MEMORANDUM

TO: Conference on Fair Use Participants ("Confu")
FROM: Electronic Reserves Drafting Sub-Group
DATE: April 19, 1996
RE: Fair-Use Guidelines for Electronic Reserve Systems

Accompanying this memo for your review is a document entitled "Fair-Use Guidelines for Electronic Reserve Systems," version dated March 5, 1996. A sub-group of the CONFU (Conference on Fair Use) participants prepared this document through a series of negotiations and is pleased to submit it to all participants in the Conference on Fair Use for their consideration at the meeting scheduled for May 30, 1996.

The effort to develop guidelines for electronic reserves has been a prominent objective of CONFU since its formation in late 1994. Through 1995, a variety of participants sought to develop guidelines that would yield agreement, but our lengthy efforts too often only reminded us of the difficulty of reaching agreement. Discussions in late 1995 left some participants with the impression that the CONFU process would not produce guidelines on electronic reserves, and that participants may even not be able to issue a joint statement outlining areas of agreement and areas of fundamental concern.

In January 1996, a group of individuals participating in the CONFU process met to begin revitalizing the effort to develop fair-use guidelines for electronic reserves. Those persons attending the meeting and participating in the early discussions were aspiring to develop workable and lawful guidelines for fair use and electronic reserves, and the individuals were negotiating with an understanding that they would be prepared to support personally a set of guidelines and to recommend those guidelines for endorsement by their respective organizations.

In sum, the negotiators of the attached guidelines are pleased to report that CONFU participants representing the following organizations have given the accompanying guidelines their personal support and have begun the process of securing formal endorsement of the guidelines from their organizations:

American Association of Law Libraries
American Council of Learned Societies
Association of Academic Health Science Library Directors
Association of American Universities
Association of American University Presses
Association of College and Research Libraries
Association of Research Libraries
Indiana Partnership for Statewide Education
Medical Library Association
Music Library Association
National School Board Association
Special Libraries Association

Developers of these guidelines are also working closely with a wide range of other organizations sharing a strong interest in fair use for electronic reserves. Those organizations include publishers, librarians, educators, and many others.

This memorandum is a formal effort to reach all participants in the Conference on Fair Use with the hope that you and your organization will also support these guidelines. No set of guidelines will meet the needs of or fully satisfy any organization. Indeed, nearly every one of
the participants in this negotiation probably has a short list of concerns for how he or she would prefer to revise these guidelines. But all participants recognize that guidelines necessarily involve compromise. This group hopes that you will join this effort to establish guidelines that can be adopted and followed by educational organizations, and that can help faculty members, librarians, and others better understand and apply the complex concepts of copyright and fair use. If you have questions or comments about these guidelines before the May 30 meeting, please do not hesitate to call either Kenneth Crews at (317) 274-4400 or Peter Grenquist at (212) 941-6610.

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FAIR-USE GUIDELINES FOR ELECTRONIC RESERVE SYSTEMS

Revised: March 5, 1996

INTRODUCTION

Many college, university, and school libraries have established reserve operations for readings and other materials that support the instructional requirements of specific courses. Some educational institutions are now providing electronic reserve systems that allow storage of electronic versions of materials that students may retrieve on a computer screen, and from which they may print a copy for their personal study. When materials are included as a matter of fair use, electronic reserve systems should constitute an ad hoc or supplemental source of information for students, beyond a textbook or other materials. If included with permission from the copyright owner, however, the scope and range of materials is potentially unlimited, depending upon the permission granted. Although fair use is determined on a case-by-case basis, the following guidelines identify an understanding of fair use for the reproduction, distribution, display, and performance of materials in the context of creating and using an electronic reserve system.

Making materials accessible through electronic reserve systems raises significant copyright issues. Electronic reserve operations include the making of a digital version of text, the distribution and display of that version at workstations, and downloading and printing of copies. The complexities of the electronic environment, and the growing potential for implicating copyright infringements, raise the need for a fresh understanding of fair use. These guidelines are not intended to burden the facilitation of reserves unduly, but instead offer a workable path that educators and librarians may follow in order to exercise a meaningful application of fair use, while also acknowledging and respecting the interests of copyright owners.

These guidelines focus generally on the traditional domain of reserve rooms, particularly copies of journal articles and book chapters, and their accompanying graphics. Nevertheless, they are not meant to apply exclusively to textual materials and may be instructive for the fair use of other media. The guidelines also focus on the use of the complete article or the entire book chapter. Using only brief excerpts from such works would most likely also be fair use, possibly without all of the restrictions or conditions set forth in these guidelines. Operators of reserve systems should also provide safeguards for the integrity of the text and the author’s reputation, including verification that the text is correctly scanned.

The guidelines address only those materials protected by copyright and for which the institution has not obtained permission before including
them in an electronic reserve system. The limitations and conditions set forth in these guidelines need not apply to materials in the public domain—such as works of the U.S. government or works on which copyright has expired—or to works for which the institution has obtained permission for inclusion in the electronic reserve system. License agreements may govern the uses of some materials. Persons responsible for electronic reserve systems should refer to applicable license terms for guidance. If an instructor arranges for students to acquire a work by some means that includes permission from the copyright owner, the instructor should not include that same work on an electronic reserve system as a matter of fair use.

These guidelines are the outgrowth of negotiations among diverse parties attending the Conference on Fair Use ("CONFU") meetings sponsored by the Information Infrastructure Task Force's Working Group on Intellectual Property Rights. While endorsements of any guidelines by all conference participants is unlikely, these guidelines have been endorsed by the organizations whose names appear at the end. These guidelines are in furtherance of the Working Group's objective of encouraging negotiated guidelines of fair use.

This introduction is an integral part of these guidelines and should be included with the guidelines wherever they may be reprinted or adopted by a library, academic institution, or other organization or association. No copyright protection of these guidelines is claimed by any person or entity, and anyone is free to reproduce and distribute this document without permission.

A. SCOPE OF MATERIAL

1. In accordance with fair use (Section 107 of the U.S. Copyright Act), electronic reserve systems may include copyrighted materials at the request of a course instructor.

2. Electronic reserve systems may include short items (such as an article from a journal, a chapter from a book or conference proceedings, or a poem from a collected work) or excerpts from longer items. "Longer items" may include articles, chapters, poems, and other works that are of such length as to constitute a substantial portion of a book, journal, or other work of which they may be a part. "Short items" may include articles, chapters, poems, and other works of a customary length and structure as to be a small part of a book, journal, or other work, even if that work may be marketed individually.

3. Electronic reserve systems should not include any material unless the instructor, the library, or another unit of the educational institution possesses a lawfully obtained copy.

4. The total amount of material included in electronic reserve systems for a specific course as a matter of fair use should be a small proportion of the total assigned reading for a particular course.

B. NOTICES AND ATTRAIBUTIONS

1. On a preliminary or introductory screen, electronic reserve systems should display a notice, consistent with the notice described in Section 109(f)(1) of the Copyright Act. The notice should include additional language cautioning against further electronic distribution of the digital work.

2. If a notice of copyright appears on the copy of a work that is included in an electronic reserve system, the following statement shall appear at some place where users will likely see it in connection with
access to the particular work:

"The work from which this copy is made includes this notice: [restate the elements of the statutory copyright notice: e.g., Copyright 1996, XXX Corp."

3. Materials included in electronic reserve systems should include appropriate citations or attributions to their sources.

C. ACCESS AND USE

1. Electronic reserve systems should be structured to limit access to students registered in the course for which the items have been placed on reserve, and to instructors and staff responsible for the course or the electronic system.

2. The appropriate methods for limiting access will depend on available technology. Solely to suggest and not to prescribe options for implementation, possible methods for limiting access may include one or more of the following or other appropriate methods:

   (a) individual password controls or verification of a student's registration status; or

   (b) password system for each class; or

   (c) retrieval of works by course number or instructor name, but not by author or title of the work; or

   (d) access limited to workstations that are ordinarily used by, or are accessible to, only enrolled students or appropriate staff or faculty.

3. Students should not be charged specifically or directly for access to electronic reserve systems.

D. STORAGE AND REUSE

1. Permission from the copyright holder is required if the item is to be reused in a subsequent academic term for the same course offered by the same instructor, or if the item is a standard assigned or optional reading for an individual course taught in multiple sections by many instructors.

2. Material may be retained in electronic form while permission is being sought or until the next academic term in which the material might be used, but in no event for more than three calendar years, including the year in which the materials are last used.

3. Short-term access to materials included on electronic reserve systems in previous academic terms may be provided to students who have not completed the course.