

## Copyright Policies in Virginia Academic Library Reserve Rooms

*Since academic reserve room photocopying was not directly treated in the copyright legislation (Public Law 94-553) that became effective January 1, 1978, there has been a lack of consensus among library administrators as to the intent of the law in this area. A 1981 survey of thirty-seven Virginia academic libraries indicated a wide spectrum of reserve room photocopying procedures, but most based their policies on fair use and/or guidelines for classroom copying, and generally do not restrict reserve room copies to one academic term.*

SINCE PUBLIC LAW 94-553 regarding copyright came into effect on January 1, 1978, there have been differences in interpretation of the meaning of the legislation on the operation of the academic library reserve room. A search of the literature reveals a lack of consensus as to the effect that sections 107 and 108 should have on reserve room procedures. John C. Stedman, emeritus professor of law at the University of Wisconsin and chairman of the Committee on Copyright Law of the American Association of University Professors, defined reserves as "selected writings made available to individual and successive students for educational purposes, subject to sharp time limitations, and usually, restrictions on physical removal from the library premises," and asked, "Does the common, and academically important practice of photocopying copyrighted materials and putting them on reserve for use by students constitute copyright infringement?"<sup>1</sup>

The core of the dilemma lies in the ambiguities ensuing from the fact that the library reserve room was not treated in the legislation, leaving some confusion among aca-

demically library administrators as to the intent of the law in this area.

Section 106 describes the exclusive rights of the copyright owner, including copy reproduction and distribution. Sections 107 through 118 deal with certain limitations on those rights, but only sections 107 and 108 are germane to this discussion and study.

Section 107 of the law gives statutory recognition for the first time to the traditional doctrine of "fair use," a limitation on the exclusive rights of a copyright holder created and developed by the courts because copying was not foreseen by the 1909 copyright law. The Register of Copyrights conceded before the House Judiciary Committee in 1975 that fair use has not been exactly defined; however, it allows limited copying "without permission from or payment to the copyright owner where the use is reasonable and not harmful to the rights of the copyright owner."<sup>2</sup>

The language of section 107 (limitation on exclusive rights: fair use) seems liberal regarding copying for purposes of academic instruction: "Notwithstanding the provisions of section 106, the fair use of copyrighted work, including such use by reproduction in copies or phonorecords . . . for purposes such as . . . teaching (including multiple copies for classroom use), scholarship, or research,

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is not an infringement of copyright." Until this language is clarified by future court decisions, it appears to allow considerable freedom in photocopying selected material to be retained in the library reserve room for instructional use. Because of multiple copying abuses by some institutions in the past, publishers and other copyright owners were apprehensive that excessive photocopying would undercut sales. However, such abuses and the resultant fears by publishers seldom centered on the academic library reserve room. Concern has focused, rather, on library photocopying associated with interlibrary resource sharing. The publishers ". . . continue to assert that library photocopying and resource sharing are cutting into their profits and undermining the long term viability of the industry. But the image of a publishing industry in distress is a myth."<sup>3</sup>

In March 1976, when the legislation was under consideration, an ad hoc Committee on Copyright Law Revision, composed of representatives from the Authors League of America, the Association of American Publishers, and selected educational institutions, brought forth an "Agreement of Guidelines for Classroom Copying in Not-For-Profit Educational Institutions," stating "minimum standards of educational fair use under Section 107 . . .," which attempted to narrow and limit the scope of fair use considerably, to the benefit of the authors and publishers. The "Guidelines for Classroom Copying" explicitly concentrated on classroom teaching practices, and many librarians believe them inapplicable to the library reserve room. Others however, both teachers and librarians, view the reserve room as an extension of the classroom because the instructor determines its contents, if only temporarily during academic sessions. The guidelines are viewed by some as the self-serving creation of an interest group, lacking the force of law. Nevertheless, their criteria as to what practices should be acceptable under the "fair use" doctrine were agreed upon between the copyright owners and representatives of a substantial segment of educational users, "an agreement that Congress knew of and found acceptable prior to final enactment of the Copyright Law."<sup>4</sup> The guidelines agreement referred only to copying from books and periodicals, not from musi-

cal or audiovisual works.

The quasi-legal "Guidelines for Classroom Copying" state minimum, not maximum, standards and specifically stipulate in the text of the agreement that they were "not intended to limit the types of copying permitted under the standards of fair use under judicial decision, and which are stated in Section 107 of the . . . Bill." The guidelines essentially allow a teacher to make a single copy for research or for use in teaching of a book chapter, a newspaper or periodical article, a short story, essay, or poem, or an illustration from a book. Multiple copies may be made for classroom use, not to exceed one copy per pupil per course, providing that tests of brevity and spontaneity, as defined in the guidelines, are met.

L. Ray Patterson, then (1977) dean of the Emory University Law School, suggested that the restrictions of the copyright law, increasing the copyright owner's control of access to copyrighted material, may be unconstitutional, and advised that litigation in a test case be invited so that the courts would begin to interpret the statute in favor of educators rather than copyright holders.<sup>5</sup> He was particularly critical of the fair use guidelines. Michael Cardozo, a Washington lawyer and former professor of law who represented the Association of American Law Schools on the ad hoc fair use committee, maintained that the intent of Congress was that the public interest in education and research transcends the author's and publisher's need for financial compensation when copying is done for those purposes.<sup>6</sup>

Section 108 (reproduction by libraries and archives), although longer and more complex than section 107, is narrower and more specific. Photocopying is permitted with certain limitations: for the purposes of preservation or restoration of collection materials; to comply with a user request for a copy of an article or selection from a title or periodical in its collection, or from the resources of another library on interlibrary loan; to provide a copy of an entire work to a user on request, provided that a copy cannot be purchased at a fair price.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) offered their offices to help develop guidelines leading to the construction

and interpretation of section 108 (g)(2) affecting interlibrary loan. The literature indicates that some confusion may still exist in distinguishing between the "Guidelines for Classroom Copying" (fair use) and the CONTU guidelines (interlibrary loan). Neither deal with the practice or even the concept of the academic library reserve room.

King Research of Rockville, Maryland, is in the process of surveying for the U.S. Copyright Office a total of 150 publishers and 500 public, academic, federal, and special libraries, gathering data for a five-year report to be made by the Register of Copyrights to the Congress on January 1, 1983, as required by Public Law 94-553. In a similar 1977 survey of library photocopy patterns, King Research found that most such photocopying fell within the "fair use" doctrine, and "warned publishers not to expect library photocopying fees to produce much revenue."<sup>7</sup>

For guidance, then, in developing photocopying policies in support of reserve room procedures, academic library staff must seek direction in section 107 (fair use), the guidelines (which extend this section by setting standards for educational fair use in the classroom situation), and in section 108 (libraries and archives). None of the three sources deal with the reserve room.

In early 1978, just after Public Law 94-553 became effective, Meredith Butler surveyed twenty-seven academic libraries in New York State by telephone to "sample current attitudes, practices, procedures and problems relating to library reserve operations and the new copyright law."<sup>8</sup> She found that ten of the twenty-seven libraries "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 others 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."

Butler concluded that:

Most of the libraries in the survey have taken a fairly conservative approach to the problem 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?<sup>9</sup>

#### RESERVE ROOM COPYRIGHT POLICIES IN VIRGINIA ACADEMIC LIBRARIES

The study presented here was conducted during January and February of 1981 to gather data for use in reviewing reserve room policies at Radford University's McConnell Library. A short survey questionnaire was sent to the library directors at forty-four institutions of higher education in the commonwealth of Virginia. The list of institutions included public and private universities, colleges, and community colleges.

#### Questionnaire Analysis

Consult appendixes A and B in conjunction with the following text.

Thirty-seven out of forty-four usable responses were returned (a response rate of 84.1 percent), as categorized in table 1.

TABLE 1  
QUESTIONNAIRES RETURNED

Institutional Category	Surveys Sent	Surveys Returned	Return Rate (%)
Universities, doctoral	8	8	100
Universities, 5th-year	11	10	90.0
Colleges, 4-year	7	5	71.4
Community and 2-year Colleges	18	14	77.7
Totals	44	37	84.1

*Question 1.* "What guidelines has your library utilized in developing reserve room policy?"

Twenty-nine (78.4 percent) of responding libraries indicated that section 107 of the statute, which focuses on fair use, either totally or partially formed the basis of their development of reserve room policies. Of these, eighteen (48.6 percent) also considered the "Guidelines for Classroom Copying" a reference in structuring policies. Seventeen institutions (45.9 percent) indicated that section 108, library and archival copying, was also considered as a philosophical base, but only one library, a community college, stated that they relied on section 108 entirely. Three other libraries (8.1 percent) marked both sections 107 and 108. Thirteen libraries (35.1 percent) considered fair use, classroom copying guidelines, and also section 108 (library photocopying) important in policy formulation. It should be noted that the three concepts represent varying degrees of liberality and that some responding libraries, in marking more than one of the three guidelines, may not have recognized the implied contradictions.

Of the four "other" respondents, one did not utilize any guidelines and one used several additional sources of information. One university left such decisions up to the instructor, while a fourth respondent noted "we usually won't make more than 4 or 5 copies."

In summary, thirty-three out of thirty-seven responding libraries (89.2 percent) used either fair use (section 107) or its associated "Guidelines for Classroom Copying" as a basis for formulating reserve room photocopying policies.

*Question 2.* "Are you aware of anything subsequent to January 1, 1978, published in congressional hearings or reports that sheds additional light on reserve operations?"

Although two libraries responded in the affirmative, subsequent analysis revealed no new congressional hearings or staff reports since passage of the law.

*Question 3.* "How many copies does your reserve room accept (from faculty members for student use)?"

Twenty-eight libraries (75.7 percent) of the thirty-seven responding accepted one fair use copy without permission, to be placed on

reserve by faculty. Of these, thirteen (35.1 percent) liberalized this policy further by allowing additional copies with the permission of the copyright owner. Another seven of the twenty-eight (18.9 percent of respondents) were even more tolerant and permitted additional multiple copies without permission. Of the ten (27.0 percent) who checked *d*, "other arrangements," two checked either *a* or *c* as well (see appendix A), signifying that other arrangements were *additional* to fair use considerations. Of the eight (21.6 percent) who noted "other arrangements" exclusive of *a*, *b*, or *c*, four (10.8 percent) essentially allowed the instructor to determine copyright compliance and accepted all copies placed on reserve by the instructor with little or no restriction; three (8.1 percent) followed the "Guidelines for Classroom Copying," permitting a set number of copies according to number of students, amounting to two or three copies on reserve.

In developing reserve room procedures, the thirty-seven respondents ranged from very restrictive in interpreting the copyright law and guidelines to very permissive, with most viewing statutes and guidelines liberally. Table 2 roughly classifies the responses to question three by the number of copies a library will accept from faculty for reserve room use.

*Question 4.* "Is your library restricting single and/or multiple copies of copyrighted materials placed on reserve for one term use only?"

Of the thirty-seven libraries responding, twenty-eight (75.7 percent) indicated no restrictions to the use of single and/or multiple copies of copyrighted material for more than one term. Nine libraries (24.3 percent) restricted copyrighted materials on reserve to one term only.

*Question 5.* "Who takes responsibility for seeking permission for copying when necessary?"

In twenty-eight out of thirty-seven responding libraries (75.7 percent), the faculty member assumes responsibility for seeking permission from the copyright owner to make multiple copies of material under copyright, to be placed on reserve in the library. Eight (21.6 percent) of the respondents reported that the library staff requests releases for the teacher.

TABLE 2  
NUMBER OF COPIES ACCEPTED  
FROM FACULTY FOR RESERVE ROOM

Policy	Respondents
One copy only, restricted to original owned collection materials or to preserve the original	1
One fair use copy only, from collection or faculty-owned materials	8
One fair use copy with additional copies by written permission of the copyright owner	13
Limited number of multiple copies from instructor under "Guidelines for Classroom Copying"	3
One fair use copy with additional copies without permission, under mild internal conditions	7
Instructor assumes responsibility for copyright compliance with few or no restrictions	4
No answer to this question	1
Total Respondents	37

*Question 6.* "When seeking permission, what form is used?"

Fourteen libraries did not answer this question because it devolves from question five, preceding. Of the twenty-three libraries who answered this question, sixteen (43.2 percent of the sample, 69.6 percent of those who responded to the question) noted that an individually prepared permission letter was sent by either the requester or the library staff to the copyright holder or clearinghouse, and seven (18.9 percent of the sample, 30.4 percent of those who responded to this question) used form letters for the same purpose. Total question responses and percentages add up to more than 100 percent because several respondents checked more than one item.

*Question 7.* "Must material copied for reserve be something already in your library's collection?"

The overwhelming majority of libraries (thirty-five out of thirty-seven, or 94.6 percent) accepted materials from an instructor to be placed on reserve that were not necessarily from the library's collection. Only two (5.4 percent) restricted reserve materials to collection items from their own libraries.

*Question 8.* "Do you plan to respond to the government's request for information concerning effects of the new copyright law

when it is reviewed by Congress in 1982?"

Of the sample of thirty-seven libraries returning questionnaires, thirty-two (86.5 percent) answered this question; twenty-two (59.5 percent of the sample, 68.8 percent of those answering this question) did not plan to provide input into congressional review scheduled for 1982. Ten institutions (27.0 percent of the sample, 31.3 percent of those answering this question) reported that they were gathering data on reserve room photocopying in preparation for participation in the statute review process.

*Question 9.* "What alternative means are you suggesting to faculty frustrated in their use of copyrighted material for the reserve room?"

Many libraries are making concerted efforts to provide other means of utilizing reserve services when restrictions on copying conflict with the instructional needs of the faculty and student body. Five institutions, including two large research universities, encourage their faculty to seek special permission more often when placing copies on reserve. Placing personal copies of works on reserve is suggested by two of the respondents, while three institutions, including one well-known research university, believes the library and/or student should purchase additional copies. Other suggestions from the surveyed libraries are:

1. greater use of other library resources.
2. utilization of OATS (Original Article Tear Sheets).
3. if material is not in print, . . . copies should be made.
4. encourage students to make their own copies.
5. use of more than one reading.
6. provide copies of the law, guidelines, and sample permission forms.
7. pay royalties to the CCC (Copyright Clearance Center).

Finally, one library offered a useful suggestion: "Stay cool and find some way around it."

#### General Analysis

In examining the data to determine if there exists a consensus on issues raised by the survey, it is clear that on at least some questions most libraries can agree. Most significantly, we can safely say that the two most

overwhelming responses support the ideas that: (1) once an item is accepted for reserve purposes, its use is not limited by term; and (2) items accepted for reserve room use do not have to be limited to those owned by the library.

An overwhelming 95 percent of the libraries responding do not limit copies to those items owned by the library, and a high 75 percent do not limit use of these items to only one term. These two responses are not ambiguous in any way and show a force of opinion in answering questions regarding the statutes. This should be of some comfort to those libraries that have doubts about the interpretation of the new law. It is significant that once an item is identified as copyable, the use of such a copy is not restrictable. It is also interesting to note that 75 percent of the respondents require the individual faculty member or requester to obtain permission to use materials under copyright, and that such duties do not burden the staff of the library reserve operation.

#### SUMMARY

Since photocopying customarily associated with library reserve room operations was not directly treated in the copyright legislation (Public Law 94-553) that became effective on January 1, 1978, there has been considerable doubt, differences in interpretation, and lack of consensus among academic library administrators as to the intent of the law in this area. The language of section 107 is succinct, specific, and liberal in permitting fair use photocopying in support of scholarship and research, including multiple copies for classroom use, which would appear to offer no barrier to reasonable photocopying of library materials to be placed in the reserve room by faculty for student use as part of classroom instruction. Additional "Guidelines for Classroom Copying," designed to narrow the interpretation of scholarly fair use photocopying to the benefit of lobbying copyright owners, were developed by a group of owners and academic users as part of the legislative process, and have attained a quasi-legal status in the minds of many, including some library administrators, although respected legal scholars have maintained that clear statutory language should generally stand on its own.

Section 108 of the statute more narrowly and specifically treats library and archival photocopying associated with collection maintenance and routine library operations in support of public services, including inter-library loan. Because faculty almost entirely dictate the contents of the reserve room, many academic library administrators view photocopying as an extension of the classroom. They believe that photocopying in connection with reserve room operations results from and supports classroom instruction, and therefore should come under either the liberal fair use language of section 107 or the tighter stipulations of the classroom copying guidelines.

A sample of thirty-seven Virginia academic libraries surveyed in early 1981 indicated a wide spectrum of interpretation regarding reserve room photocopying parameters permitted by the statute. All but one allowed at least one fair use copy of library or faculty-owned materials to be placed on reserve by instructors without the permission of copyright owners.

Eleven of the thirty-seven placed few or no restrictions on the number of photocopies for reserve use. Three followed the guidelines for classroom copying, restricting the number of copies to two or three. Twenty-two accepted one fair use copy plus additional copies with copyright owners' permission, but in only eight of these did the library staff take the responsibility for seeking permission for additional copies. The other fourteen generally left the responsibility for copyright clearance beyond one fair use copy up to the faculty member. One library allowed only original collection materials to be placed on reserve except for one copy to protect materials. Most libraries do not restrict reserve room copies to only one academic term.

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## APPENDIX A

## ANALYSIS OF RESPONSES BY QUESTION

1. What guidelines has your library utilized in developing reserve room policy?

Responses	% of Returns	
a. 29	78.4%	Fair Use (Sec. 107)
b. 22	59.5%	Guidelines for Classroom Copying
c. 17	45.9%	Reproduction by Libraries and Archives (Sec. 108)
d. 5	13.5%	Other

2. Are you aware of anything published in congressional hearings or reports that sheds additional light on reserve operations?

Responses	% of Returns	
a. 2	5.7%	Yes
b. 35	94.6%	No

3. How many copies does your reserve room accept?

Responses	% of Returns	
a. 8	21.6%	One fair use copy without permission only
b. 13	35.1%	One fair use copy without permission and multiple copies with permission
c. 8	21.6%	One fair use copy and multiple copies without permission
d. 10	27.0%	Other arrangements



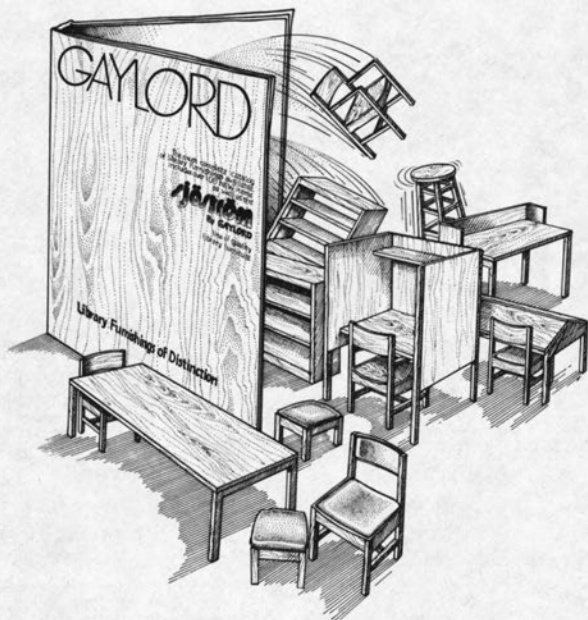


## APPENDIX B (CONT.)

Institution	Type	Question/Response																								
		1				2		3				4			5			6			7		8			
		a	b	c	d	a	b	a	b	c	d	a	b	a	b	c	a	b	c	d	e	a	b	a	b	
23	C	NO RESPONSE																								
24	M	x			x						x	x		x									x			x
25	D	x	x	x		x				x	x	x		x			x	x			x		x		x	
26	2		x			x							x	x												
27	M	x	x			x		x					x	x										x	x	
28	C	x	x	x		x		x					x	x							x		x		x	
29	C	NO RESPONSE																								
30	C	NO RESPONSE																								
31	D	x	x	x		x							x		x								x		x	
32	D	x	x	x		x			x			x	x				x		x			x		x		x
33	D	x	x	x		x				x		x		x						x			x			x
34	M	x				x			x				x	x									x		x	
35	C				x	x				x			x	x							x			x		x
36	B		x			x				x			x	x										x		x
37	B	x				x				x				x							x			x		x
38	B	NO RESPONSE																								
39	C	x				x					x		x									x		x		x
40	C	NO RESPONSE																								
41	D	x	x	x		x				x			x		x								x		x	
42	B	x	x			x		x		x			x		x							x		x		x
43	C	x	x	x		x			x				x		x								x		x	
44	M	x	x	x		x				x			x		x								x		x	

84.1 % RETURN (37/44)

B = Bachelor's or 4 year institution; C = Community or 2 year college; D = Doctoral institution; M = Master's or 5th year institution;  
2 = Other 2 year.



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