

Copyright Considerations for e-Reserves

October 29, 2009

1:00 p.m. EDT

Overview

Thank you for participating in an Academic Impressions webinar!

The information below is to help ensure you have the best possible experience. **If you have any questions, please contact us directly at 720.488.6800.**

Before the Webinar

1. Review the attached handout and print as necessary for attendees at your site.
2. Complete the short pre-conference survey no later than Wednesday, October 28th by clicking this link:

http://www.surveymonkey.com/s.aspx?sm=QsIBPC_2fQaLzfx9kNKI5B0g_3d_3d

Your responses to this survey will enable us to compile and share the successes and challenges of all institutions in attendance as relating to e-Reserves.

3. Be sure that your computer is set up appropriately by running the meeting test:

<http://ai.connectpro.acrobat.com/wctest>

Below is a link to the minimum computer system requirements for participants:

<http://www.adobe.com/products/acrobatconnectpro/systemreqs/#role01>

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- If listening via **computer**, be sure to go to the “Meeting” menu in the upper left corner of your screen, then down to select “My Connection Speed” and change it to a different setting. Changing to DSL/Cable from LAN often helps mitigate lags in audio.
- Please have a phone with speakers available as a backup in case you encounter any computer audio issues. Teleconference information is provided in the login instructions email.
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On Screen Portion

- A “Questions” box will be available for you to ask questions to the speaker(s) through the computer (typing).

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If you need additional assistance, please contact Academic Impressions at 720.488.6800.



Copyright Considerations for E-Reserves

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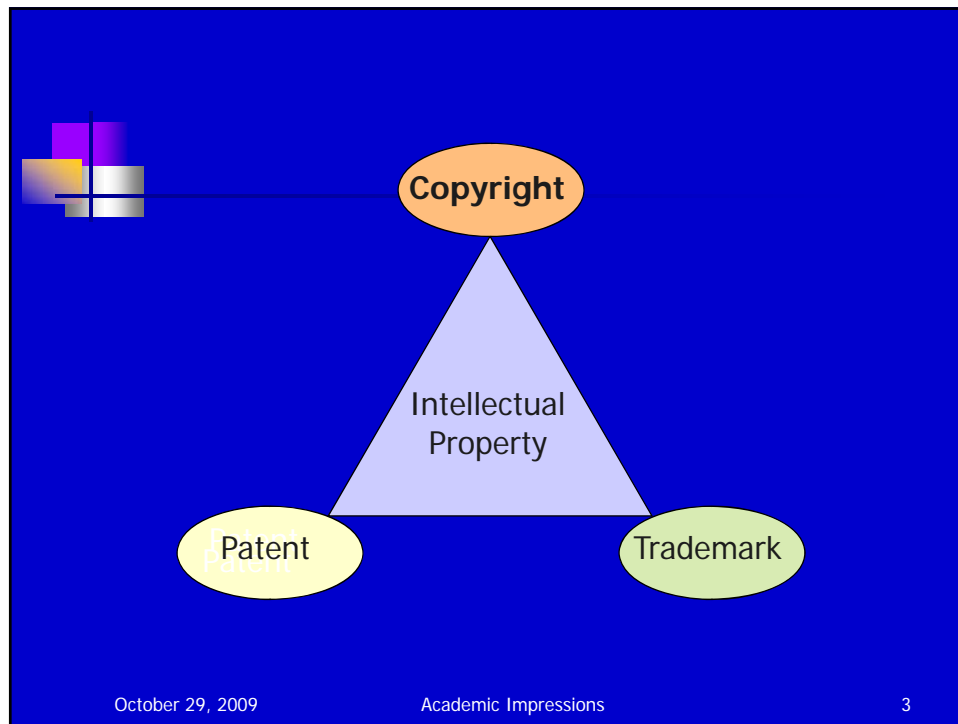
Road Map

- Copyright Basics and Fair use
- Library Reserves – E, Print & ??
- Guidelines & Case Law
 - Course pack cases
 - Non-print materials (TEACH Act)
- Implementation
- Present & future for e-reserves

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Foundations of U. S. Copyright

“The Congress shall have the Power...to ***promote*** the Progress of Science and useful Arts by securing for ***limited Times*** to Authors and Inventors the ***exclusive Right*** to their respective Writings and Discoveries”

United States Constitution, Article 1, Section 8

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Copyright Debate

- Author's rights
- User's rights


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Copyright Requirements

- Must be an original work
- Must be fixed in a tangible medium of expression

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Fixation

- Work must be fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

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Copyrightable Works

- Literary, musical and dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other AV works
- Computer programs
- Compilations of works and derivative works
- Architectural works

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What is not copyrightable

- Ideas, procedures, methods, systems, processes
- Titles, names, short phrases, slogans
- Facts, news, research
- Works in the public domain
 - Works created by US government employees
 - Works with expired copyrights

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Copyright Duration

- Works created on or after 1/1/78
 - Life of author plus 70 years
 - Corporate author – the shorter of 95 years from publication or 120 years from creation
- CTEA
- Supreme Court weighs in

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Copyright Owner's Exclusive Rights

- Reproduction
- Distribution
- Public performance
- Public display
- Derivative works

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Show me the Way

Copyright Act of 1976



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First – the Law....

- Section 106 – Exclusive Rights
- Section 107 – Fair Use
- Section 108 – Libraries and Archives
- Section 110 - Education

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Copyright Infringement

- “The act of violating any of a copyright owner’s exclusive rights granted by the federal Copyright Act...”

Black’s Law Dictionary

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Elementary, Mr. Watson

- © infringement elements
 - Valid copyright
 - Access to © work
 - Duplication outside exceptions

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Send me to the pokey or the poorhouse

- Actual damages & profits
- Statutory damages \$200 - \$150,000
- Attorney fees and costs
- Injunction
- Impoundment
- Jail



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I Did It – but....


- Defenses
 - Fair use
 - Education exceptions
 - Library exceptions

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Fair Use

- What is it?
- Benefits
 - Multiple uses
 - Technology neutral
 - Flexible



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Fair Use Doctrine

- Purpose and character
- Nature of work
- Amount of work
- Market effect


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First Factor: Purpose & Character

<ul style="list-style-type: none">■ <i>Favors Fair Use</i>■ Nonprofit■ Educational■ Personal■ <i>Teaching</i>■ <i>Research</i>■ <i>Scholarship</i>■ <i>Criticism</i>■ <i>Commentary</i>■ <i>News reporting</i>	<ul style="list-style-type: none">■ <i>Favors Permission</i>■ Commercial use■ Entertainment■ For profit
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Second Factor: Nature of work

- *Favors Fair Use*
 - Fact
 - Published
- *Favors Permission*
 - Fiction
 - Unpublished

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Third Factor: Amount

- *Favors Fair Use*
 - Small amount
 - Amount used is not significant to work
- *Favors Permission*
 - Large amount
 - Amount used is heart of work


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Fourth Factor: Market Effect


- ***Favors Fair Use***
 - No major impact
 - Licensing/permissions unavailable
 - Limited/restricted access to work
 - User/institution owns legal copy
- ***Favors Permission***
 - Major impact
 - Licenses/permissions available
 - Work is made available to world
 - Use is repeated or long term

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Basic Civics

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Reserves – E, Print & ???

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Classic – A book which people praise but don't read


Mark Twain

- Collateral reading
- Multiple copies of originals
 - books
 - ephemera
 - journals


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I Could Write Copy a Book



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The "New" Reserves

- Multiple photocopies
 - Book chapters
 - Journal articles
 - Other material

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The "New" Issues

- Space
- Budget
- Replacements
- Processing
- Save or return

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Traditional Reserves v. E-Reserves

- Print
 - Articles
 - Book chapters
 - Books
 - Course packs
 - Consumables
 - Student papers
 - Professor notes
- Media
 - CD's
 - DVD's


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The What's Have It

- What is to be placed on e-reserve?
- What is the difference?
 - Delivery method
 - materials
- What is the concern?
 - Distribution
 - Access
 - Use
- What is the infringement?
 - Duplication
 - Distribution

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- Questions?



...Then - the Guidelines

- Classroom guidelines
 - Multiple copies
 - Brevity
 - Spontaneity
 - Cumulative effect test
 - Notice of copyright
 - Classroom v. reserves


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Library Speak

- ALA Model Policy for Classroom, Research and Library Reserve Use (1982)
 - Articles and book chapters – no%*
 - Amount and # of copies should be reasonable*
 - No anthologies
 - # of copies should not exceed # of students
 - No use for multiple classes or successive use

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Not So Fast

- Disagreements = libraries
- No agreement = publishers
- Taking the 5th = ALA


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Let's Try Again

- Conference on Fair Use (CONFU) – 1997
 - E-reserves guidelines
 - Too restrictive
 - No consensus

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And there were others

- UC San Diego
- Cornell & the guidelines

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Guidelines and case law

- Two cases on “course packs”
 - Basic Books v. Kinkos (S.D.N.Y. 1991)
 - Princeton University Press v. Michigan Document Service (6th Cir. 1996)
- Both rejected fair use.
- Both cited classroom copying guidelines

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Looking for the right analogy

- These cases only precedents cited in e-reserve complaints.
- Both cases stressed commercial purpose (1st factor) due to role of copy shops.
 - Will universities get more leeway?



Fair use & course packs

- Commercial purpose
- Mostly “factual” originals
- Classroom Copying guidelines used to judge amounts
 - Is this workable?
- Debate over consideration of licensing market.



Non-print reserves?

- Growing pressure to facilitate access to
 - Music
 - Video
 - Images
- “Transmission” of these materials is covered by TEACH Act:
 - Section 110(2) of the Copyright Act
 - Applies to e-reserves or CMS



Who gets the bigger portion?

- All of “non-dramatic literary or musical” performance may be transmitted
- “Reasonable & Limited” portions of other works
 - Dramatic musical performance (i.e. opera)
 - Video
- Can display amounts comparable to tradition classroom (i.e. image slides)



Instructor compliance

- Transmission must be integral part of systematic, mediated instruction
- Directly related to teaching content
- Does not apply to materials marketed primarily for distance education use.
- Copy transmitted must be legally made
 - NO circumvention of technological protection measures



Institutional compliance

- Accredited, non-profit educational institutions.
 - Has copyright policies, makes information available to students & faculty
- Notice given of content protected by ©
- Access only for officially enrolled students



Technological compliance

- Reasonable technological measures used to prevent retention or further distribution.
- Works stored in way normally not accessible to others
- Works not retained in accessible way for longer than necessary; stored only by institution.



What copying is permitted?

- Ephemeral digital-to-digital copies necessary for transmission.
- Analog to digital conversion OK IF:
 - No digital version available OR only digital versions are subject to technological protections that prevent transmission, AND
 - No more is reformatted than can lawfully be used for the course.




Fair Use & TEACH

- Are TEACH portion limits also outer limits for fair use?
 - My opinion is yes.
 - If so, no provision for streaming full videos except permission
 - Some institutions disagree.



- Questions?



Implementation: Assessing the Environment

- Library
- University
- Publishers
- Legal

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E-Reserves Considerations

- Why
- Ownership
- Access
- Use
- Technology
- Staffing/Decision making authority
- Funding
- Challenges


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Role of Third Parties

- Course management systems
- Rights management vendors


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Analyzing the Options

- Application of fair use
- Role of licensing/contracts
 - Links vs. PDF
- Public domain
- University/faculty/student authorship
- Guidelines
 - Classroom
 - ALA Model Policy
 - CONFU
 - Cornell/AAP
- Permissions

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Implementation: Policies & Procedures

- Identifying necessary elements
- Personnel issues
- Implementation


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Necessary Elements

- Statement of purpose & use
- The rules – fair use, permission
- Types of works included
- Identifying responsible parties for compliance/decision making authority
- Policy application/access
- Same policy or different policy for traditional & e-reserves/procedures
- Reference to other applicable policies – university & library


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Organizational Issues

- Staff expertise and size
- Workflow system
- Final authority for disputes/risk analysis/DMCA complaints

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Implementation

- Vendors/equipment/IT support
- Authentication
- Amounts
- Removal of material
- Funding/resources
- Monitor objectives

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Making E-Reserves Work

- Determine status of work
 - Copyrightable
 - Copyrighted
 - Public domain
- Obtain legal copy
- Apply policy consistently
- Request permission from copyright owner if exceptions do not apply (Request and permission should be in writing), retain permissions according to University policy

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Final Considerations

- Risk analysis v. library mission
- Awareness of recent trends and developments in ©

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E-reserves environment

- Hotly contested!
 - AAP threatens lawsuits.
 - Asks institutions to consult as they develop policies & procedures
- Points of contention
 - Who has access?
 - How much is used?
 - Subsequent uses?
 - Role of a checklist?



Money makes the world go round

- Perhaps the real issue is permission fees.
 - Procedural disputes as proxy for how much institution spends on permission.
 - Marketing for Annual Campus License?
 - Includes e-reserve & CMS use for those materials covered by the ACL.




Into the future with Georgia State

- Current lawsuit against GSU
 - New fair use policy focused on e-reserves and CMS use for electronic course content.
 - Pretty similar to widespread university practice, including checklist.
 - Decision will impact most of us.
 - Settlement would tell us less, for better or worse.
 - Appeal probably inevitable.



Key Takeaways

- All e-reserves involve assessment of risk, institutional comfort
 - Policy can help manage risk
- Guidelines not a perfect fit, but may help shape policy decisions.
- Implementation is everything!



- Questions?
- Local challenges?