

LIBRARY ISSUES

BRIEFINGS FOR FACULTY AND ADMINISTRATORS

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Online Course Content Delivery: Opportunity for Expertise from and Partnership with the Library

by Beth E. Clausen

In April 2008 three publishers (Cambridge University Press, Oxford University Press, and Sage Publications) filed suit against persons, including the President and the University Librarian, in their official capacities at Georgia State University for “systematic, widespread, and unauthorized copying and distribution of a vast amount of copyrighted works” through “online systems...hosted by the University.”¹ The suit, which is yet to be resolved in the courts or through a settlement, seeks injunctive relief to halt the practices in question and not monetary damages.

This suit should illustrate clearly that widespread violation of copyright is suspected across academic institutions by faculty posting scanned articles and book chapters for use by students without regard for intellectual property rights. In many cases, this is being done through the campus’ course management systems (CMS) like Blackboard and Sakai.

Kate Douglas Torrey, Director of the University of North Carolina Press, asserts that this phenomenon is being ignored by university administrators and that use of such course management software presents a “serious threat to the fragile system of scholarly communications, whose survival depends on balancing the needs of authors, publishers, teachers, and students.”² She further suggests that universities have a moral responsibility to support copyright compliance and that there should be mechanisms in place on campuses to ensure that this is done.

A Mechanism for Support

A system already in place that should be seriously considered as a basis for such a mechanism is the one used by the campus library for reserve services. The system is usually well established and staffed by persons experienced in considering copyright and procedural issues related to the delivery of convenient course content to the campus community both responsibly and responsively. Reserve services vary from institution to institution but those commonly provided by various libraries illuminate that libraries are willing and actively expanding or establishing a role in helping faculty deliver course content by any means necessary.

A Bit of Background

For the past 15 years, reserve services provided by libraries have been evolving quickly from the closed, separate collection with brief circulation periods reluctantly visited in person by students to a dynamic resource for helping faculty deliver course content of all types. Where files of photocopied articles once typified the services, PDF, TIFF and other electronic files are now the norm. The service is accessible to students on campus as

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well as those studying at a distance. This development is consistent with technological advancements and trends in higher education.

E-reserves evolve. E-reserves have become commonplace in academic libraries since San Diego State University launched its service in the early 1990s. Other libraries followed suit and developed similar systems and services. Libraries started by scanning textual documents and providing access to them through systems protected behind a firewall or a password system. Soon, as electronic resources purchased by the library grew, links to these resources also became more commonplace as sources of reserve materials. Video and audio clip files in addition to text and image files are also now served in the suite of reserve services offered by many libraries. Streaming of media that is presented so it is difficult or impossible to capture for redistribution is also available through the libraries of some institutions.

What has also grown along with the number of e-reserve services offered by academic libraries is the awareness of and interest in copyright issues, limitations, and opportunities in relation to the legal delivery of course content.

How e-reserves function. Electronic reserve intake and delivery systems are often homegrown; however, there are also commercial systems available such as Ares from Atlas and Eres by Docutek. These systems are designed to help manage the reserve process and provide a convenient front end for instructors to submit reserve requests for materials regardless of file type or format. Systems may also provide usage and access statistics.

The reserves function of a library's online catalog system often serves as an access point to some e-reserve materials. Although the titles of the article or book chapter can be seen by anyone accessing the catalog, access to content is restricted to those who are authenticated as legitimate users. Intellectual access to the materials is

through course, department or instructor rather than title, keyword or subject

Partnering for delivery of e-reserves. Libraries are increasingly partnering with campus stakeholders to assist in delivering e-reserve materials through the course management system. For example, faculty members at Northwestern University do not always find out about reserve services directly from the library or its website.

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The administrators of Blackboard on campus in the Research and Academic Technologies Department are aware of the services offered by the library and make an effort to alert faculty users of the courseware. There are regular meetings that assist in helping library reserve service providers and the courseware providers keep up-to-date on what is happening in order to make the best of both service areas. The groups work together to provide optimal opportunities for librarians and faculty to best deliver information to the students in a legal manner. Such communication should be the norm in order for delivery of course content to be the most efficient and effective it can be.

Facets to Reserves Operations

There are various facets to the reserve services operations and libraries that provide a solid foundation on which to build sound practices to assist faculty in providing course content through traditional e-reserve and/or the CMS. These include a willingness to collaborate, the library's

expertise in electronic resources, the library's mission and service orientation, and knowledge of and interest in copyright and fair use.

Collaboration. Librarians and library staff are willing and perhaps even eager to collaborate on campus with the CMS support providers and faculty. Current library literature abounds with articles – either scholarly or experiential accounts – about collaboration between the library and an academic or administrative partner on a campus. These articles are often about information literacy and education efforts, but the topics also include delivering content to students.

Expertise. Librarians' knowledge of electronic resources available to the campus community and the best way to deliver them can be an indispensable benefit to the faculty and students. A librarian working with e-reserve materials is rarely surprised, but almost always dismayed when it is discovered that a faculty member is purchasing access to a resource already being subscribed to by the library.

For years, library acquisitions and reserve staff have worked together to ensure that the licenses of the ever-growing array of online journals and books purchased and leased in digital format allow for linking to course content delivery to the authenticated community. The same library staff have lobbied vendors of such content to provide durable links to their materials to facilitate and stabilize access. The library staff members tend to know which vendors and systems do this in the best way for satisfactory delivery.

Mission. Working to facilitate information delivery to users when it is needed is at the core of the academic library's mission and appeals to the strong orientation of service of such libraries. Libraries exist on campuses in large part to support the teaching of the institution. Therefore, if a resource is used for teaching, the library has a role in connecting the student to that information regard-

less of type of information or user location or access point.

Copyright compliance. Because of their experience and knowledge of the arena, reserve operations in libraries are poised to help campuses develop copyright compliant delivery of resources. Librarians for years have been applying appropriate sections of the U.S. Copyright Act. The lessons learned in developing e-reserve could be critically important in the arena of CMS delivery of resources. Particular knowledge and expertise in relation to fair use as applied in library reserve systems cannot be overemphasized.

Some libraries and institutions may encounter difficulties in pursuing a program that offers a copyright compliance mechanism to faculty for course content delivery. These tend to require an increase in support – particularly for staff – from the host institution. Basic resistance to change may also be a barrier to be addressed.

Some libraries do not currently take responsibility for copyright compliance with their e-reserve systems. In these cases, faculty members are often responsible for obtaining permissions as appropriate. If the library does not have the expertise in house, there may be need for the support of training and learning – in house and external – before the library can increase its role in this area.

Permissions, Fair Use, Royalties

The process of determining whether or not permission needs to be sought can be time-consuming and requires effort and often expertise. The first step after a request is received and reviewed for completeness and initial processing (e.g., list creation, searching, retrieving, ordering) is to determine whether fair use guidelines need to be considered in context of the particular request. Reasons to not apply fair use principles or to seek permission include the item being in the public domain (e.g., published before 1923, a U.S. federal publication), if the copyright were owned by the requesting faculty member, or if this

were the first time the article or book excerpt has been used for a course at the institution. These are all widely accepted considerations.

Applying fair use guidelines themselves requires informed, consistent judgment. While there are rules of thumb and varied suggested guidelines, this is not a black and white/yes and no area. Practices, procedures, and policies can likewise vary greatly among libraries. Each assessment of fair use should be performed consciously on a case-by-case basis. Librarians, like others, do the best they can when assessing fair use under Section 107 of the copyright law and weighing the four factors that bear repeating here:

- the purpose and character of the use;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

If an article or chapter were determined to be not usable without permission or possible fee under fair use, the first stop for many American libraries would be the Copyright Clearance Center or CCC at <http://www.copyright.com>. The CCC offers institutional flat fee subscriptions or the option for billing to be itemized. The fees are often based on the number of pages to be used and class enrollment figures. Fees can vary from free to fairly hefty per page fees. Although the CCC is a great starting point, the Reserve unit is able to clear or pay royalties through the site for less than half of the materials processed.

When the Real Work Begins

In the other cases, the real work begins. A staff member needs to verify and execute procedures that vary greatly between publishers and other rights holders. Some rights holders accept e-mail requests and

others require that a printed request be sent through surface or airmail. Response time from rights holders also varies greatly from almost instantly to no response. How this is handled varies among libraries. Some libraries may wait to hear about a permission request and others will post an article when the request is made and take down the item if the request is denied or the cost is prohibitive. This can definitely be frustrating for everyone involved including the faculty and students.

Although out of the hands of the academic institution, response time for a request needs to be considered when building a mechanism to support copyright compliance. Of course, the optimal solution for the campus would be for publishers and other rights holders to take a more active role in providing permissions and information about royalty fees. This should be part of their responsibility in terms of upholding the infrastructure of scholarly communication.

The royalties paid to rights owners of the intellectual content will almost inevitably increase if permission to use such content rises. This may be more modest than one may expect as some permission is granted gratis and some is fairly low in cost. For three academic quarters, the Main Reserve operation of NU Library has suspended limits on what will be paid for use of an item processed for traditional e-reserve use or for use within a course via Blackboard. Surprisingly, there has been an insubstantial impact on the amount of money paid overall for copyright permissions.

Any change in procedure or process can be a barrier. In this case, there could be practices and mindsets that would need to change for this endeavor to be successful. For example, if faculty members have for years been posting what they would like to their course site, there may be great reluctance to change what has been working for them and their students. Encouragement to participate would need to come from the central administration or

the individual unit's administration. Education about copyright and why copyright may need to be considered will also be necessary to overcome some resistance inherent in change.

Recent Events and Lawsuits

Recent events in relation to e-reserves and electronic course content delivery have brought discussions of copyright compliance to the minds of many in academic circles. Knowledge of these occurrences may help shape the future of course content delivery on any campus. In 2003, the University of California-San Diego received a request from the American Association of Publishers (AAP) in order for open monitoring of e-reserves that faculty post on the open web lists of readings on e-reserve. The University refused the proposal and no lawsuit was filed by the AAP. This event got many libraries thinking about e-reserves.

In September 2006, Cornell University issued a statement touting that it had written guidelines jointly with the AAP for faculty on how to use electronic reserve without violating copyright. Basically, these affirm that the parties agreed that copyright law applies to electronic course content.³ In January 2008, it was announced that Marquette, Syracuse and Hofstra universities were adopting similar guidelines on limiting electronic content to students. Certainly, the adoption of guidelines that tend to minimize the legitimacy of fair use is not pervasive, but they should be known to stakeholders while reviewing this issue on a local campus.

In the last few years, there has been a specter of lawsuits hanging over libraries and universities in relation to violation of copyright in relation to delivering electronic course content. News of libraries being approached about their e-reserve policies and practices by publishers has spread through the academic library community – particularly via email and other non-public avenues.

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The urgency to consider the issue of legal course content delivery was greatly increased in April 2008 with the three-publisher lawsuit against Georgia State University, mentioned at the beginning of this article. This event has spurred action and consideration of policies in this area in many academic institutions with libraries participating actively in the discussion.

Final Thoughts

Such events should encourage campuses and institutions to consider the practices and local environments surrounding these issues to find satisfactory solutions in relation to their context, practice, and needs. It can be said that copyright compliance is a national issue with local solutions that will vary. Any solution, however, should provide a mechanism

of support to the faculty. This is increasingly important as more material is delivered to students within the course management software environment. Each institution needs to decide the best mechanism for itself in its context and current operations. All institutions, however, would do well to consider basing this mechanism in the library or partnering with the library which has experience with reserves. Administrators and faculty are likely to find library staff who are willing to work with others, who can ensure responsible delivery of course content, and who have experience in balancing of needs of all stakeholders in scholarly communication.

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Further Readings

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