The higher education community is very aware of the legal dangers of a permissive or lax attitude toward copyright issues. The higher education community is also responsible for supporting the copyright rights of both creators and users, whether they are instructors, researchers, or students.

Fair use of copyrighted material for instructional purposes is defined in the Copyright Law. The definition includes consideration of four factors:

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

Based on the Court’s decision in the Georgia State University Fair Use Case (2012), excerpting NON-FICTION copyrighted material to provide for broad dissemination of facts and ideas, while not transformative, is considered fair use in the higher education context. The GSU case also allowed that acceptable fair use for Library Reserves or course sites is defined as:

1. Using no more than 10% of works with 10 chapters or fewer;
2. Using one chapter for books more than 10 chapters in length (and for calculation purposes, including acknowledgement pages, indexes, and the like);
3. The portion used in not “the heart of the work.”

The courts ask:
1. Was the use of copyrighted material for a different purpose, rather than just reuse for the original purpose?
2. Was the amount of material taken appropriate to the purpose of the use?
3. Was it reasonable within the field or discipline it was made in? (Aufderheide, 2011, p. 135)

I. Classroom Copying

An instructor is legally able to make a print copy (no more than one copy per student in the class) of an item for classroom use or discussion as long as the tests for “brevity, spontaneity, and cumulative effect” are met, and if each copy carries a notice of copyright.

1. Brevity
   A. Fiction
      i. Poetry
         1. Complete poem if less than 350 words and if printed on up to 2 pages
         2. An excerpt of up to 250 words from a longer poem
      ii. Prose
         1. An article, story, or essay of fewer than 2500 words
2. An excerpt (of not more than 1000 words or 10% of the total, whichever is less) from any prose work
3. One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue

2. Spontaneity
   A. Copying is done at the inspiration of the individual teacher, not at the direction of a higher authority
   B. The decision to use the work and the actual use are so close in time that it would be unreasonable to expect a request for permission.

3. Cumulative Effect
   There shall not be more than 9 instances of such multiple copying for one course during once class term.

Additionally, copying shall not:
1. be used to create or replace or substitute for anthologies, compilations, or collective works
2. substitute for the purchase of books, reprints, or periodicals
3. be made from works intended to be consumable: workbooks, exercises, standardized test, and test booklets, etc.

II. Library Reserves or LMS Course site
A Library-sponsored Reserve Service and a LMS Course site are a legitimate approach to advancing the learning mandate of the higher education environment. In circumstances where either the Library or the instructor owns a legal copy of the printed material, there is no limit on the number or type of items placed on reserve (e.g. 23 books, 7 videos, 17 journals). In circumstances where the Library has licensed or purchased electronic resources, Library staff or classroom faculty need only supply students with a link to the material.

However, when using a print or digital copy, fair use definitions come into play. One can exercise a copyright without authorization, without signing a license, and without paying a fee through exercise of the fair use option. Faculty choosing to use material that falls outside fair use must obtain copyright permission and present appropriate documentation of the permission they have legally obtained before the material can be placed on Reserve or posted in a LMS Course site.

Based on the Georgia State University Fair Use Case (2012), acceptable fair use for NON-FICTION material placed in Library Reserves or course site use is defined as:
   i. use no more than 10% of works with 10 chapters or fewer
   ii. one chapter for books more than 10 chapters in length
   iii. the portion used is not “the heart of the work.”

When Faculty place copies (digital or print) of copyrighted material in their LMS Course Sites, they must have permission from the copyright holder and/or include written justification, under the four factor test of fair use, for the inclusion of the material.

There is no one standard for determining a library reserve policy or postings of copyrighted material within a LMS Course site. However, responsible practices underpinning the policies of many academic institutions include:
1. limiting reserve or course site material to small portions of copyrighted works that are required reading/use for all students in the class
2. using the fair use test regardless of format (print or online)
3. acknowledging that reserve material or postings of copyrighted material within a LMS course site is supplemental to a courses other texts
4. understanding that reserves or LMS course sites should not comprise a significant portion of a courses’ texts
5. understanding that copies of material placed on reserve or within course sites should be made from originals – either printed materials or authorized copies – owned by the institution or instructor
6. limiting access to only students in a single class
7. placing the copyright notice on reserve materials
8. when applicable, digital licensing between content providers and academic institutions permit use of material in an e-reserves context

As the Copyright Law does not explicate the copyright standards more fully, the College considered these models and best practices when establishing Library Reserve and LMS Course site policy:

1. Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals (Ad Hoc Committee on Copyright Law Review, Author-Publisher Group, March 19, 1976)
2. Model Policy Concerning College and University Photocopying for Classroom Reserve and Library Reserve Use by the American Library Association (1982)
4. National academic codes of best practice and legal case precedent:
5. College Counsel.

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