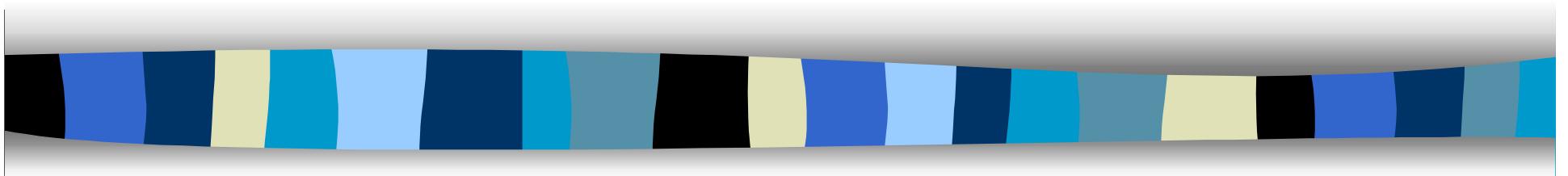


Copyright in [Digital] Libraries



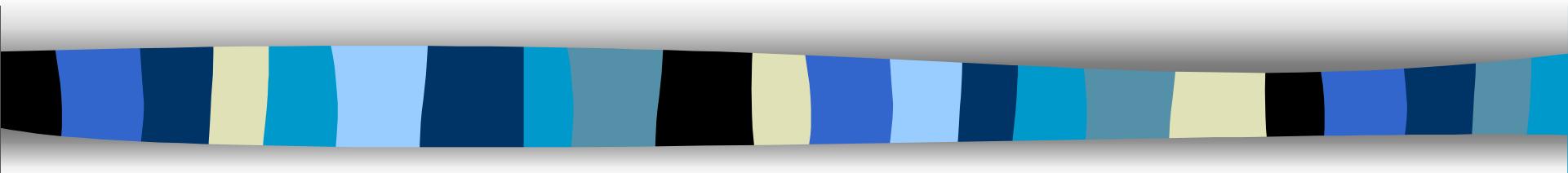
Gail McMillan

Director, Digital Library and Archives
University Libraries

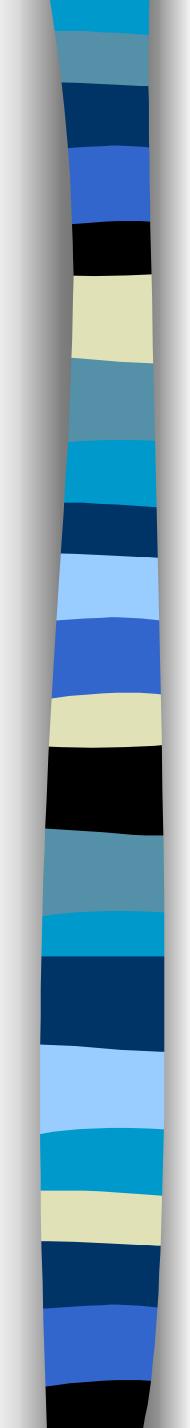
ALICE, Nov. 9, 2001



or, Legal Issues in Developing Digital Libraries: Is it Funambulism?

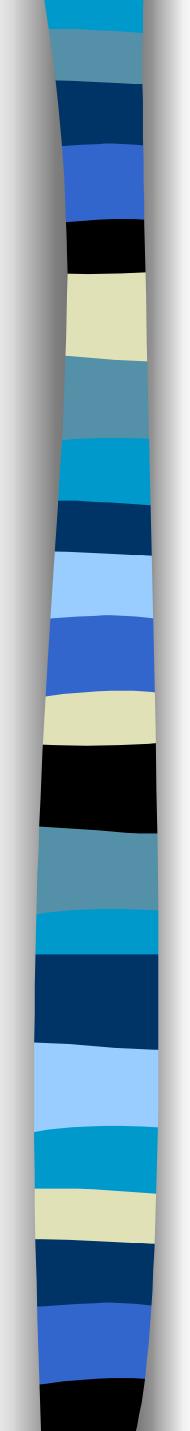


Libraries often have the responsibility to inform their user communities about intellectual property and copyright, while university legal counsel focuses on patents, trademarks, and licensing (including library databases). Additionally, libraries try to make compliance very do-able for authors as well as readers (i.e., creators and library users). Following a brief overview of copyright law (US Code Title 17, sections 106-108 especially), begin applying what you already know (i.e., common library practices) to the new online environment: ejournals, ETDs (electronic theses and dissertations), images, and EReserve. We might call this "Legal Tight Rope Walking," learning to use the balance rod so you can successfully navigate the chasm between information producers and users.



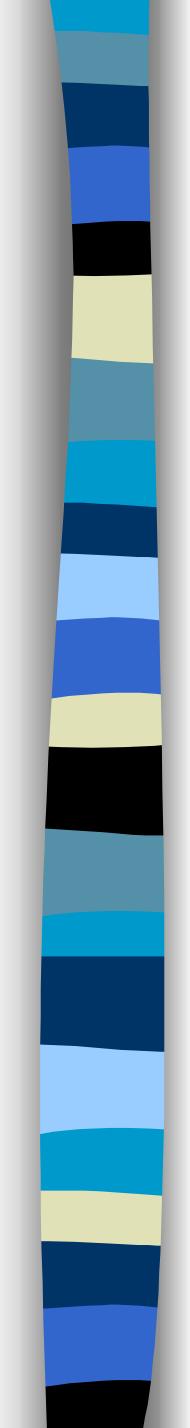
US Constitution, Article I, Sect. 8

Promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.



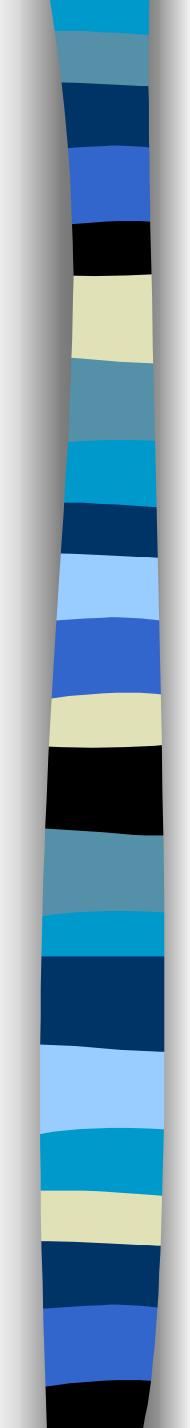
Copyright Law: *U.S. Code, Title 17*

- **Section 106:** Exclusive rights of creators
- **Section 107:** Fair use and limits to exclusive rights
- **Section 108:** Libraries and limits to exclusive rights



Who owns the copyright?

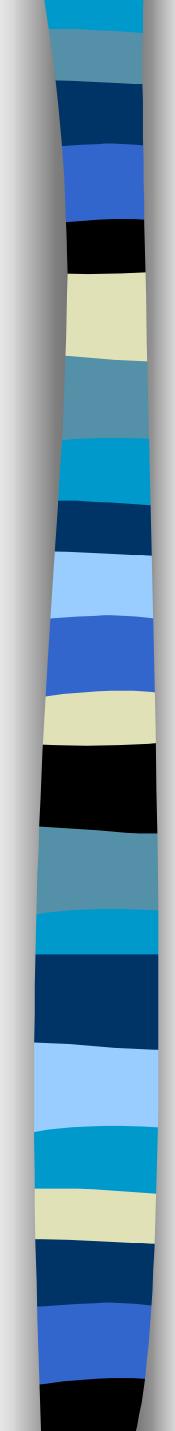
- Creators of original works
- Creators' assignees
- Employers: works for hire
 - New York Times et al., Petitioners, v. Jonathan Tasini et al.
 - Greenberg v. National Geographic Magazine



Rights of copyright holders

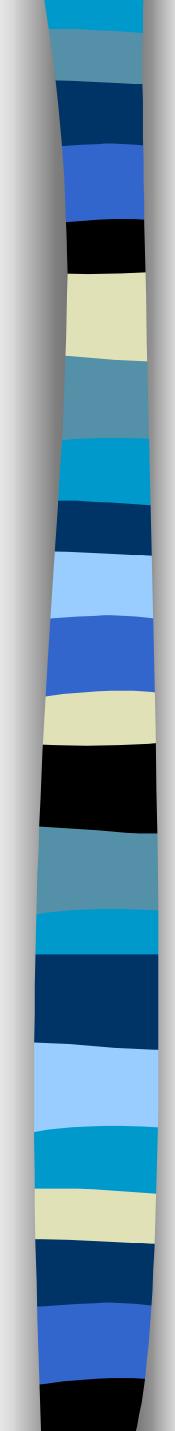
1. Reproduction
2. Modification
3. Distribution
4. Public performance
5. Public display

Sect. 106



Why officially register your copyright?

- Possibly receive greater compensation, with less documentation when filing an infringement suit



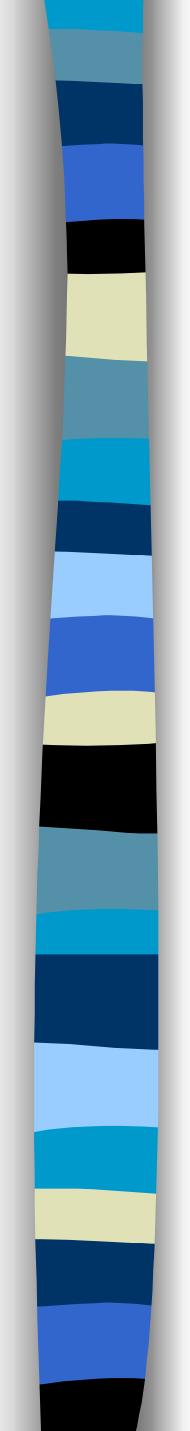
Permission or license to use a copyrighted work is NOT required if

- Work is a fact or an idea
- Work is in the public domain
- Fair use

Public Domain

Lolly Gassaway: <http://www.unc.edu/~unclng/public-d.htm>

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

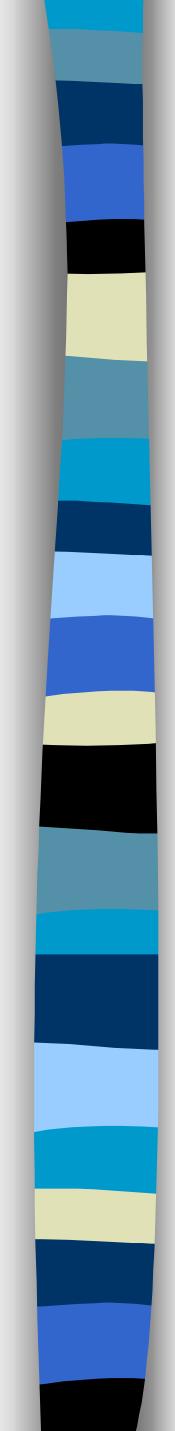


Fair Use

Before using someone else's work *without permission*, consider **ALL 4 FACTORS**

1. Purpose and character of use
2. Nature of the copyrighted work
3. Amount, substantiality
4. Effect

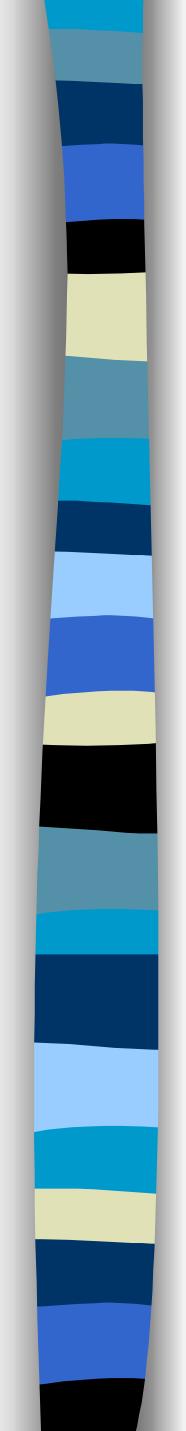
Sect. 107



1. Purpose and character of use

- Commercial or educational use
 - © Myth: It's OK--it's for educational purposes.
- For profit or not
- Degree of transformation; value added
 - © Myth: I modified it; now it's mine.
 - Pretty Woman*: 2 Live Crew (Campbell, aka Skywalker, et al.) v. Roy Orbison Estate (Acuff Rose Music, Inc.), 1993/94
- For criticism, commentary, news reporting, teaching, scholarship, research

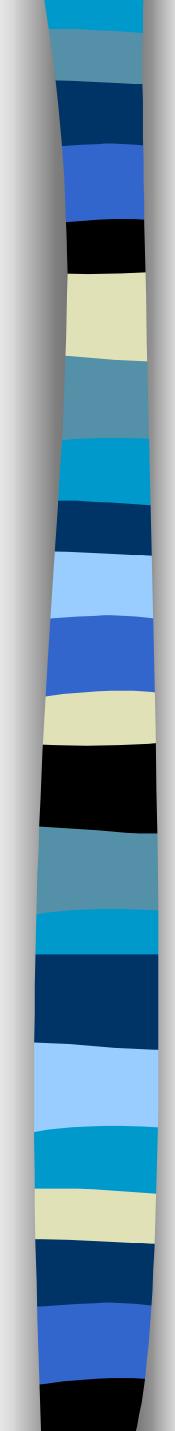
FAIR USE



2. Nature of the copyrighted work

- Character of the work
 - for example, fact or fiction
- Worthy of (extensive) protection?

FAIR USE

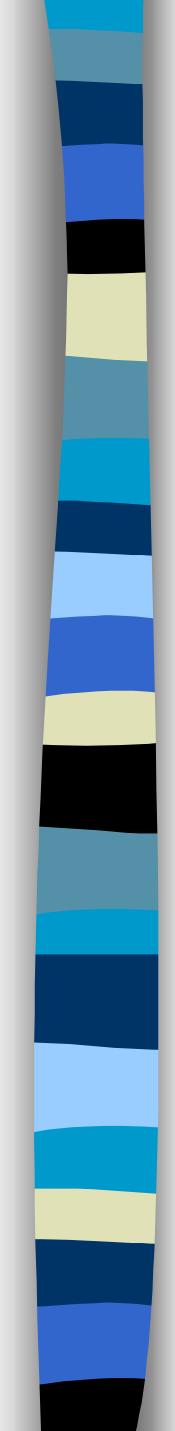


3. Amount and substantiality

© Myth: Copying *just a little bit* is OK.

- Use only what is necessary
- Quantity and quality in relation to the whole work
 - Gerald Ford's memoirs: Harper & Row, Publishers, Inc. v. Nation Enterprises, 1985

FAIR USE



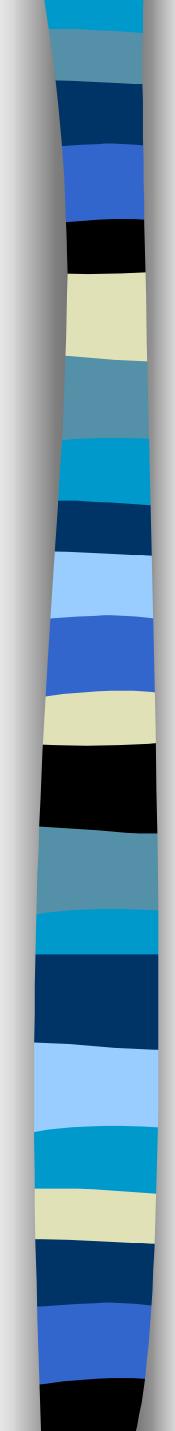
4. Effect

- Harm to potential market or value of a work after a portion has been used separately from the whole
 - © Myths
 - *Attribution is as good as permission.*
 - *It's free advertising.*

original by Brad Templeton

<http://www.templetons.com/brad/copymyths.html>

FAIR USE

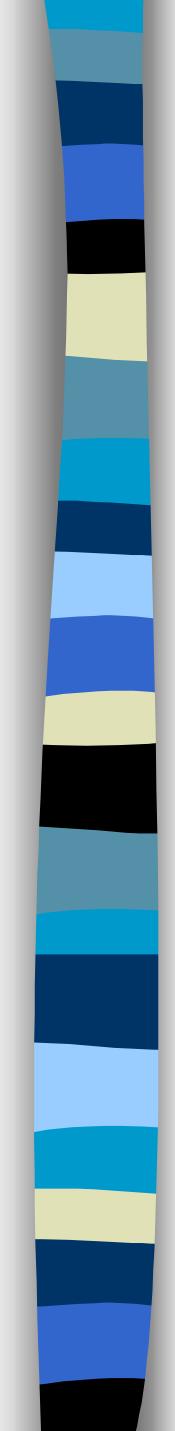


© Myths

*It doesn't say it's copyrighted!
It's on the Web so I can use it
without asking.*

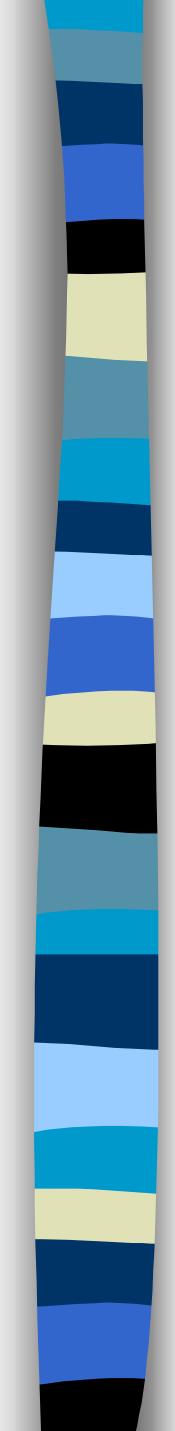
- As of March 1, 1989, the copyright warning does not have to appear for a work to be legally copyrighted.
- Reminders

© 1997 by [your name] or Copyright by [your name]
ALL RIGHTS RESERVED



Consider adding statements that grant permission or restrict use.

- "Permission is given to copy this work provided credit is given and copies are not intended for sale."
- "Use or inclusion of any portion of this document in another work intended for commercial use will require permission from the copyright owner."



Conditions of Use

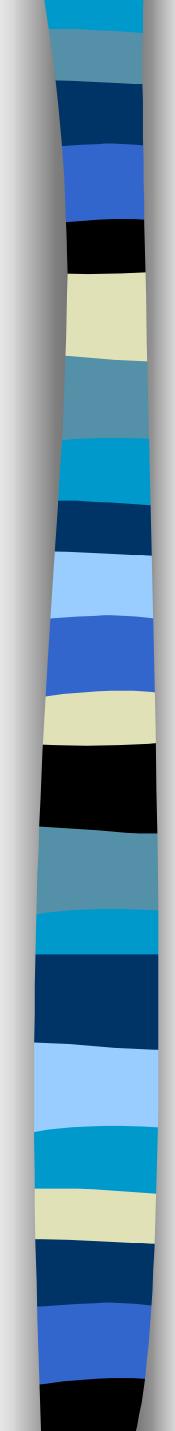
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- You may not download these resources and materials in order to mount them on another server for public use, or for use by a set of subscribers. Institutions may link to the resources and materials of the **Digital Library and Archives**, subject to these conditions of use.
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Libraries and Sect. 108

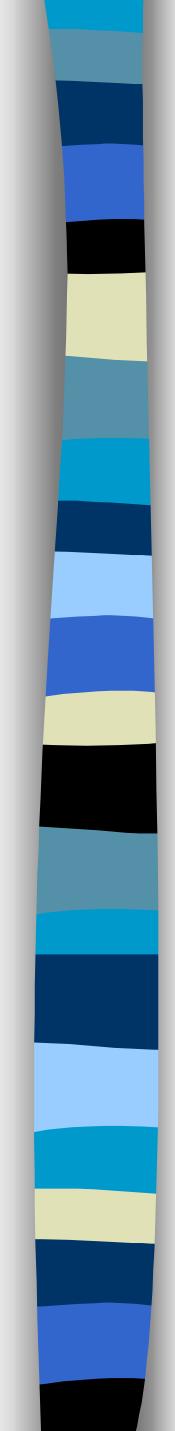
- Reproduction or distribution is made without any purpose of direct or indirect commercial advantage
- Collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field
- Reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section

University Libraries' Policies

<http://scholar.lib.vt.edu/copyright/>

- EReserve and Reserve
- ETDs (Electronic Theses and Dissertations)
 - Request Publisher's Permission to Use Copyrighted Works.
 - You don't have to give away all your rights to get published.
- ILL (InterLibrary Loan) and Document Delivery
- Center for Alternative Media
 - Fair Use of educational multimedia
 - CCUMC Consortium of College and University Media Centers
- Photocopy Warning
 - Post warning re © restrictions (law)





EReserve Copyright Guidelines

<http://scholar.lib.vt.edu/copyright/libcguid.html>

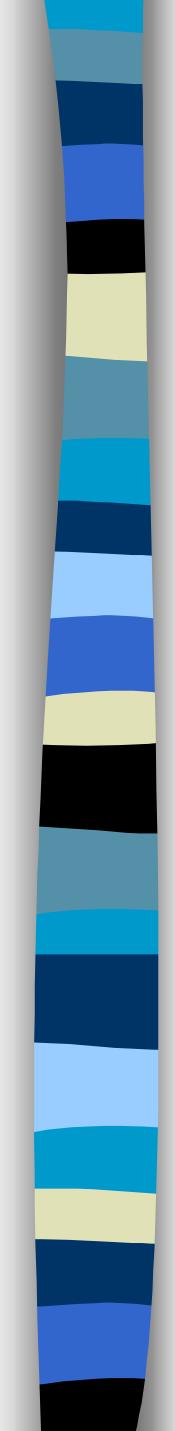
■ Why revise?

- Unknown origin of existing policy
- Align policies: branches, main--Reserve Desk, EReserve
- Faculty questions

■ Collaborators within the Library

- User Services: Reference, Circulation, Reserve
- Scholarly Communications Project (DLA)

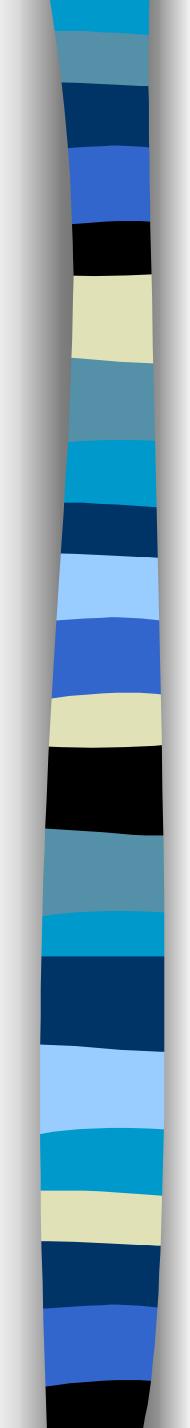
■ Will be reviewed by University Counsel



EReserve Copyright Guidelines

[without asking permission]

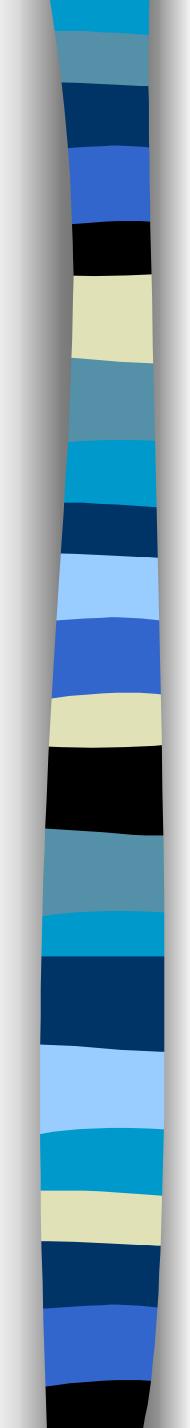
- Books
 - 1 chapter from one book
 - applies to edited collections of readings, essays
- Articles
 - 1 article from one issue of one title
 - applies to journals and newspapers
- US government publications: reproduction is unlimited
- Consumables: NOT appropriate for EReserve
- Coursepacks: NOT appropriate for EReserve



EReserve Copyright Guidelines

Faculty must

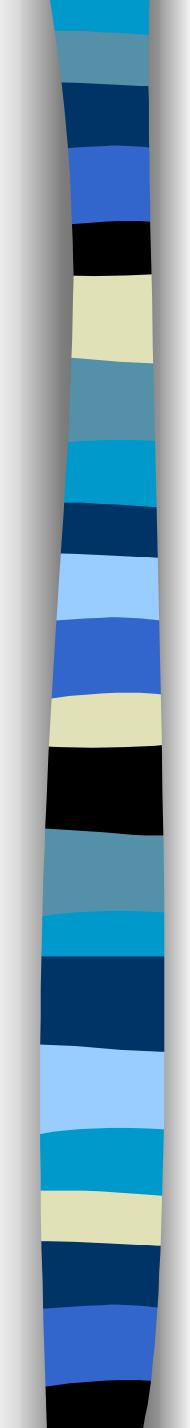
- Acknowledge reading Guidelines
- Agree to comply
- One term only
 - When necessary, have received written permission
 - Publishers' email addresses
 - Sample permission request letter



EReserve Copyright Guidelines

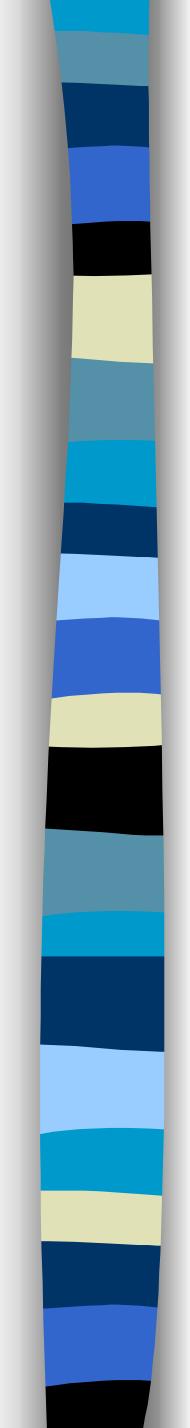
Students

- may make one copy (e.g., download, print or photocopy) for their personal reading, research, or education
 - preserve author's name, title of the work, copyright notice
- other use is illegal
- do not mislead others about the views or competence of the author



EReserve Copyright Guidelines

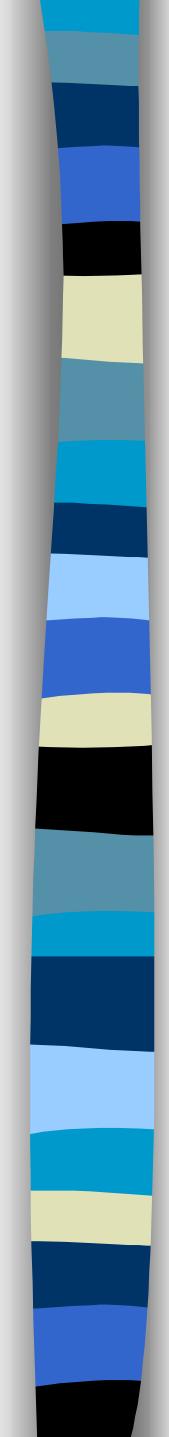
- How to inform faculty?
 - *Spectrum* article
 - FDI: educational forums
 - Library Liaisons and Collegiate Librarians
- Policing
 - inconsistent: monitoring and honor
Reserve Desk vs. EReserve and branches



ETDs: electronic theses and dissertations

<http://scholar.lib.vt.edu/theses/copyright/>

- Handout
- Request Permission: Sample letter
- Publishers' email addresses
- Elsevier's copyright permission policy
- Negotiate with publishers
- US Copyright Office
- Register your copyright
- More Copyright Information from University Libraries
- Publishers' Surveys

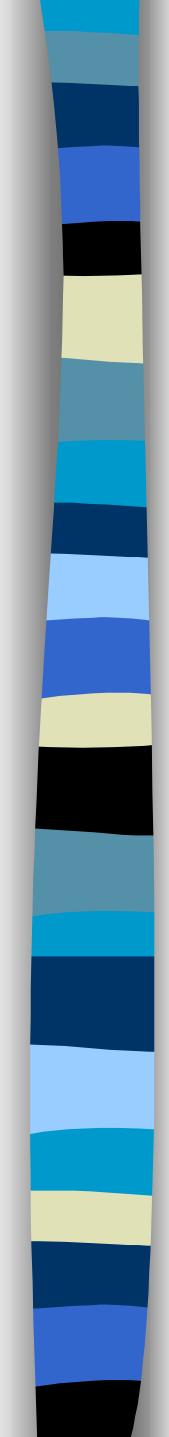


InterLibrary Loan/Document Delivery

<http://www.ill.vt.edu/CopyrightInformation.html>

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction

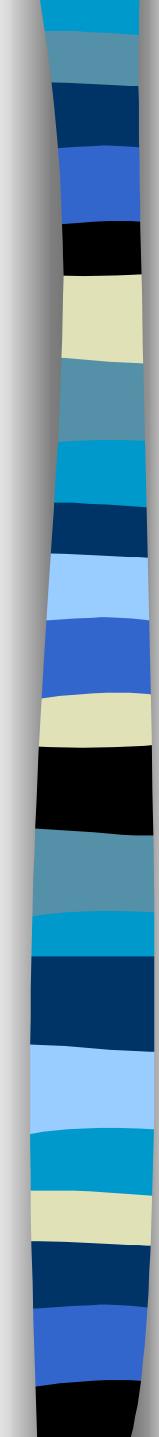
- If not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.
- Photocopy a single article from a periodical or a chapter of a book and give the copy to a Virginia Tech student, faculty, or staff member who studies or works on the Extended Campus.
- Libraries must not receive copies in "such aggregate quantities as to substitute for a subscription to or purchase of such work."



Center for Alternative Media

<http://scholar.lib.vt.edu/copyright/MediaCen.html>

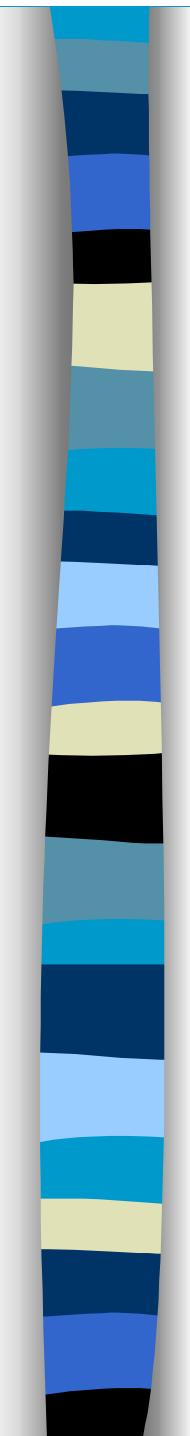
- Off the air recordings that departments own and have been retained longer than the 45 days free-use period are considered illegal.
- CAM will not put illegal off-air recordings on Reserve in the library.
- CAM will not make duplicate copies of illegal off-air recordings.
- CAM will not alter off-air programs. Excerpts of programs can be used in class provided the recorded program is not altered from its original content.
- Off-air recordings will not be added to the library's collection without permission from the copyright owner.
- CAM will not duplicate copyrighted tapes.
- Some CAM-owned videocassettes have public performance rights; many, however, do not. Those that are labeled "For home use only" may be used in a face-to-face teaching situation.
- Groups or clubs may not use "For home use only" videos in a public performance setting. They must rent the videos from sources that grant public performance rights.



Photocopy Warning

<http://scholar.lib.vt.edu/copyright/photocopy.html>

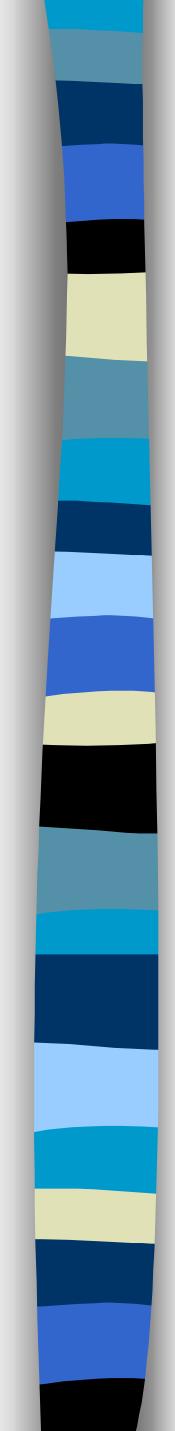
- Under Certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship or research."
- If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.
- This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would violate copyright law.



Digital Millennium Copyright Act

<http://lcweb.lov.gov/copyright/legislation/dcma.pdf>

- NII Updates/E-News: Section 1 of Association of Research Libraries Federal Relations Notebook Updates, 1996 to date <http://www.arl.org/info/frn/copy/frncopy.html>
- Report on Distance Education: US Copyright Office, <http://www.loc.gov/copyright/>
- Executive Summary: Lutzker & Lutzker LLP <http://www.ala.org/washoff/osp.html>
- Status & Analysis: Association of Research Libraries, <http://www.arl.org/info/frn/copy/dmca.html>



Copyright Resources

especially for libraries

- Copyright Management Center
 - Kenneth Crews, IUPUI: Indiana University-Purdue University Indianapolis
- Crash Course in Copyright
 - Georgia Harper, University of Texas at Austin
- US Copyright Law
 - <http://www.law.cornell.edu/uscode/17/>
- Library of Congress, Copyright Office
 - <http://www.loc.gov/copyright/>
- VT Library's copyright Web site
 - <http://scholar.lib.vt.edu/copyright>