

Angelo State University Library
Policy and Procedure Memorandum
PPM #8: Copyright Compliance

LAST DATE OF REVIEW

1 June 2010

SCHEDULE FOR REVIEW

This PPM will be reviewed in June of odd-numbered years by the Executive Director of Library Services in consultation with University Library Committee.

DIRECTOR'S NOTE

13 September 2020

- During the COVID-19 pandemic, PPMs and LPs may be **temporarily amended** to balance public health considerations with the library's service and operation responsibilities. Any amendment of this nature in no way supersedes the traditional collaboration between the library and the University Library Committee for regular scrutiny of governing documents.
- Any concerns or questions regarding this PPM's content – traditional or temporary – should be sent to Chris Matz chris.matz@angelo.edu

In order to meet the SACS-prompted mandate of all-modality access to resources as well as promote better safety during this public health emergency, **electronic reserves** will be prioritized in FY21 as the format for course reserves at Porter Henderson Library. Faculty members and library workers will follow the copyright guidelines (below) for that particular format and update as necessary.

The Angelo State University Library follows and enforces the copyright laws of the United States and the copyright policy of the University – see OP 76.01 “Copyright Ownership and Administration” – and the Texas Tech University System – see OP 74.04 “Intellectual Property Rights”

POLICY/PROCEDURE

I. Course Reserves: Print and Electronic¹

The copyright laws of the United States (Title 17, US Code) govern the making of reproductions of copyrighted material. Under certain conditions, libraries are authorized to furnish a reproduction, but one of the specified conditions is that the reproduction will not be used for any purpose other than private study, scholarship, or research.

When faculty members submit someone else's work to Course Reserves, they should preserve the author's name, title of the work, and copyright statement² if there is one. Faculty members may not request that Course Reserves provide access to copies of the same material for more than one term unless they have received the copyright holder's written permission. Availability for one term usually gives the faculty member enough time to request permission from the copyright holder.

Faculty members should not place copies of materials on Course Reserves unless the faculty member, the Library, or another unit of the University possesses a lawfully obtained copy. When invoking fair use³ the total amount of material on Course Reserves for a class should be a small proportion of the total assigned reading for that class. Materials are available only to the Angelo State University community and all are expected to adhere to these copyright and fair use guidelines.

The guidelines described below apply to all copies of materials in Course Reserves and are in compliance with US Code, Title 17. Submitted materials which violate any of these regulations will NOT knowingly be made available by the Library. Faculty members will be notified upon discovery of copyright violations; and this will result in their students having delayed access to Course Reserve materials through the Library.

A. Copyright Guidelines Summary

1. **Books:** Only one chapter from a book may be placed on Course Reserves unless the faculty member received the copyright holder's written permission and acknowledged the receipt when submitting materials to Course Reserves. This applies to edited collections of readings and essays because each reading is considered a chapter.
2. **Periodicals and Newspapers:** Only one article from an issue of one periodical may be placed on Course Reserves unless the faculty member received the copyright holder's written permission and acknowledged the receipt when submitting materials to Course Reserves. Newspapers are treated the same as periodicals.
3. **Multiple Copies:** Only one copy of photocopied material is allowed for every 20 students enrolled in a class, or any fraction thereof, but no more than nine copies per class. Each photocopy should contain the copyright statement.

4. Consumables: These materials are not appropriate for Course Reserves use because one of the tenets of fair use is that such use not affect the market value. Consumables include but are not limited to workbooks, exercises, standardized tests and test booklets, and answer sheets.
5. Course Packs: Custom published anthologies may be prepared for sale through the ASU Bookstore. A faculty member wishing to create a course pack will need to make arrangements through the ASU Bookstore. Course packs are not appropriate for Course Reserves.
6. Media Items: For electronic and multimedia materials, copyright law and fair use guidelines are unclear. As expected, challenges to the copyright law are being debated. When requests fall outside of the "fair use" guidelines, legal permission to use copyrighted materials must be obtained.

B. Copyright Acknowledgments.

Everyone submitting materials to Course Reserves must agree to the three following guidelines. If a faculty member cannot abide by these guidelines, the Library cannot provide access to the course materials without violating the US copyright law (US Code, Title 17) as it pertains to libraries. (For further information, please refer to the US Code Title 17 sect. 108.)

1. "I acknowledge having read the Porter Henderson Library's policies (PPM No. 4 and No. 8) pertaining to Course Reserves and agree that the materials I submit to Course Reserves are in compliance with this interpretation of US copyright law."
2. "When required, I received written permission from the copyright holder to provide access to the materials I am submitting to Course Reserves."
3. The proper copyright statement must appear on all materials submitted to Course Reserves.

C. Electronic Reserves⁴

In addition to the requirements above, the Library will provide the following services in relation to E-Reserves.

1. Digitize and make available, at the request of the faculty member, copyright protected material within Fair Use guidelines, including an accompanying copyright statement, the copyright notice on the original, and appropriate citations and attributions to the source.
2. Limit access to ASU students for the materials in the course(s) in which they are currently enrolled, ASU faculty members for the materials in the course(s) they are currently teaching, and ASU Library's staff members involved with E-Reserves processing and support.
3. At the end of each semester, remove E-Reserve materials pertaining to courses taught that semester.
4. Require the faculty member to obtain permission from the copyright holder(s) when the digitization and provision of access to copyright protected materials is not within Fair Use guidelines.
5. Follow any restrictions of the copyright holder(s) as specified by the terms of the permission.

II. Interlibrary Loan.

To comply with U.S. copyright law and CONTU guidelines, each year PHL's ILL service may order only five articles from any one periodical title published in the previous five years. No more than one article may be ordered per person from a single periodical issue published in the previous five years. When these limits are surpassed, the requestor must pay a copyright clearance fee for the needed articles.

III. Government Documents

A. U.S. Documents.

Copyright of U.S. Government works is covered under 17 USC § 105: "Copyright protection . . . is not available for any work of the United States Government, but the United States is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise." A contractor working for a government agency may apply for permission to assert copyright. If an agency grants permission, then the contractor's work may receive copyright protection.

A government agency is not required to provide notice when there is no U.S. copyright on its works. An agency will often place a simple notice similar to this example. "This is a work of the U.S. Government and is not subject to copyright protection in the United States. Foreign copyrights may apply." If such a notice appears in a government document, the document may be copied in its entirety without violating copyright.

B. Texas Government Documents.

17 USC § 105 does not apply to works of state and local governments. These entities may and often do claim copyright for their publications.

IV. Fair Use Guidelines⁵

All users of the Library must follow the provisions of fair use; that is, the user may make one copy (e.g., download or print) for personal reading, research, or education. Any other use without permission from the copyright holder is illegal. The user must not use any of these documents to mislead others about the views or competence of the author, nor as part of a commercial product. Any copy that is made should preserve the author's name, the title of the document, and a statement of copyright, if there is one. Making multiple copies for republication would violate the spirit of the agreement under which the authors and the Library provide users with access to materials.

APPENDIX ON FAIR USE⁶

Libraries, like individuals, have rights under 17 U.S.C. ("Section 107") to make fair uses of copyrighted works⁷. Most commonly they exercise these rights in one or another form of what used to be called the Reserve Room.

Teachers often make supplemental reading assignments or recommend additional readings that all their students can not complete given normal loan periods. Placing the reading materials on reserve gives each student time-limited access, but sometimes even severe restrictions on the loan period will not guarantee full access. The students need more copies. Faculty members may provide their own copies or ask the library to make or acquire additional copies.

Since the Library is an extension of the classroom, its duplication activities must conform with fair use principles. There is no part of Section 108 that addresses this kind of copying. Complying with fair use is not an easy task because fair use can be hard to understand. For example, **Section 107** explicitly cites the practice of making multiple copies for classroom use as an example of fair use, but the provision also requires the user to consider at least the famous "four factors" that are stated in the statute before deciding whether a particular use is fair:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for 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.

Not very helpful, are they?

Still at one time universities thought they knew what fair use was. Now, however, these commonly held beliefs have been challenged by several lawsuits over the scope of fair use⁸. These lawsuits raise serious concerns.

1 For additional information on Course Reserves policies, please see PPM No. 4, "Circulation."

2 In addition to the title of the work, the copyright statement usually consists of the copyright symbol, year of first publication, and the name of the owner of the copyright. An example would be "© 2010 Mary Jones."

3 For additional information on fair use, please see Section V and the Appendix.

4 The Library will follow these guidelines when this service is available for use on campus.

5 See the "Appendix on Fair Use" for a discussion of "Fair Use" taken from the University of Texas System guidelines for "Fair Use: Reserve Room Operations, Generally" website. See also: <http://www.depts.ttu.edu/itts/documentation/laws/dmc/copyright.html>

6 From The University of Texas System, 2007, <http://copyright.lib.utexas.edu/l-resgen.html>

7 17 U.S.C. Section 108 (f)(4) ("**Section 108**" generally), which protects certain library reprographic and distribution activities, explicitly preserves any rights libraries may have under **Section 107**. Fair use rights may be different from and/or more extensive than rights under Section 108.

8 *Addison-Wesley Publishers Co., Inc. v. New York University*, (settled out of court); *Basic Books, Inc. v. Kinko's Graphics Corporation*, 758 F. Supp. 1522 (S.D.N.Y. 1991); *American Geophysical Union v. Texaco, Inc.*, 802 F.Supp.1 (S.D.N.Y. 1992); 37 F.3d 881 (2nd Cir. 1994); *Princeton University Press v. Michigan Document Services, Inc.*, 1996 WL 54741 (6th Cir. 1996) [WITHDRAWN]; 1996 FED App. 0357P (6th Cir.). These cases concern faculty prepared "coursepacks" containing supplemental reading materials for students and research copies (*Texaco*).