Guidelines on the Fair Use of Copyrighted Works by Law Libraries

1. Introduction

1.1 Preamble

The Copyright Act [2] sets out the rights of copyright ownership [3], as well as the limits to those exclusive rights.[4] Two of the most important limits for law libraries are fair use (Section 107 of the Copyright Act) and the library exemption (Section 108 of the Copyright Act). The purpose of these Guidelines is to provide guidance to law librarians on copying by the library and by users under fair use and the library exemption, rather than by authorization from the copyright owners.

These Guidelines describe conditions under which fair use and the library exemption should generally apply. A particular use that exceeds these Guidelines may or may not be a fair use, but the more one exceeds the Guidelines, the greater the risk that fair use does not apply. The American Association of Law Libraries believes that operation within these Guidelines provides a safe harbor, although only the courts can determine authoritatively whether a particular use is a fair use.

The limitations and conditions set forth in these Guidelines do not apply to works in the public domain for which there are no restrictions (such as facts, U.S. government works, or works in which copyright has expired), or to works for which the institution has obtained permission for the particular use. License agreements or contracts may govern the uses of some works, in particular, electronic information products; users should refer to the applicable license or contract terms for guidance on the use of those works.

These Guidelines represent the American Association of Law Libraries' collective understanding of fair use in law libraries. This Preamble is an integral part of these Guidelines and should be included whenever the Guidelines are reprinted or adopted by libraries or their parent organizations and institutions.

1.2 Background and Intent

The AALL Electronic Fair Use Committee was appointed in 1994 to develop Guidelines on the fair use of legal materials by U.S. law libraries. The AALL 2000-2001 Copyright Committee felt it important to update the 1997 Guidelines due to subsequent federal legislation and case law.

These Guidelines represent recommendations for "best practices" in all types of law libraries. Because of differences in types of institutions and different uses made of copyrighted works, and because certain exemptions apply only to nonprofit educational institutions, some Guidelines relate only to one type of library. Government libraries, such as court, county and agency libraries, and bar association and other membership libraries, are nonprofit libraries and generally fall somewhere between non-profit law school and for-profit law firm libraries in these Guidelines.

These Guidelines cover the reproduction, distribution, transmission, and display of copyrighted works, or substantial portions thereof, whether published in print or available in digital format. Further, the copying may be analog (i.e., photocopying or microform) or electronic (i.e., scanning or transmission). The Guidelines assume that the library's "original" copy is a legal copy.

1.3 Fair Use: Section 107

Fair use is a legal principle that limits the exclusive rights [5] of copyright owners. There is no simple test to determine what is fair use. Section 107 of the Copyright Act [6] lists four factors that must be considered to determine whether a use is a "fair use;" other factors may also be considered based on the particular facts of a given case.[7] Section 107 states:

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 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.[8]

1.4. The Library Exemption: Section 108

Much of the copying covered by these Guidelines is permitted under §108 of the Copyright Act.[9] The exemptions provided in §108 are available to all types of libraries that meet the requirements of §108(a). To qualify for the §108 exemptions, copying must not be for direct or indirect commercial advantage, each copy reproduced must include the notice of copyright that appears on the original work or a legend if no such notice appears on the work (see 1.4.1 for additional detail), and the collection must be open to the public or available to researchers doing research in a specialized field. A library that makes its collection available to others by interlibrary loan or otherwise meets the "open and available" requirement.[10]

Section 108(d) provides that a library which meets the §108(a) requirements may, at the request of a user, reproduce one copy of an article from a periodical issue or other contribution to a collective work either from material the library owns or from material owned by another library. The copy must become the property of the user. The library must post the warning prescribed in 37 C.F.R. §201.14 at the place where the orders are placed, and must include it on the order form.[11] Further, the library should have no notice that the user will use the copy for other than fair use purposes.

Under §108(d), libraries that qualify for the Library Exemption may provide a single copy to an external user upon request from that user. [See 2.1 below] The copy provided may be either a photocopy or an electronic copy. Consistent with §108(a)(1), the library may charge a reasonable fee for making the copy as long as the charge does not exceed reasonable cost recovery.

1.4.1 Notice of Copyright Under Section 108

A notice of copyright should appear on each print and electronic copy reproduced.

Under §108, copies should include the notice of copyright that appears on the copy being reproduced. Absent such notice, the copy should include a legend such as “This work may be protected by copyright; further reproduction and distribution in violation of United States copyright law is prohibited.”[12]

2. Reproducing Single Copies within the Firm, School, Court, or Other Institutions

2.1 Copying from the Library's Own Collection

Fair Use: Purposes for copying from the library's collection include teaching, scholarship, or research, such as preparation in teaching, background research for drafting a court opinion, a client letter, a brief or a memorandum of law, and writing an article or book. Attorneys may offer reproductions of court opinions, statutes, articles, and sections of treatises into evidence in court proceedings. This also includes reproducing and distributing copies as required for administrative proceedings.

Library Exemption: A library which meets the §108(a) requirements may, at the request of a user, reproduce one copy of an article from a periodical issue or other contribution to a collective work either from material the library owns or from material owned by another library.[13] The copy must become the property of the user; it may not be added to the library's collection. The library must post the warning prescribed by the Copyright Office at the place where the orders are placed, and must include it on the order form.[14] Further, the library should have no notice that the user will use the copy for other than fair use purposes.

For-Profit Library Copying for External Users: Libraries in the for-profit sector may provide a single copy of an article, a chapter, or a portion of another copyrighted work to clients to support work done for the client. The copy provided may be either a photocopy or an electronic copy, provided it includes the appropriate notice (see 1.4.1 above).

For-Profit Library Copying for Internal Users: Law firm and other law libraries in the for-profit sector should be aware that the Texaco decision[15] may apply to them. The AALL Model Law Firm Copyright Policy cautions against copying and distributing articles for later (rather than current) use and creating personal libraries. Libraries are also cautioned against systematically routing journals with knowledge or reason to believe that recipients will copy the articles for later (rather than current) use and creating personal libraries. Libraries may copy tables of contents, but should not solicit requests for copies of articles that would constitute systematic copying.[16]

2.1.1 Printed Copies of Printed Works

To satisfy a user's request, a library may make a photocopy or other printed copy of a printed work such as an article, a chapter or portions of other copyrighted works.

2.1.2 Electronic Copies of Printed Works

To satisfy a user's request, a library may scan an article from a periodical issue, a chapter, or portions of other copyrighted
works and provide an electronic copy to the user in lieu of a photocopy. Because the copy must become the property of the user, the library may not retain the scanned image. A copy may be faxed or otherwise transmitted electronically to the user, but the library should destroy any temporary copy made incidental to the transmission. In other words, an incidental copy made to facilitate transmission is a fair use, as long as that copy is not retained.

2.1.3 Printed Copies of Digital Works

Unless prohibited or otherwise restricted by the terms of a valid license agreement, a library may print a copy of an article, a chapter, or portions of other copyrighted works at the request of a user.

2.1.4 Electronic Copies of Digital Works

Unless prohibited or otherwise restricted by the terms of a valid license agreement, a library may download a copy of an article, a chapter, or portions of other copyrighted works at the request of a user and forward it electronically to the user.

2.2 Obtaining Copies from Another Library

2.2.1 Interlibrary Loan Copies

A library may request single copies of articles, book chapters, or portions of other copyrighted works from the collection of another library to satisfy user requests as described above. The receiving library may deliver the copy to the user in print or electronic format. Neither the borrowing nor lending library may retain the print or digital image. Libraries may request print or electronic copies of works through interlibrary loan, but borrowing libraries of all types should be aware of the CONTU suggestion of five.[17] The more a library exceeds the suggestion of five, the less likely it is that the interlibrary loan request is fair use.

2.2.2 Access to Digital Works by External Users [18]

Terms of a valid license agreement may prohibit access to or reproduction of digital works for external users, including interlibrary loan, or may limit the external constituencies to which a law library may supply either print or electronic copies of digital works. If the license agreement is silent on providing copies to external users, then the library may make either printed or digital copies for external users.

3. Multiple Copying of Copyrighted Works

3.1 Multiple Copying in General

Multiple copying is limited under the Copyright Act and under these Guidelines. Section 108 of the Act (the Library Exemption) is restricted to single copies. There are, however, instances in which multiple copying might be considered fair use under §107.

3.1.1 Academic Law Libraries

Under the Classroom Guidelines,[19] nonprofit educational institutions may, under certain circumstances, make multiple copies of articles, book chapters, and portions of other copyrighted works for classroom use. The Classroom Guidelines restrict use to one term, and also impose tests such as brevity, spontaneity and cumulative effects. Scholars, librarians, and publishers agree that uses within the terms of the Classroom Guidelines are fair.

The Classroom Guidelines were designed to cover uses in primary and secondary schools. In higher education, including nonprofit law school-sponsored continuing legal education programs, however, fair use should encompass copying beyond that which is permitted in the Classroom Guidelines. The word limitations in the Classroom Guidelines are especially problematic for legal education due to the length of most copyrightable legal documents and scholarship.

Academic libraries may make a limited number of copies of articles, chapters, and portions of other copyrighted works for library reserve collections as an extension of the classroom. The ALA Model Policy suggests that no more than six copies be made for reserve for any one class.[20] The copies may be print or electronic. In the case of electronic copies, access should be limited to no more than six simultaneous users. For electronic reserves, the institution should take reasonable steps to ensure copies are only accessible to enrolled students.

3.1.2 Other Law Libraries

Multiple simultaneous copying generally is not permitted under the library exemption. There may be instances, however, where such copying would be permitted under fair use. The library should apply the four fair use factors to determine whether making the copies qualifies for the fair use exemption.

3.2 Preservation

A library may make three copies of either a published or unpublished work for preservation purposes under specified conditions.[21] Such copies may be in analog or digital formats, but digital copies may not be used outside the premises of the library nor sent to other libraries.

3.2.1 Obsolete Devices
A library may make three copies of a published work when the format in which the work is stored has become obsolete. A format is obsolete if the equipment or device necessary to perceive the work is no longer manufactured or not reasonably available in the commercial marketplace.[22]

3.2.2 Unpublished Works

A library that has a copy of an unpublished work in its collection may make a copy of that work for deposit in another library that qualifies for the Library Exemption [see 1.4 above]. Such copies may only be in analog format.

3.3 Copying Newspapers

Libraries generally may reproduce only small portions of copyrighted newspapers. All types of libraries should avoid multiple copying of newspapers or routing newsletters if they have knowledge or reason to believe that recipients will reproduce the newsletter or articles therein for a later use or create personal libraries.

4. Copying Database Search Results

4.1 Signed License Agreements

Most libraries sign license agreements to obtain access to legal and other databases. Because libraries must comply with the terms of a valid license agreement, they should review the terms of all licenses closely.

4.2 Redistribution of Results -- Single Copy to a User

Distribution of database search results to a single user clearly is permitted under fair use unless prohibited by a valid license agreement. This includes providing a copy of search results to any library patron, including a faculty member, student, judge, or law firm client. Public domain information is not subject to any of these limitations.

4.3 Redistribution of Results -- Multiple Users

Absent a license agreement that restricts redistribution of non-public domain research results, redistribution to multiple users may be permitted. Libraries should seek permission for multiple distributions of research results, whether by print or via electronic means, if that use exceeds these Guidelines.

1. The American Association of Law Libraries encourages the free reproduction and distribution of the AALL Guidelines on the Fair Use of Copyrighted Works by Law Libraries without permission. Because digital technology is in a dynamic phase, there may come a time when it is necessary to revise the Guidelines. All institutions should review their own policies to ensure compliance with all applicable laws.

2. Title 17 of the United States Code.


9. 17 U.S.C. §§109, 110, and 117 may also be relevant to these Guidelines.


11. Notice Warning Concerning Copyright Restrictions

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

37 C.F.R. sec. 201.14(b).

12. The Digital Millennium Copyright Act amended Section 108(a)(3) to require that a library copy include the notice of copyright that appears on the work. It is not clear from the language of the statute or the legislative history whether this requirement applies to copying the copyright notice in front matter of the volume when copying independently authored articles from a journal or compilation.


14. See fn. 11, supra.

15. American Geophysical Union v. Texaco, 60 F.3d 913 (2nd Cir. 1994).


17. The suggestion of five permits libraries to copy five articles from the most recent five years of a single title without
In July, 1994, AALL President Carol Billings appointed the Special Committee to Advance the Fair Use of Electronic Information Resources in Law Libraries and by Law Librarians. Dubbed the "Electronic Fair Use Committee," its charge was to develop policies/guidelines relating to the fair use of electronic information resources in law libraries and by law librarians with specific reference to networking, downloading, retransmission, re-use and combining information and to any other relevant issues.

The Electronic Fair Use Committee, chaired by Laura N. Gasaway, held hearings to determine what AALL members believed to be fair use in the electronic environment. The original Guidelines, which were adopted by the AALL Executive Board in July, 1997, represented this effort.

The AALL Copyright Committee has continuing responsibility for these Guidelines, as well as others relating to intellectual property. The 2000-01 Copyright Committee revised the original Guidelines to reflect changes in the law since 1997.

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