



Category
COPYRIGHTS – 2:10:04:00
Approval
Leadership Council Approved: December 9, 2016
Effective Date/Approved: January 1, 2017
Revised: January 12, 2009; December 9, 2016
Responsible Party: Vice President for Academic Affairs

I. PURPOSE

- A. Motlow State Community College faculty, staff and students abide by copyright law as stated in the United States Code and as set forth in Tennessee Board of Regents’ policies and the laws of the State of Tennessee.
- B. Additionally, the College supports fair use as outlined by the Kastenmeier Guidelines (1984), TEACH Act Guidelines as published by North Carolina State University Libraries (2002), National Commission on New Technological Uses of Copyright Works (CONTU, 1978), and the guidelines on fair use published by The Conference on Fair Use (CONFU, 1998).

II. GENERAL

- A. Software available on computers and networks is not to be copied except as permitted by the applicable software license. The College adheres to the EDUCOM Code of Software and Intellectual Rights:

“Respect for intellectual labor and creativity is vital to academic discourse and enterprise. This principal applies to works of all authors and publishers in all media. It encompasses respect for the right to acknowledgement, right to privacy, and right to determine the form, manner, and terms of publication and distribution. Because electronic information is volatile and easily reproduces, respect for the work and personal expression of others is especially critical in computer environments. Violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secret and copyright violations, may be grounds for sanctions against members of the academic community.”

Quoted from: Using Software: A Guide to the Ethical and Legal Use of Software for Members of the Academic Community, EDUCOM (January 1992), p. 3.

Sources: 17 USCS 107 (2005), 17 USCS 108 (2005), 17 USCS 110 (2005), 37 CFR 201.14

B. CONTU GUIDELINES ON PHOTOCOPYING UNDER INTERLIBRARY LOAN ARRANGEMENTS

The CONTU guidelines were developed to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted under the copyright law. In the spring of 1976 there was realistic expectation that a new copyright law, under consideration for nearly twenty years, would be enacted during that session of Congress. It had become apparent that the House subcommittee was giving serious consideration

to modifying the language concerning "systematic reproduction" by libraries in Section 108(g)(2) of the Senate-passed bill to permit photocopying under interlibrary arrangements, unless such arrangements resulted in the borrowing libraries obtaining "such aggregate quantities as to substitute for a subscription to or purchase of" copyrighted works.

The Commission discussed this proposed amendment to the Senate bill at its meeting on April 2, 1976. Pursuant to a request made at that meeting by the Register of Copyrights, serving in her ex officio role, the Commission agreed that it might aid the House and Senate subcommittees by offering its good offices in bringing the principal parties together to see whether agreement could be reached on a definition of "such aggregate quantities." This offer was accepted by the House and Senate subcommittees and the interested parties, and much of the summer of 1976 was spent by the Commission in working with the parties to secure agreement on "guidelines" interpreting what was to become the proviso in Section 108(g)(2) relating to "systematic reproduction" by libraries. The pertinent parts of that section, with the proviso added by the House emphasized, follow:

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee...

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

Before enactment of the new copyright law, the principal library, publisher, and author organizations agreed to the following detailed guidelines defining what "aggregate quantities" would constitute the "systematic reproduction" that would exceed the statutory limitations on a library's photocopying activities.

C. Photocopying-Interlibrary Arrangements

Introduction- Subsection 108(g)(2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108(g)(2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals--those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108(g)(2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

D. Guidelines for the Proviso of Subsection 108(g)(2)

1. As used in the proviso of subsection 108(g)(2), the words "... such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:
 - (a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of "...such aggregate quantities as to substitute for a subscription to [such periodical]."
 - (b) With respect to any other material described in subsection 108(d), including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.
2. In the event that a requesting entity:
 - (a) shall have in force or shall have entered an order for a subscription to a periodical, or
 - (b) has within its collection, or shall have entered an order for, a copy of phonorecord of any other copyrighted work, materials from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisos of section 108, to supply such copy from materials in its own collection.
3. No request for a copy or phonorecord of any materials to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.
4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.
5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

These guidelines were accepted by the Conference Committee and were incorporated into its report on the new act. During the ensuing twenty months, both library and publisher organizations have reported considerable progress toward adapting their practices to conform with the CONTU guidelines.

The guidelines specifically leave the status of periodical articles more than five years old to future determination. Moreover, institutions set up for the specific purpose of supplying photocopies of copyrighted material are excluded from coverage of the guidelines.

<http://old.cni.org/docs/infopols/CONTU.html>

E. The TEACH Act: Section 110(2) of the Copyright Act

The Technology, Education and Copyright Harmonization Act (aka TEACH Act) was enacted eight years (2002) ago as an amendment to Section 110(2) of the Copyright Act. It is, in fact, simply the current version of Section 110(2) and is not a separate law. Referencing the TEACH Act, after so many years, as the TEACH Act, has actually become misleading at this point. It is more accurate, when considering whether or not to transmit performances and displays of copyrighted materials - such as those used in online courses - to assess the options as follows:

- (1) Is permission required from the copyright holder?
- (2) Does the proposed use constitute a fair use as outlined in Section 107 of the Copyright Act? Or
- (3) Does the proposed use fit within the transmission performance and display exception (Section 110(2)) of the Copyright Act?

Of course, if you are the copyright holder of the work or the work is in the public domain, you may use the work freely.

1. The Guidelines were developed to apply only to off-air recording by non-profit educational institutions.
2. A broadcast program (including cable programs) may be recorded off-air and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording.
3. Off-air recording may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days--not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions--within the forty-five (45) calendar day retention period.
4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each additional copy shall be subject to all provisions governing the original recording.
6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes. i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Congressional Record, October 14, 1984

<http://www.lib.berkeley.edu/MRC/Kastenmeier.html>

Copies of this policy, along with all backup materials, will be placed in all vice presidents' offices, Deans' offices, at each campus, and in the library.