's personal copies of books, CDs, and DVDs can be circulated under Section 109(a)
- This is despite warnings that may be on the work
- Valid contracts may trump this right though!

*Read These:* Bobbs-Merrill Co. v. Straus [210 U.S. 339 \(1908\)](#)

UMG v. Augusto [558 F. Supp. 2d 1055 \(2008\)](#)

Kirtsaeng v. John Wiley & Sons, Inc.\* [568 US 519 \(2013\)](#)



Trivia!

# Myths and Misconceptions! How many copies can we have on print reserve?

- Common myth that you can only make one copy available for every 15 or so students enrolled in the class
- Under the first sale doctrine, you can circulate as many as you like, can afford to purchase, and/or can squeeze on the shelf
- Think best sellers or popular films at the public library!

# Option 2. Instructor is the Rightsholder

- PowerPoint presentations, notes, class assignments, etc.
- For published works (e.g. book chapters, articles, etc.), the instructor should first check their publication agreement to ensure they still have the rights to make copies available to others
- Options to circulate under 109?
  - Instructor may not be able to place a photocopy of a book chapter or article they authored on print reserve, but the library may be able to circulate a copy of the book or journal issue under the first sale doctrine!

# Option 3. The Work is in the Public Domain

- Works first published or registered with the U.S. Copyright Office prior to January 1, 1925 are in the public domain in the U.S., meaning they no longer have copyright protection
- For unpublished works, the term is the life of the author +70 years (2020 - 70 = 1950)
- Public domain can also include works of U.S. Government employees (see Section 105) or works that have no copyrightable components

*Recommended resource:* [Copyright Term and the Public Domain in the United States charts](#)

# Option 4. Circulating Licensed Works

- Works in the library's collection
  - Check to see if there are any license restrictions on these resources
- Open Access and Creative Commons Works
  - Directory of Open Access Journals: [doaj.org/](http://doaj.org/)
  - Creative Commons: [creativecommons.org/](http://creativecommons.org/)
  - Be sure to use in compliance with the attached license!

Trivia!

# Myths and Misconceptions! If the license does not say I can do something, I can't do it.

- Review licenses to see what we can do
- Don't over restrict yourself!
  - If a license does not expressly state you can do something, this does not mean you can't do it
- To what extent is the license enforceable?

# Option 5. Fair Use (17 U.S.C. 107)

Notwithstanding the provisions of sections [106](#) and [106A](#), the fair use of a 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.



# 17 U.S.C. § 107

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 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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Trivia!

# Myths and Misconceptions! All educational/nonprofit uses are fair uses.

- Myth!
- While educational uses can be highly favored under the first factor of fair use, it does not automatically make uses fair
- Remember, all four factors must be considered!

# Factor 1: Purpose & Character of the Use

- Teaching/Research/Scholarship
- Criticism/commentary
- Nonprofit institution
- Commercial use

Trivia!

# Factor 2: The Nature of the Work

Explores the characteristics of the work being used...

- Nonfiction/factual
- Fiction/Creative
- Published or unpublished

Trivia!

# Factor 3: The Amount & Substantiality of the Portion Used

- “The amount and substantiality of the portion used in relation to the copyrighted work as a whole”
- Think quantity and quality
- Consider the amount needed to serve the purpose of the use in relation to the work being used.
- This is a judgment call, and one you must be prepared to justify should your use of the work ever come into question!

There are no absolute rules as to how much of a copyrighted work may be copied and still be considered a fair use.

-Maxtone-Graham v. Burtchaell  
803 F.2d 1253 (1986)



# Myths and Misconceptions! Using less than 10% of a work or no more than 1 chapter is fair.

- Classroom Photocopying Guidelines (1976)
  - Can use 1 chapter or 10% of a work
  - No more than 250 words from a poem
  - Only 1 chart, picture or diagram from a work
- At best, hogwash!
- At worst, misleading as a safe harbor against infringement

Read this: The Law of Fair Use and the Illusion of Fair-Use Guidelines by Kenneth D. Crews, [Ohio State Law Journal, Vol. 62, No. 2, 2001](#)

Georgia State Reserves Opinions:  
<https://libguides.law.gsu.edu/gsucopyrightcase>

Trivia!

# Factor 4: Effect on the Market

- Is your use resulting in lost revenue for the rightsholder?
- Could your use replace sale of the work?
- Could your use help the market for the item, e.g. comment, critique, parody?

# Myths and Misconceptions! How do we determine market impact?

- Spontaneity, and cumulative effect (Classroom Photocopying Guidelines (1976))
  - Timing of the inspiration to copy does not allow for the asking of permission
  - Only one course at the school can be using the work
  - Copying can only be from so many works from a single author
  - Can only copy nine works in a semester
  - The copying of the material is for only one course in the school in which the copies are made.
  - Must seek permission for subsequent use
- At best, hogwash!
- At worst, misleading as a safe harbor against infringement

Read this: The Law of Fair Use and the Illusion of Fair-Use Guidelines by Kenneth D. Crews, [Ohio State Law Journal, Vol. 62, No. 2, 2001](#)

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Trivia!

# Myths and Misconceptions! Giving credit is required for fair use.

- Myth! The statute does not mention this anywhere.
- It's a nice thing to do
- Also prevents us from committing plagiarism
- Won't get you off the hook though for infringement claims

# Fair use is so confusing!

- Yes and no!
- Congress deliberately created fair use to flexible so that it could apply to many different situations.
- Unfortunately though, this can lead to uncertainty regarding its application.
- The more you use it, the more comfortable you'll get in making

# Using Fair Use Tools

- These decisions are very subjective and need to be made by the person utilizing the protected work
- Only work if you are completely honest!
- Keep a copy as a record of fair use decision?



# ALA Fair Use Evaluator

<http://librarycopyright.net/resources/fairuse/>



## What this tool can do for you:

- Help you better understand how to determine the "fairness" of a use under the U.S. Copyright Code.
- Collect, organize & archive the information you might need to support a fair use evaluation.
- Provide you with a time-stamped, PDF document for your records [\[example\]](#), which could prove valuable, should you ever be asked by a copyright holder to provide your fair use evaluation and the data you used to support it. [\[why is this important?\]](#)
- Provide access to educational materials, external copyright resources, and contact information for copyright help at local & national levels.

## What this tool cannot do for you:

- This tool does not provide legal advice. It records the information you provide it as well as your own judgment on the fairness of the use. See the tool [\[disclaimer\]](#) for more information.
- Only a court of law can definitively rule on whether a use is fair or unfair. This tool does not assume or predict a court outcome.

Make a Fair Use Evaluation

Learn More about Fair Use

Local Copyright Information  
© 2008 Michael Brewer & ALA Office for Information Technology Policy



# Kenneth D. Crews' Fair Use Checklist

<https://copyright.columbia.edu/content/dam/copyright/Precedent%20Docs/fairusechecklist.pdf>

**Fair Use Checklist**  
Copyright Advisory Office  
Columbia University Libraries  
Kenneth D. Crews, Director  
<http://copyright.columbia.edu>

Name: \_\_\_\_\_  
Institution: \_\_\_\_\_  
Project: \_\_\_\_\_  
Date: \_\_\_\_\_  
Prepared by: \_\_\_\_\_

**Purpose**

Favoring Fair Use	Opposing Fair Use
<input type="checkbox"/> Teaching (including multiple copies for classroom use)	<input type="checkbox"/> Commercial activity
<input type="checkbox"/> Research	<input type="checkbox"/> Profiting from the use
<input type="checkbox"/> Scholarship	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Nonprofit educational institution	<input type="checkbox"/> Bad-faith behavior
<input type="checkbox"/> Criticism	<input type="checkbox"/> Denying credit to original author
<input type="checkbox"/> Comment	
<input type="checkbox"/> News reporting	
<input type="checkbox"/> Transformative or productive use (changes the work for new utility)	
<input type="checkbox"/> Restricted access (to students or other appropriate group)	
<input type="checkbox"/> Parody	

Fair Use Checklist p. 2

**Nature**

Favoring Fair Use	Opposing Fair Use
<input type="checkbox"/> Published work	<input type="checkbox"/> Unpublished work
<input type="checkbox"/> Factual or nonfiction based	<input type="checkbox"/> Highly creative work (art, music, novels, films, plays)
<input type="checkbox"/> Important to favored educational objectives	<input type="checkbox"/> Fiction

**Amount**

Favoring Fair Use	Opposing Fair Use
<input type="checkbox"/> Small quantity	<input type="checkbox"/> Large portion or whole work used
<input type="checkbox"/> Portion used is not central or significant to entire work	<input type="checkbox"/> Portion used is central to or "heart of the work"
<input type="checkbox"/> Amount is appropriate for favored educational purpose	

**Effect**

Favoring Fair Use	Opposing Fair Use
<input type="checkbox"/> User owns lawfully purchased or acquired copy of original work	<input type="checkbox"/> Could replace sale of copyrighted work
<input type="checkbox"/> One or few copies made	<input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative
<input type="checkbox"/> No significant effect on the market or potential market for copyrighted work	<input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work
<input type="checkbox"/> No similar product marketed by the copyright holder	<input type="checkbox"/> Affordable permission available for using work
<input type="checkbox"/> Lack of licensing mechanism	<input type="checkbox"/> Numerous copies made
	<input type="checkbox"/> You made it accessible on the Web or in other public forum
	<input type="checkbox"/> Repeated or long-term use

Most recent revision: 051408

# Think Through Fair Use

**Thinking Through Fair Use - My Analysis**

Name/title of document or item to be used

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**Factor #1: Purpose and character of the use**  
[\(more info\)](#)

<b>Favors Fair Use</b>	<b>Weights Against Fair Use</b>
<input type="checkbox"/> Educational, scholarly, and research uses, and/or news reporting	<input type="checkbox"/> Commercial activity
<input type="checkbox"/> Criticism or commentary	<input type="checkbox"/> Profiting from use
<input type="checkbox"/> Non-profit use, including personal uses	<input type="checkbox"/> Decorative or other non-critical, non-commentary use
<input type="checkbox"/> Transformative use (creates a new work with a new purpose), including parody and transformative technologies	

**Notes:** Enter additional thoughts regarding the purpose of your proposed use.

**Overall thoughts on your purpose**

<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
strongly favors fair use	somewhat favors fair use	neutral	somewhat weighs against fair use	strongly weighs against fair use

Tip: Think of checklist tools as a list of things to consider and a way to help you work-through/balance the factors, not an exercise in checking and counting boxes.

<http://www.lib.umn.edu/copyright/fairthoughts>

# Option 6. Obtaining Permission

- Not required for nonexclusive licenses, but it's a good idea to have it documented in writing
  - This includes student work!
- Securing Permission
  1. Contact the rightsholder
  2. Request their permission to use the work providing detailed info on who, what, and how

*Recommended Resource:* Sample permissions letters available via Columbia's Copyright Advisory Services Office:  
<http://copyright.columbia.edu/copyright/permissions/requesting-permission/model-forms/>

# CQ: What do we do while we're waiting for a reply?

- When is it needed?
- Circulate until you know what is going on?\*

Quiz!

# CQ: What do we do if no reply comes?

- Reasons we don't receive replies:
  - Contact info is outdated or incorrect
  - Rightsholder does not care to respond
  - Rightsholder is scared to respond!
- A lack of response can also be factored into a fair use determination

# CQ: What do we do if the answer is “no”?

- A denial of permission does not mean all is lost
- Fair use can still be considered!
- Can an alternate, comparable item be used?

*Read these:* Campbell v. Acuff-Rose Music, Inc., [510 U.S. 569 \(1994\)](#), Bill Graham Archives v. Dorling Kindersley, Ltd., [448 F.3d 605 \(2006\)](#)



# Option 7. Obtaining a License

- Copyright Clearance Center: <http://www.copyright.com/>
- Swank Motion Pictures: <https://www.swank.com/>
- License rights for various uses including making copies, posting a digital copy online, commercial republication, etc.
- Permissions fees are involved, often based on the number of pages being used and the number of students in your class
- Who will be responsible for paying these fees?

# Food for Thought

Spicing Up Reserve Services

# Open or Closed Stacks?

- Closed is often the default
  - Control over access
  - You know who has the item
- Considerations for open stacks
  - Does allow students to browse
  - Help students feel more empowered to gain access to work?

*Read this:* Jared Hoppenfeld & Wendi Arant-Kaspar (2010) Do-It-Yourself for Course Reserves: A Student-Driven Service in an Academic Library, *Journal of Interlibrary Loan, Document Delivery & Electronic Reserve*, 20:5, 353-361, DOI: 10.1080/1072303X.2010.520264

# Not Just for Books and Movies!

If you can stick a barcode on it, you can circulate it!

- Anatomy models
- Chemistry models
- Dry erase markers and erasers
- Headphones
- Phone chargers
- Laptops
- Wi-fi hotspots
- Bike locks
- Recording equipment
- Art supplies
- Pancake 3D printer



Image credit: Amazon.com

How about you?

# Textbooks on Reserve

- Provide real benefits to students
  - Affordability
  - Access
  - Convenience
- Not reasonable or perhaps even feasible to place EVERY book on reserve
  - Those already in the collection
  - Identify certain courses?
  - Donations/loans from instructors
  - Donations from students, both books and funds
  - Alumni/donors

# In-Library Use Only

- Pros
  - You know where they are
  - Students can go hunting for classmates to study with
- Cons
  - Restrictive on students bringing the book to class, grabbing a bite to eat, joining classmates to study elsewhere, etc.
- Just bring it back on time!

# Fines on Reserve Materials

- Many libraries are doing away with fines
- Sometimes they are needed as an incentive to get things returned
- For reserves, consider grace periods, fines, and when items go billed
- Consider putting a sticker on items with this info
- Remember that we all make mistakes or have “one of those days” and fines should always be negotiate



# Tips and Best Practices

# Reserves Copyright Policy

- Can serve as a guide for instructors and library staff
  - In support of the teaching and learning mission of the library and academic institution, reserve services will be made available in compliance with US copyright law
  - Library reserve services are made available in compliance with US copyright law, including user rights such as the first sale doctrine and fair use
- Questions can be directed to [insert name and contact info]

# Working Through Your Options

Recommended resource: [A Framework for Analyzing any U.S. Copyright Problem](#)

1. Is the work protected by copyright?
2. Is there a license that covers my use?
3. Is there an exception (user right) that covers my use (e.g., 109)?
4. Is my use a fair use?
5. Do I need permission from the copyright owner?

# Copyright Education and Chain of Command

- Those working with reserves should have an understanding of the basics of copyright and the user rights found there
- Learning never stops, so seek continued opportunities to engage with the law
- Making determinations will become easier overtime
- Who will make them?
- Will they be documented, and how?
- What about the tricky/higher risk decisions?

# Get to Know your Legal Counsel

- Your institution will likely have an Office of General Counsel or attorneys in the community they work with
- Let them know what you are doing
- Discuss policy development and practices
- Can they help with education?
- Accept that you may be the educator!
- Can they help with tough decisions?

# The More You Know!

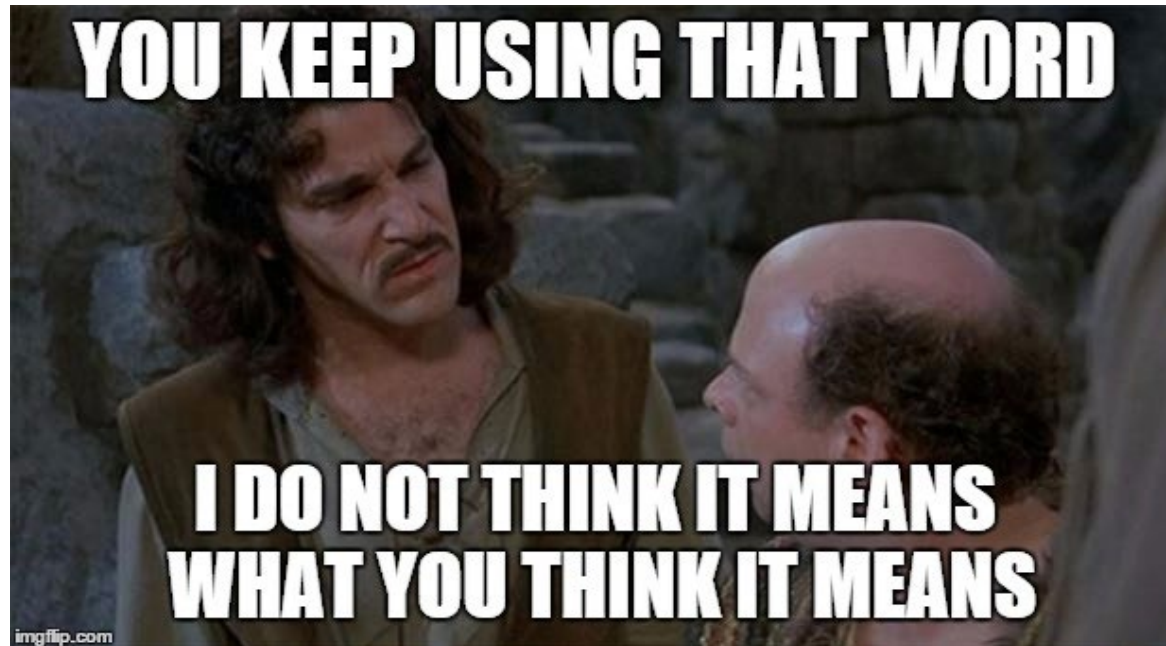
Two More User Rights You Should Know  
About

# Section 108 Super Powers!

- Ability to request deposit copies
- Ability to make alternate copies of “obsolete” works
- These options can help us in obtaining copies of works to circulate via reserves

# Relevant to Reserves – Section 110(1)

- Libraries are being sold works, especially films, with “classroom rights”





# Section 110(1) - The Face-to-Face Teaching Right

Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, is [not an infringement of copyright] unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made

# Pros and Cons to Purchasing “Classroom Rights”

- Film may also come with PPR
- Supporting independent filmmakers
- Make a thoughtful and ethical decision here

*Read this:* [Performance of or Showing Films in the Classroom, by Kenneth D. Crews](#)

# Putting it all Together

# One of these Options will Likely Work

1. First sale doctrine
2. The instructor holds the copyright
3. The work is in the public domain
4. The work falls within the scope of a user right, like fair use (or 108)
5. The work is licensed for reuse
6. You obtain permission for the use
7. You obtain a license for the use

# Remember the Mission!

- We confidently address legal issues in other areas
  - Privacy law
  - Employment law
- Don't ignore copyright, but also don't let it scare you to the point that you are not making services and resources to patrons
- There are protections for us in the law
  - Sovereign immunity
  - 504(c)(2) - The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under [section 107](#), if the infringer was an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords

# Be Prepared

1. Understand the law
2. Make thoughtful and ethical applications of it
3. Sound copyright policy
4. Determine what should be documented
5. Work closely with administrators and your institution's legal counsel
6. Remember the mission

# Questions?

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