

Copyright Guidelines for the Yale University Library Electronic Reserves

Title 17 of the US Code governs copyright law in the United States. Copyright law reserves the right of reproduction of a copyrighted work to the holder of copyright. However, copyright law also contains provisions for the legal "fair use" of copyrighted works, which allow for reproduction in certain cases. Fair use has been widely used in the US to allow reproduction of works for educational use. Fair use is not a hard and fast rule but rather consists of four factors that must be weighed together to determine whether a copyrighted work can legally be reproduced. These are:

1. the purpose and character of use
2. the nature of the copyrighted work
3. the amount and substantiality of the portion taken, and
4. the effect of the use upon the potential market.

A determination of "fair use" requires weighing all four factors. As regards electronic reserves, the first factor is favorable to use; that is, our purpose is educational and non-profit in nature. In practice, non-fiction work is considered more favorable to fair use, but fiction may be used as well. The third and fourth factors are somewhat harder to judge. The vagueness of the four factors of fair use has made this a hard law to put into practice with confidence that the law is being followed. Therefore, some libraries have adopted conservative guidelines, which help them to ensure compliance under the most conservative interpretation of copyright law. Adherence to these conservative guidelines (outlined in D below) allow the Yale Library to confidently offer an electronic reserves service, and to give unambiguous guidance to faculty. However, these guidelines are probably more stringent than "fair use" entails.

Copyright Status of a Given Item

A. Material the Library Has Purchased in Digital Format

Access to material for which the library has purchased a digital copy is governed by the terms of the license signed by the Library. For any e-journal, e-book, image, or music purchased by YUL, the Library has the right to make a link to that material from a course reserves site. Therefore, the faculty should be encouraged to use this material. When given a list of course readings, library staff should check for licensed digital material and link to it before considering digitization of print.

B. Material Freely Available on the Internet

The Library may include links in its e-reserve system to any material freely available on the Internet.

C. Non-Digital Material in the Public Domain (The Library will limit its involvement in digitization to material that it owns.)

Some material is not copyrighted: it is in the public domain and may be freely reproduced. This includes:

1. US federal government publications,
2. Books and journals published before 1923,
3. Items published between 1923 and 1978 with no copyright statement, and

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4. Items published between 1923 and 1963 when the copyright holder did not renew copyright.
5. Additionally, some copyrighted material is maintained with the explicit provision that educational reproduction is allowed (for example, Creative Commons and Scientific Commons Copyright licenses).

In these cases, the Library should digitize the material and place it on reserve. In practice, 3, 4 and 5 above would be difficult to judge and would require knowledgeable staff to interpret on a case-by-case basis. When in doubt, staff should assume the material is copyrighted.

D. Copyrighted, Non-Digital Material (The Library must own a legal non-digital copy.)

Items for which we do not already own an electronic copy, we will digitize and make available WITHOUT submitting for copyright clearance:

- At most one article from a single journal issue
- At most one chapter from a single book
- At most one poem from a single anthology or
- At most one item from a collected work such as an encyclopedia

Items for which we do not already own an electronic copy, we will digitize, make available AND submit to the copyright clearance center:

- Two or more articles from a single journal issue
- Two or more chapters from a single book
- Two or more poems from a single anthology
- Two or more items from a collected work such as an encyclopedia

In practice, the distinction will not be apparent to the faculty member. The library will digitize both sets of items. However, faculty should be notified when the course reserves are created which items require copyright clearance. If it is not a burden on staff, it would be helpful to notify the faculty member at the end of the semester what fees were paid for copyright clearance for the class, so that they will understand the costs involved.

E. A faculty member's own lecture notes or other material they own should be referred to RIS. Unpublished material is usually covered by copyright law. Material not owned by the Library is not handled by the Library's electronic reserves service.

Copyright Statement

Every item provided through electronic reserves must contain a copyright statement:
NOTICE: This material may be protected by copyright law (Title 17 U.S. Code).

In addition, we post the following warning on materials distributed to faculty, and on the DPIP Electronic reserves Web site:

Warning Concerning Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified 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 or electronic transmission for purposes in excess of "fair use" that user may be liable for copyright infringement. In addition, further electronic distribution may subject the user to liability.

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.