

AALL Academic Law Libraries SIS Faculty Services Listserv Discussion
“Law Faculty, Copyright and Law Libraries”
May 2 and 3, 2007

To: "AALL Academic Law Libraries SIS Faculty Services Roundtable" <all-fsr@aallnet.org>
Subject: ALL-SIS Faculty Services Committee: Law Faculty, Copyright and Law Libraries

Welcome to the ALL-SIS Faculty Services Committee discussion of "Law Faculty, Copyright and Law Libraries." Please join our discussion by responding to all-fsr@aallnet.org with your comments on the topics below:

Who handles copyright permissions at your library for course reserve material, electronic reserves or postings on course or faculty webpages? When a professor wants to download a music video from the web for a presentation, who is responsible for obtaining the license to display it? Does the library provide guidance or information for the faculty on copyright issues? Now that so many materials are provided to students in electronic format, copyright issues are more problematic than ever for our faculty. How do we help them navigate these issues while accommodating new methods of teaching and learning? We'd like to exchange ideas and information on how these issues are affecting or adding to the services we provide to law faculty.

Margaret Schilt
Faculty Services Librarian
D'Angelo Law Library
University of Chicago

Here at Syracuse, the University's Copyright Advisory Committee assumes responsibility for crafting policies and responding to faculty and staff copyright questions. The committee is comprised of campus librarians, IT staff and several law faculty.

The Law Library has, until recently, played little role in copyright issues. Individual faculty members have been responsible for compliance. However, last year we implemented a copyright permissions program through Copyright Clearing Center (copyright.com) to encourage compliance. Faculty submit requests through web forms on our library web site, and I process and manage their requests through the CCC.

So far, our faculty have not been pleased with the CCC's service. Turn around is VERY slow for republication requests, and at least 60% of the requests could not be handled because the copyright holder asked that the requester contact them directly.

As a result, many of our faculty continue to violate copyright law.

Has anyone else experimented with the Copyright Clearing Center service?

Wendy Scott, Assistant Director for Faculty & Outreach Services
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This year, I offered a program for faculty on how to create links to documents in Westlaw, Lexis and Hein Online. In conjunction with the program, I developed a series of step-by-step tutorials and posted them to the Faculty Services section of our web site

(<http://www.law.syr.edu/lawlibrary/faculty/research.asp>).

I push the 'interactive' advantage of creating links over posting a document in PDF. If a student accesses a document through a link to Westlaw, he/she can then use the functionality of the research system.

Wendy Scott, Assistant Director for Faculty & Outreach Services
H. Douglas Barclay Library
Syracuse University College of Law

Yes. When I can get the faculty to acknowledge that it needs to be cleared via copyright, then I usually coordinate the permissions. I am now involved in more than just articles.

In the last year I've added the responsibility for obtaining reproduction permission from authors of out of print books. I am then scanning them and the faculty are placing the materials on the intranet/portal for the students to use in class. So far it's worked out great. The student have access to the books, when they want it, and the library doesn't have to keep scanning out of print dealers for additional copies - a big staff time cost. Oh yes, and the faculty member is happy.

Also, with more and more faculty visiting overseas, converting the teaching material into an electronic format sure makes it easier for them to transport multiple copies for their students. I am not sure what will happen if this becomes more and more a part of my job. Has someone figured out a way to streamline copyright permissions (other than CCC). I know a lot of the publishers have put copyright permissions front and center on their websites. But am I missing something?

Monica M. Ortale, M.L.I.M., J.D.
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Several years ago, the Law School contracted with Xerox Services to do all of its photocopying needs, including coursepacks. It was done because there was a push to put everything online. However, Xerox, put a clause in the contract which essentially indicated it presumed everything that was sent to them was copyright compliant. So, a librarian was assigned to vet everything for copyright compliance. Not one faculty member every obtained permissions on their own. Although, the coursepacks contained material that was available on Westlaw and other databases they do not provide links to the material. This was something pushed by the librarian but the faculty are not responsive to the idea. Electronic reserve is basically non-existent due to the arrangement with Xerox. If faculty are showing video's, downloading music, etc. the librarian isn't aware because few requests come to the library for permissions for this type of media.

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Re: Streamlining the permissions process

I've found that contacting publishers through their web sites is reliable, but not always quick enough for faculty who do not submit their requests in a timely manner. Sometimes I'll work with the faculty members RA's and have them contact the publishers directly by phone, then follow-up with a fax to the appropriate contact person.

Wendy Scott, Assistant Director for Faculty & Outreach Services
H. Douglas Barclay Library
Syracuse University College of Law

My experience has been more with journals, especially online only journals. I find that the Terms of Use are frequently buried in what, to me, seem unintuitive places (the bottom of an "international contacts" webpage?). Once I find the right person to email, permission has been forthcoming relatively quickly - often within 24 hours. This is highly labor intensive on my end, though, and as volume increases may become less tenable. For one course this year, I had to clear 24 online articles for the first week of readings. I also have not yet worked out a good method for archiving the evidence of permissions, for each article for each course that I handle. That raises another issue - does anyone have guidelines

as to long the evidence of permission to post must be kept?

Margaret Schilt, Faculty Services Librarian
D'Angelo Law Library
University of Chicago

I would like to ask a related question -- how does one educate faculty about copyright in general?

If the library is in charge of e-reserves and faculty is required to interact with librarians, copyright issues can be discussed with those faculty members -- but what about non-library/quasi-library copyright issues -- handouts to students, faculty members duplicating copyrighted library materials to multiple faculty members, etc?

Is better to deal with copyright concerns with individual faculty members, through presentations open to all faculty, left to administration, or through another option?

Raizel Liebler
Reference Librarian
John Marshall Law School

We offered a program, which attracted approximately 10% of the faculty.

My web site materials are used only when I direct faculty to them.

The administrative University Copyright Advisory Committee has proven to be the most successful way to capture faculty's attention.

The committee has no policing function, but does accept inquires through a web form.

I think a organizational committee, which is sanctioned by the highest level of administration, and includes faculty, librarians and administrators, is the best way to go.

Wendy Scott, Assistant Director for Faculty & Outreach Services
H. Douglas Barclay Library
Syracuse University College of Law

Faculty often asked for ongoing permissions ("I want to use these articles in every semester that I teach contracts.") Does anyone have a system for managing this kind of request? Do faculty assume that a single permission is valid for future use?

Wendy Scott, Assistant Director for Faculty & Outreach Services
H. Douglas Barclay Library
Syracuse University College of Law

Repeated use is a tricky issue, not least because our course webpage software automatically archives the course documents and allows them to be reposted en masse the next time the course is taught. If what is posted is a link to a licensed

database, I would say that the link may be used over and over, so long as the license remains in force. If the article is posted pursuant to a decision that the fair use exception applies, I think the answer is that fair use does not extend to repeated uses of the same material from semester to semester. (Although I have heard, more than once, the creative argument that of course the use is fair because after all, even though the professor and the course are the same, the students are new each semester so from their point of view the article is newly posted...) I believe it is a judgment call how frequently fair use can be said to apply (that is, if the course is taught in 2007 and then again in 2009, can the use be "fair" in both instances because there was a break of a year?) All that being said, educating the faculty to these fine distinctions is not easy, as, in my experience, they frequently approach the issue with an ingrained conviction that any use for academic purposes should be considered a fair use.

Permission applied for and received is only good for whatever particular use was described in the application, I would think.

Margaret Schilt, Faculty Services Librarian
D'Angelo Law Library
University of Chicago

Good discussion topic. Be forewarned, my reply is rather long-winded.

Who handles copyright permissions at your library for course reserve material, electronic reserves or postings on course or faculty webpages?

With the help of a student assistant, I do. I've been the "Copyright Coordinator" for the law school for 9 years now. As a librarian, I know that not all of the professors view my opinions as credible, but it made a big difference that our former dean put the issue front and center. Several years ago I requested the formation of a copyright policy committee, with the IP professor as chair. We jointly developed a policy and then he and the dean presented it to the faculty for adoption. While I wish my credibility alone would have been enough to get the attention of the faculty, the real priority was getting a policy established and convincing the law faculty that they weren't all copyright experts. I made a presentation to the law school during the Fall orientation meeting after the policy was adopted to explain the limitations of academic fair use, which seems to have had some impact. It was also critical for the dean to make it clear to the web support department that they needed to check with me about copyright authorization for online course materials. There are still gaps, but overall I consider us to be compliant. I do have my student assistant "audit" the course pages at the end of each semester and if something went up without my knowledge, we pay through the CCC after the fact.

When a professor wants to download a music video from the web for a presentation, who is responsible for obtaining the license to display it?

Multimedia doesn't come up very often at our school. But I rely heavily on *110(1) for in-class, face-to-face performances. Under those circumstances, I don't consider it necessary to ask for permission as long as the professor is not using a bootlegged copy. On those rare occasions that a professor has needed permission for something like a syndicated cartoon or photo for an off-campus presentation, I've done the research on how to get permission and then helped the department secretary to obtain the license. That has kept the licensing fee under the correct budget.

Does the library provide guidance or information for the faculty on copyright issues?

Yes. I periodically get phone calls from faculty members who are doing something different than they've done before and they'd like my advice. (After the policy was adopted and the IP professor expressed his confidence in my judgement, my credibility with the remainder of the faculty did go up :-)

Now that so many materials are provided to students in electronic format, copyright issues are more problematic than ever for our faculty. How do we help them navigate these issues while accommodating new methods of teaching and learning?

In my experience, most faculty just want the bottom line ("what do I do when ..."). In those cases I make the judgement call based on our policy. For those rare professors who want to know more, there are copyright tutorials online that I recommend. (The BYU copyright website has a good one, the UT website copyright tutorial is probably the most well-known, and it is excellent.)

For the typical faculty member, I have a few basic rules:

1- if it's possible link students to a licensed copy of the material directly, that's best - as was mentioned above, it puts students in a position to use the power of the resource/search tools, and it also saves the students money, which is a big motivator for our faculty. We do have an in-house web support department that will create class pages, but when the faculty member is using a lot of readings that are on West or Lexis, I recommend that they put their course page in TWEN or Blackboard instead.

2- we apply the exceptions written into the copyright law where appropriate, such as the *110(1) exception for multimedia performances.

3- the first time a particular resource is used in the law school, I consider the use "probationary" and fair. For repeated or ongoing use, we ask permission. We've developed our own permission tracking database (originally in Access, just moved to SQL) that lets us track specific resource use requests, which is paired with a paper filing system that tracks the various resources that we've used with their associated permission letters. Even fair uses are recorded, so we know when a different faculty member is requesting the same resource another faculty member has already used.

I have given the web support department the same basic rules to follow, with additional information about which works are in the public domain (works published before 1923, judicial opinions, etc.) There is also a good brochure at <http://www.knowyourcopyrights.org/> and I've printed out a large copy of the chart on the last page to post in the web support room and the office of each faculty secretary.

We have reached the point where I'd estimate we process fewer than 100 copyright requests per year. The majority of the material we use is either in the public domain or available electronically through a licensed provider. Those items that do require permission are often re-used, and we've either received ongoing permission already or we go through the CCC to get a new license when required.

Whenever we can, we obtain permission directly from the publisher or rightsowner. I start the process during the "fair use" semester, by asking the professor if he or she plans to use the item again. If they do, we send out a form letter directly to the rightsowner explaining the purpose and nature of the use the professor would like to make of the material. This usually gives us enough lead time to go through several different request iterations if necessary. We always request permission for the upcoming semester, AND "any future semester when the material is needed." The letter includes a signature block for the recipient, and a notice that it is our policy to assume ongoing permission if no time limit is specified. We also include a self-addressed stamped envelope with each request to make it easy for the recipient to sign and return the letter without any impediments. Personal rightsowners almost always give blanket permission. Some publishers do as well. Others refer us to the CCC. Whenever we've been referred to the CCC, we make a note of that and just go there directly when/if the use is repeated. We

keep the responses in our files for future reference.

One last note - faculty here are very sensitive to student budgets. If the cost to use an item seems too high, I'll let the professor know about it. Many of our faculty will find another no-cost or low-cost substitute under those circumstances. As a result, our overall copyright costs are fairly low.

Laureen C. Urquiaga, J.D., M.L.S.
HWHLL Associate Director for Access Services
JRCLS Copyright Coordinator

ARL has recently published a one-stop brochure for faculty called Know Your Copy Rights: <http://www.knowyourcopyrights.org/>

The website is also designed for librarians and offers ways to introduce copyright information at your school.

It is an attempt to put a positive spin the issue by addressing what faculty can do without having to get permission.

The flipside of the issue is helping faculty understand that when they publish, they should read their publication agreements and ensure that they retain the rights they need to reuse the content and perhaps permit others to do so in an educational context.

Jonathan Franklin

An issue that we haven't yet addressed is - how are faculty copyright permission costs funded at your institutions?

Currently, our faculty are expected to pay out of their individual faculty research accounts. As you can imagine, this affects the degree of compliance. Our director has requested that funds be made available to the library to support faculty requests OR that the Administration make funds available to faculty (in addition to the research accounts) for this purpose.

I would be interested to hear how other law schools handle this.

Wendy Scott, Assistant Director for Faculty & Outreach Services
H. Douglas Barclay Law Library
Syracuse University College of Law

That is also an issue at our institution. The faculty secretaries had been handling copyright permissions for coursepacks. The price of the coursepack to the

student included both the cost of duplication and the cost of the copyright permissions. Now that the faculty are moving to course webpages rather than coursepacks, the mechanism for passing on the cost is not there. As Wendy notes, this has a tendency to affect decisions as to whether copyright permission is required, but on the plus side has also motivated the administration to advocate for increased linking to licensed databases, bringing the library further into the process of providing course materials. So far the savings by using links have pretty much offset the loss in coursepack fees, but it's an issue that will be closely watched.

Margaret Schilt, Faculty Services Librarian
D'Angelo Law Library
University of Chicago

The Law School absorbs all costs of copyright permissions. The students have never paid since the production of the coursepacks was brought in-house via Xerox. When they had to purchase from the Univ. bookstore, copyright fees were part of the cost of the coursepack.

Lesliediana Jones

When we began handling course materials and related copyright issues, the law school stepped up and agreed to pay the fees. If there is a printed coursepacket, students purchase it and the cost of the fees is shared equally by each student. The first 75 pages of the course pack are provided free (excluding copyright fees) - pages over 75 cost 5 cents a page, plus a share of the fees. We have handled copyright clearance for symposia and conferences, in which case fees are charged to the conference budget.

Pamela Bluh
President-Elect, Association for Library Collections & Technical Services
(ALCTS) a division of the American Library Association and
Associate Director for Technical
Services & Administration
Thurgood Marshall Law Library
University of Maryland
School of Law

We pass the costs on to the students. If the fee is for a reading in a coursepack, we add it to the coursepack price. If it is for an online resource, we usually get a list of students from the professor and he or she announces the fee to the class. We then notify the professor after the payment deadline if anyone has not paid the fee. The professor then notifies the student that they won't receive a grade until the fee has been paid. The law school maintains a permissions account for faculty-only charges. The library has made it clear that while we are happy to help facilitate the permissions process, we don't have the budget to subsidize it.

Laureen C. Urquiaga, J.D., M.L.S.

HWHLL Associate Director for Access Services
JRCLS Copyright Coordinator

A question a little off but something someone may be answer. If I wanted to do a CLE course where we charge lawyers to attend, would I be able to the following:

I wish to do a Harry Potter and the Law 2 hour cle using clips from the four movies to discuss the topic. Can I do this without getting permission from CCC or Rowling or Warner, etc.? There was an academic presentation made last year at a Law & Humanities conference, but not sure if I can do it if there is the collection of money involved.

Thanks for answers in advance. Hope this isn't too far off base.

Joel Fishman, Ph.D.
Asst. Director for Lawyer Services
Duquesne University Center for Legal Information

Welcome back to the ALL-SIS Faculty Services Committee listserv discussion: Law Faculty, Copyright and Law Libraries. The discussion will continue today until 6:00 EDT.

Rereading yesterday's postings made me think about how these issues relate to the topic of our last Faculty Services listserv discussion on boundaries. To what extent do we want faculty members to be self-sufficient? That is, is my goal to educate and train my faculty so that they will recognize a copyright problem, deal with it appropriately and handle their own postings to a course webpage (or assemble a coursepack) once the copyright issue is dealt with? Or is my goal to determine what parts of those tasks can be done by the library, preserving the faculty member's time and energy for teaching and scholarship? Where will the line be drawn? I have heard the following different opinions expressed:

--making the copyright permission judgment call is properly the faculty member's responsibility, and then faculty support staff should implement that decision (the library has no responsibility, except possibly for gathering materials on request)

--making the copyright permission judgment call (including determining when a link to a licensed database is available) is the responsibility of a librarian but the implementation of that decision should be the responsibility of faculty's clerical support staff

--the library is responsible for course materials: receives the list of readings desired, makes the copyright decisions, gets the permissions, assembles the coursepack, populates the course webpage and/or posts electronic reserves

Making library policy is made more difficult because courses differ in the amount and type of readings they require and faculty differ in their motivation and ability to handle these tasks.

What considerations drive where your library sets these boundaries?

Margaret A. Schilt
Faculty Services Librarian
D'Angelo Law Library
The University of Chicago

I'm only going to reply as a faculty services librarian, I think access services and circulation approach the issue differently.

I won't argue with faculty about copyright. Here are some examples when I did notice a problem and brought it up.

A faculty member wanted 25 very small booklets that had been done locally and were copyrighted, copied for his class. I called and found out they would cost \$3 apiece. He basically said no and was slightly annoyed, and said he didn't want his students to pay. My feeling, I brought it up, gave him an option, that's it.

Another time I knew there was a problem. The faculty member said in a very authoritative tone that he had taught copyright, it was fine. He was having an area in the law school handle the copying, I had only found the materials.

Again in faculty services I think we may be disinclined to argue and I think many of my faculty feel they know the law and don't want me trying to educate them. What do other reference/faculty services librarians think?

The Access Services or Circulation librarians perhaps can reply on how they handle faculty on these questions. My guess is that it is different. I believe in the main libraries on campuses they will refuse to put items on reserves for faculty.

I think our two areas in the library may handle copyright differently.

Marianne Alcorn

I agree with Marianne. Our IP expert/professor in that area is of the view that public universities can violate copyright law under the holding of the Florida Pre-Paid case (sovereign immunity). So, she has argued against permissions as we generally don't obtain them. I wonder if others find themselves in this situation. Our faculty secretaries do the copying for the course packs and I don't believe they get permissions. However, there is a copyright office on campus and some fees may be run through them.

Matthew Wright
Collection Development Librarian
William S. Boyd School of Law
University of Nevada Las Vegas

I do circ - we've always been pretty proactive on this issue
- if I see a potential problem, I tell the faculty member

something like "this might be a problem; let me fix it."
And then do what I need to do. We've dealt with CCC,
contacted authors and publishers, etc. - in your first
example, I probably would have thought about finding \$75
from somewhere to pay for the pamphlets.

Having said that, we've only very rarely had the issue come
up, and I've never had anyone get huffy with me, so don't
know how I would have dealt with your second example.
Frankly, if a faculty member sends me a number of copies
that exceeds the five or six allowed by the guidelines, only
five or six find their way onto reserve at any given time
(we're maybe small and slow-paced, because I've never seen
more than five students want to look at the same thing at
the same time) -

Scott DeLeve
Public Services Law Librarian
University of Mississippi Law Library

Yes, I agree with Marianne, too. Fortunately, our law school faculty assistants
are no longer preparing course packs. Law faculty must contact the copyright
manager at the main campus bookstore, and he gets the permissions and sets
the prices for the course packs, which are sold to law students at their store. But
we have a lot of faculty who put PDFs of copyrighted material on their TWEN
sites rather than linking to those items in Westlaw or other library subscription
databases. It's hard to make a dent in what is a pretty lax culture.

Jane Thompson
Assistant Director for Faculty Services
William A. Wise Law Library
University of Colorado Law School

In our case, having a commercial entity doing the actual copying puts a different
spin on things. But, permissions has been a non-issue because most of the
faculty are unaware that it is being done and that the Law School is paying for it.
There have only been a few times when permissions have been denied or the
cost was too exorbitant. In those cases, they accepted the circumstances.

Lesliediana Jones

Great topic. It's helpful to me to learn what others are doing.
In the fall of 2006 our library began assisting faculty who wanted help securing
permissions for print or electronic course packets. Prior to that time it was the
responsibility of each faculty member and most weren't doing it. The response to
this service is very positive from both the administration and faculty.

Officially, the instructor decides when to seek permission. In practice, I get sent the whole reading list, review it and advise what is probably fair use (court decisions, books where the copyright term has expired, and more gray areas). I've found that few faculty want to spend the time to review the "fair use" factors for each item on their reading list. Levels of risk-aversion vary ... some want to get permissions for everything and others don't see the need to get any permissions (my personal favorite is the "I know the author so I'm sure it's OK" response when the author doesn't have the copyright). Most are open to at least short discussion of fair use.

I use CCC if there is a "quick price" listed. There were a few titles (law reviews, as I recall) that are on CCC but if you check their web page's copyright statement it says there is no fee for course packets. It's often worth checking. I try not to use CCC's "special orders". I can usually get an answer cheaper and faster if I contact the rights holder directly. We have run up against "number of page" limits and "percentage of book copied" limits at times and have been able to negotiate for what we wanted. I provide the assigned faculty secretary with the notices to affix to each item in a course packet. I also compile the total fees for the packet for the faculty's OK before it goes to the printer.

We pass the copyright fees on to the students for print course packets. They pay at the time of purchase at the distribution center. For electronic packets, the law school has absorbed the fees, but that may change.

The more times we do this the easier it gets. Now that I've been through a few rounds I'm seeing how to bring in others to assist. I've been using Excel but would like to move to a web-based database. If anyone has any suggestions or code to share, let me know!

Amy Spare
Faculty Services Librarian
Villanova University School of Law