

Resolution 1998-13. Endorsing a Proposed Policy Statement Concerning Fair Use Under the Federal Copyright Law.

The Faculty Council resolves:

The Faculty of the University of North Carolina at Chapel Hill endorses adoption by the University of the following policy statement.

"As an institution devoted to the creation, discovery and dissemination of knowledge to serve the State of North Carolina, the University of North Carolina at Chapel Hill is committed to complying with and taking responsible advantage of all applicable laws regarding intellectual property. That commitment includes the full exercise of the rights accorded to users of copyrighted works under the fair use provision of federal copyright law.

"Fair use depends on the facts and circumstances of a given situation, and the University is confident that its faculty, librarians and staff are able to make good-faith decisions about fair use that reflect the particular circumstances relevant to such decisions. The State of North Carolina provides insurance for faculty, librarians and staff, and the Attorney General generally provides legal representation for employees sued within the course of their employment, including such cases that might arise through reasonable attempts to exercise fair use of copyrighted materials.

"It is therefore the policy of the University of North Carolina at Chapel Hill to encourage the exercise in good faith of full fair use rights by faculty, librarians and staff in furtherance of their teaching, research and service activities. To that end the University shall:

1. Inform and educate the community about their fair use rights and the application of the four factors for determining those rights set forth in 17 U.S.C. § 107.
2. Develop and make available through the office of the University Counsel, an Office of Scholarly Communication and other appropriate units, effective resources concerning fair use and intellectual property laws generally and the application of fair use in specific situations, and
3. Avoid, whenever possible, adopting or supporting policies or agreements that would restrict fair use rights."

Comment by the UNC-CH Copyright Committee

Copyright law exists both to protect the rights of the creators of copyrighted works and to ensure the availability of those works to the public. Faculty, staff and students create copyrighted works, the University supports and facilitates the development of copyrighted works, its Press publishes copyrighted works, and students, faculty and staff use copyrighted works in teaching, research and learning. Although authors and other creators are entitled to exclusive rights in the works they develop, the users of copyrighted works also have certain rights. The U.S. Constitution, in Article 1, section 8, clause 8, states that "the Congress shall have Power...to 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." Promotion of learning and

creativity is the reason that copyright law exists, a mission that coincides with that of the University.

The Copyright Act of 1976 details the exclusive rights of the copyright holder: reproduction, distribution, adaptation, performance and display. Equally important are the limitations on the exclusive rights of the copyright owner that are included in the statute. Of these, fair use is the most important. According to section 107,

... [T]he fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or any other means specified by that section for purposes such as criticism, comment, news reporting, teaching (including multiple copying for classroom use), scholarship or research, is not an infringement of copyright.

According to the statute, teaching, scholarship and research are favored uses of copyrighted works. Although not all nonprofit educational uses are fair uses, many are.

Rights that are not exercised often are forfeited. If the University were to require that permission be obtained to use copyrighted works when the use is a fair use, fair use rights enjoyed by members of the University community would be threatened. UNC-CH has traditionally encouraged its faculty, staff and students to exercise their rights to use copyrighted works in the furtherance of teaching and learning.

Fair use depends on the facts and circumstances of the given situation. Therefore, the person closest to those facts is best suited to determine the law's application. It is essential that the University continue to express confidence that its faculty, staff and librarians are able to make good-faith decisions about fair use and that their decisions will best reflect the particular circumstances relevant to the decision. Furthermore, the University must be committed to protecting the fair use rights accorded members of the academic community.

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