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# COLLEGE & RESEARCH LIBRARIES

## *news*

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## Copyright and Reserve Books— What Libraries Are Doing

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Although a wealth of information on the new copyright law has been published in recent months, much of what has appeared repeats what is commonly known: It reproduces the law and outlines the changes in it, discusses the concept of fair use, reiterates the various guidelines, and advises librarians (1) not to be too hasty to give up hard-won rights and (2) to seek legal counsel before making policy decisions. Many questions remain unanswered, especially those concerning library reserve operations. As Charles Martell stated in his article, "Copyright Law and Reserve Operations—An Interpretation," in the January 1978 issue of *College & Research Libraries News*, "The law contains many ambiguities. In terms of day-to-day library reserve operations, these ambiguities are especially troublesome (p. 1).

How are librarians coping with the ambiguities of the new law? What decisions are they making? Whom are they consulting? Has the law drastically affected reserve operations? Are teachers and students who use reserve materials unhappy? In order to seek some answers to these and other related questions about the new law and its effects on library reserve operations, a questionnaire was mailed to the directors of twenty-seven selected university, college, and community col-

lege libraries, both public and private, in New York State.

Because of the timely nature of the subject, it was arranged to answer the questionnaires by telephone. The directors, or persons designated by the directors, of all twenty-seven libraries responded to the survey and the results are summarized in these pages.

Perhaps a word of caution is necessary at the outset. Sophisticated survey research methodology was not employed in this study. Rather, an attempt was made to obtain a quick, albeit representational, sampling of current attitudes, practices, procedures, and problems relating to library reserve operations and the new copyright law using academic libraries in New York State as a model.

No attempt has been made to determine the "best approach" to reserve problems, nor do policies outlined in these pages offer unambiguous answers to questions raised by the law. It is hoped, however, that the various approaches to questions and issues discussed here will furnish food for thought, focus thinking about the topic, and perhaps provide several possible models a library might develop. Because of the sensitive nature of the topic and the confusion and lack of certainty among librarians, it was thought best to preserve the anonymity of the respondents as well as their institutions.

### RESPONSE TO THE LAW

The first part of the questionnaire asked how libraries have responded to the new copyright

law in terms of their current reserve policy and what information they used to help formulate policy decisions.

Results indicate that, although policy does not differ markedly overall, interpretation of basically the same information differs considerably. Faced with ambiguity, most librarians in the sample have been quick to respond with formal policies and sound reasons on which they base their interpretation. But all point out that their policies are flexible and subject to change as more definitive answers emerge in the future.

Of the twenty-seven institutions, ten have established reserve policies based on the principle of fair use (Section 107) and feel strongly that the *Guidelines for Classroom Copying in Not-for-Profit Educational Institutions* do not apply to the reserve operation since it is not an extension of the classroom. Fifteen libraries have based their policies on both the concept of fair use and the *Guidelines* and think that the *Guidelines* have direct applicability to library reserve operations. Of the remaining two libraries, one has not yet made any changes in its reserve policies but plans to do so in the future. The other library has interpreted the concept of fair use to apply only to individuals who wish to make a copy of something for their own use and research and, therefore, thinks that the library is not entitled either to make a copy or to accept a copy from an individual to be placed on reserve.

Type of institution—public or private, community college, four-year liberal arts college, university, or special library—did not seem a significant factor in establishing policy. Ten libraries have also considered Section 108, Reproduction by Libraries and Archives, in developing policy, while two mentioned Section 105, U.S. Government Works.

No one knew of published material which dealt specifically with copyright and reserve operations, but several libraries found the information packets produced by the Special Libraries Association to be particularly comprehensive and helpful. Several other items were mentioned, a complete list of which appears at the end of this article.

How have librarians informed themselves? All mentioned material published by the U. S. Copyright Office, articles in the professional literature, discussions with colleagues, conferences, and workshops. One librarian telephoned the Copyright Office directly to ask for clarification on several questions and found the staff there very helpful.

#### CURRENT RESERVE POLICIES

##### *Number of Copies*

What is current reserve policy in these twenty-seven libraries? An overwhelming majority of the libraries, twenty-one, have limited photocopied items on reserve to one copy, although one library stipulated that there was room

for flexibility in its policy, depending on an individual's need. Several libraries, all of large research institutions, indicated that a one-copy limit had been their policy prior to January 1, 1978.

(In some libraries, the photocopying is done by the library staff at the request of the instructor. In others, the instructor copies material needed for reserve and submits it to the library. For purposes of this discussion, we make no distinction between the library actually copying material and the library accepting copies for reserve made in a faculty department. We realize, of course, that the distinction between these two points may be a fine legal distinction and cogent to the question of liability.)

Three libraries indicated that they will place on reserve one copy supplied by the instructor and one copy made for the library under Section 108, although two libraries restrict the library copy to material currently in the library's collection.

Two libraries have placed no limitation on photocopied material, stating that if an instructor supplies multiple photocopies for reserve use, the library will assume the instructor is acting in full knowledge of his or her rights under the new copyright law and the library will, accordingly, accept the material without requiring proof that permission to duplicate has been granted. One library will place *no* photocopies on reserve unless prior permission to copy has been granted. This library, of a large research institution, is relying heavily on a large stock of material copied prior to January 1, 1978, and on reprints purchased from publishers.

##### *Requests for Permission*

If multiple copies are needed, fourteen libraries will write for permission to copy additional

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copies at the request of the instructor. Nine libraries indicated that the instructor requesting materials must write for permission and furnish proof of permission granted to the library before multiple copies are placed on reserve. Two libraries, again both of large research institutions, rely on reprints and accept no multiple photocopies. As stated earlier, two libraries place multiple copies on reserve and require no proof that copyright permission has been granted.

Six libraries mentioned that they sent out mass mailings to publishers, either for all journal titles in their collections or for most frequently used titles, requesting permission for multiple copying. Results have been positive, although one librarian observed a change in publishers' attitudes after January 1: "As publishers refuse permission, or referrals to the Copyright Clearance Center become more frequent, satisfying reserve demands will become a more acute problem."

#### *Repeated Use*

The question of whether reserve material may be used semester after semester has troubled many librarians. Three libraries in the sample are restricting all photocopied materials to one-term use while fifteen libraries are not. Three libraries are asking permission to keep material on reserve for longer than one term. Two libraries are restricting only the use of multiple copies to one term, and four libraries have not yet determined their policy on this issue.

Several librarians felt strongly that there was no need to restrict items to one-term use since the copyright law and *Guidelines* forbid the repeated copying of material but nowhere forbid the repeated use of material. For those libraries restricting use to one term, the most common control mechanism is to date the photocopy and stamp it with a copyright notice.

#### *Material Copied at an Earlier Date*

Another issue on which opinion and practice is divided is the question of the application of the copyright law to material on reserve prior to January 1, 1978. Thirteen libraries replied that the law is not retroactive, and they have not reviewed or removed photocopied material on reserve prior to January 1. Eleven libraries removed multiple copies and either destroyed them or returned them to faculty members. Three libraries have not addressed the issue as yet. Several libraries are dating photocopies, and some are adding requesting faculty member's name to indicate individual rather than library ownership of the material.

#### *Copying Limited to Material in Collection*

Twenty-two libraries said that reserve requests need not be limited to material already in their collections. Two libraries stipulated that only one fair use photocopy of material not in the library's

collection would be permitted for reserve. One library said that it would not request reserve material on interlibrary loan in lieu of purchasing it. Two libraries required reserve requests to be for material in their library's collection.

#### *Spontaneous Copying*

How will these libraries respond to the demand for spontaneous copying? Five of the ten libraries not using the *Guidelines* said that the spontaneous demand question was not applicable to them. Twelve libraries would respond favorably to the demand to place spontaneous photocopies on reserve, although some libraries stated conditions such as:

1. "Faculty member must show proof of having begun the process of writing for permission."
2. "Material must be very current and have immediate relevancy."
3. "We would put only one spontaneous copy on reserve."
4. "We would put multiple copies on reserve but for only one semester."

Ten libraries would not respond favorably to the demand for spontaneously copied material to be put on reserve. Reasons given include:

1. "The library would not be able to document the spontaneity of the request."
2. "We demand a two-week lead time on reserve requests, so would not honor a spontaneous request."
3. "Use of reserve is planned for and deliberate; can't be spontaneous."

What are librarians suggesting to faculty as alternatives to the past practice of multiple photocopying? The variety of answers given are listed below (in order of frequency with number of times mentioned in parentheses, some librarians offering more than one suggestion):

1. Plan ahead and write for permission (13).
2. Purchase reprints (7).
3. Purchase additional copies of material (3).
4. Revise teaching methods, get away from use of reserve (2).
5. Distribute material in classroom (2).
6. Encourage students to make individual copies (2).
7. Make payments to Copyright Clearance Center (2).
8. Put personal copies and bound journal volumes on reserve (1).
9. Put reserve material on shorter loan period (1).

Several libraries stated that they were not offering advice either because no problems had occurred, or they considered it the faculty responsibility to find answers to the problem.

#### CAMPUS REACTIONS

What have libraries done to inform their staff and their users about copyright? Memos, news-

letters, and Copyright Office information have gone out to faculty and staff. Some libraries have held information sessions on copyright, widely publicized on campus (and generally poorly attended). One community college library held a workshop paid for by the college administration. Most libraries have issued formal policy statements, some backed up by reprints of sections from the law or other relevant materials. Some library administrators have written letters to the faculty, and several library directors have met with administrators and department chairpersons to inform them about copyright and library policy. Some libraries have relied on more informal means of communication, personal contact, and telephone calls to disseminate information. A small minority of the libraries surveyed have done nothing to date because they are waiting for further clarification and more specific information.

Of the twenty-seven libraries, sixteen reported that they received strong support from the administration of their institution, while six admitted their institution's lack of interest in the topic of copyright. The sixteen libraries supported by their administration took a very active role in informing their public and were seen as an information resource in their community. One librarian complained that she had been too successful in heightening interest in copyright because everyone was reading, talking about, and interpreting the law differently, and one department had even issued incorrect guidelines! Three libraries were involved in administratively appointed committees to establish campus-wide copyright guidelines, while two libraries had nothing to report on this matter.

A frequently repeated caution in most of the recent material on copyright urges librarians to seek legal counsel for solutions to difficult or ambiguous problems. Yet the reality is that legal counsel well versed in the intricacies of copyright law is hard to find and expensive. Twenty-five libraries believed they did not have *local* access to legal counsel well versed in copyright law!

Given that statistic, it is perhaps encouraging to see that seventeen libraries reported they have

had no problems since the new copyright law went into effect. Six libraries indicated that they have had minor problems and complaints from faculty and students. Publishers have been slow in answering permission letters, students find it difficult to obtain reserve material, faculty are unhappy about multiple copying restrictions, etc. One librarian identified a dual reaction on the part of many faculty members he had talked to. "They feel that the new law is interfering with their teaching, but those who do research and publish are sensitive to protecting the rights of creative people."

Several librarians expressed concern about the extra costs that will be absorbed by shrinking library budgets if it becomes necessary to buy many duplicate copies. They were also concerned about the wear and tear on journals that will be used more frequently if multiple photocopies are not available. Many librarians admitted to uncertainties about the law and the desire for more specific information on reserve and copyright.

Do these librarians plan to respond to congressional review of the law in five years? Only five libraries answered with a definite yes and indicated that they were keeping statistics on costs, work load, publishers' responses, and recording problems and complaints. Seven libraries said they would not respond. The remaining fifteen libraries either were undecided or would respond only if they had something significant to report.

#### CONCLUSIONS

What conclusions can we draw from this survey?

Most of the libraries in the survey have taken a fairly conservative approach to the problems of reserve and copyright. Practice and interpretation vary considerably from one library to the next, and this should be a cause for serious concern in the profession. There is confusion and disagreement on such important questions as:

1. Do the *Guidelines* apply to reserve operations?
2. In terms of reserve demands, what constitutes fair use copying?
3. Should the law be retroactively applied?
4. Can photocopied materials be used repeatedly?
5. Is photocopied material placed on reserve the library's property, or must it belong to the individual instructor?
6. What rights does a library have to satisfy its need for reserve material if permission to copy is denied or delayed?

However, we can also conclude that librarians in the sample have been quick to respond to the challenges presented by the new law and have worked hard to inform their public and satisfy reserve demands. These librarians have asserted their rights to get information to their clients and fulfill their educational mission while not infringing

#### Michael Gorman Elected

Michael Gorman, director of technical services at the University of Illinois at Urbana-Champaign, has been elected a Fellow of The Library Association (British). Association bylaws limit the number of such fellowships to fifty at any one time. There are currently about twenty-five living Fellows. Nomination and election for this honor is based on evidence of a significant contribution to librarianship. Mr. Gorman is editor of *AACR II*.

ing on the rights of authors. It now remains for individuals and groups in the profession to use their professional knowledge and their understanding of the internal ramifications of the copyright law on library services to offer guidance and counsel to the interpreters of the law so that ambiguities can be eliminated and practice become uniform and so that library services will not be seriously hampered.

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## Some Responses on Copyright

*Editor's note: In the January issue C&RL News invited responses to Charles Martell's "Copyright Law and Reserve Operation." As space permits, we will print those responses.*

### COPYING FOR RESERVE READING— A DIFFERENT VIEWPOINT

Many academic libraries appear to be extending the use of the *CONTU Guidelines* to provide a legal basis for reserve room copying. Some interpret the reserve room as being an extension of the classroom, thus multiple copies for classroom use could also be for reserve room use.

Late last year, and after careful study, Northern Illinois University Library chose not to follow such a course. The librarians, with the advice of the university's legal counsel, decided that reserve copying could not meet the three criteria established to justify multiple copies for classroom use; namely, brevity, spontaneity, and cumulative effect. In the library's experience, reserve copying frequently exceeds 2,500 words or 10 percent of a work. The fact that a professor requests, weeks in advance, that a copy be placed on reserve defeats any pretense of spontaneity. Some reserve reading lists include many more than the nine articles per class term recommended under the rubric, "cumulative effect." A lack of any other guidelines to Section 108 of the Copyright Law led the librarians to the conclu-

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### A PERSONAL VIEW FROM PENN STATE

I found Charles Martell's January article, "Copyright Law and Reserve Operations," interesting but naive. Let me accept your invitation to respond to that article and explain my impressions of it.

I agree with Martell that faculty members should be made aware of the new restrictions on photocopying and the distribution of reserve materials. I disagree that "the individual teacher should . . . request copyright approval from [its] holder if multiple copying is required."

Librarians, not the teaching faculty, should take the initiative in these dealings with authors and publishers so that they can compile records that prove they have acted in good faith. This ability to prove good faith compliance is necessitated by the fact that libraries act as co-owners and distributors of the photocopied items for as long as they circulate "for classroom use."

If the faculty members inform the library that they intend to reuse the materials, the reserve librarian should arrange to purchase the reprints and keep accurate records of these requests and purchases. These records are crucial because the

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