

# Northwestern Affirms Fair Use Through Practice; Electronic Reserve Policy, System Developed

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Northwestern University developed its electronic reserve policy and system with involvement from both its library and academic computing center, leading to considerable inter-organizational communication on policy options at the same time the technical system was actually being put in place. Academic computing needed to respond to immediate needs for faculty to distribute course materials electronically, and did not initially have copyright policy development on its agenda. The library, however, saw the need to develop a coherent policy perspective from the start. The synergy between the two organizations has led to a technological implementation for electronic reserves which is simple and inexpensive. At the same time, a policy position was developed for electronic reserves that affirms the principle of fair use as an important protection for faculty members' rights to distribute material in the new environment without undue constraints.

As the library and computing center reviewed the emerging debate over copyright in the electronic realm, it became clear that an approach which affirmed through practice the fair use principle while at the same time showing respect for the legitimate interests of copyright holders was needed. Publishers have been extremely anxious about the potential loss of control that the new electronic environment threatens, and their calls for control were about to foreclose *any* uses of the Internet for delivery of copyrighted materials that the library and computing center might put in place. Putting a system in place which showed the publishers that electronic distribution of course materials could be accomplished within limits of fair use was thus seen as an important policy goal in itself. If the promise of digital libraries and the hopes within the Clinton-Gore Administration, the educational policy development community, and the Internet community were to be realized, Northwestern needed to affirm through practice that intellectual property must have a public element as well as a private one.

With that resolve, Northwestern undertook a careful review of reserve policies, in both the electronic and paper realms, to ensure that application of the four factors in Section 107 of the Copyright Law would be consistent, fair, and protective of the legitimate interests of copyright owners while at the same time not constraining rights under the law which served educational purposes. The outcome, with policy and procedures which received wide discussion within both library and computing organizations keeping the University's general counsel well-informed offered more effective protection for publishers in the paper realm than had been the case in years past, and gave them protection in the electronic realm as well. Northwestern has affirmed that uses of electronic files distributed over the network in a manner which satisfies the four factors are protected under the law as fair use. The University has also argued that electronic distribution of copyrighted documents offers new income opportunities for publishers interested in the higher education market, and is interested in working with publisher suppliers of documents which are distributed in ways that go beyond fair use. The electronic reserve systems which enable fair use distribution, and are immensely popular with both faculty and students, are also capable of improved record-keeping which could bring copyright holders new income streams.

More information about [Northwestern's e-reserves system](#) is available at their site.

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