File: I24

COPYRIGHT, FAIR USE AND LIBRARY COPYING POLICY

The most comprehensive copyright policy statement can be found in the joint American Library Association - National Education Association publication, The Copyright Primer for Librarians and Educators, second edition, by Janis H. Bruwelheide. Portions of this book are presented here.*

The subject of copyright law, with all its shades of black, gray, and white, is of special concern to educators and librarians. Every day, they deal with the communication of ideas, concepts, and information embodied in copyrighted works.

A basic understanding of copyright principles is necessary - especially in light of new technologies appearing continually that challenge interpretations and applications. In many cases, there are no clear-cut answers to questions, no clear indication of "fair use," and thus caution must be exercised. One option always available to users of copyrighted information is to contact the copyright owner and request permission to use the materials in educational settings. Often the answer may be yes and frequently the fee is affordable.

Educational entities and employees can be held liable for copyright violations, so it is in the best interest of all to understand copyright, have adopted policies in place that clearly delineate rationale and procedures, and train employees on policy and their responsibility to uphold it. Presenting a good model for other individuals to follow is also a responsibility.

Fair Use

Without this privilege to use copyrighted materials, copyright would not serve its constitutional purpose 'to promote the progress of Science and Useful Arts.' Fair use thus limits the copyright owner's monopoly by reserving to others the right to make reasonable uses of copyrighted materials without the specific consent of the author. The doctrine is of extreme importance to teachers, librarians, researchers, and scholars as well as to the public generally. Fair use gives us the convenience of watching "Saturday Night Live" on Sunday afternoon, the pleasure of parody, and the guidance of a book reviewer's excerpts.

The parameters of fair use have been developed by the courts. In drafting the Copyright Revision Act, Congress codified fair use for the first time, but made it clear that it had no intention of broadening or narrowing the doctrine. Fair use is now Section 107 of Title 17 of the U.S. Code:

(Sec.) 107. Limitations on exclusive rights: Fair use 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. 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.

Library Copying Under Section 108

Section 108 of the Copyright Law is vital for libraries and their users. This section deals with single copying of published and unpublished print materials and phonorecords by libraries and archives. Thus, the reproduction and distribution rights of copyright owners are discussed in the context of libraries.

Not all libraries qualify to take advantage of the exemptions in Section 108, which are listed in subsection (a). These exemptions provide special copying rights for libraries open to the public or whose collections are available to outside researchers. Academic libraries, school library media centers, and special libraries could meet the criteria if the collections are open to the public or outside researchers. To qualify, the copying must not be done for commercial advantage, and copies must bear notice of copyright.

*Janis H. Bruwelheide, The Copyright Primer for Librarians and Educators (Chicago: American Librarian Association and National Education Association, 1995), pp. 1-14.

Adopted: 1999

1st reading: Reg SC Mtg 4/16/08

2nd reading: Reg SC Mtg 5/7/08