
This study describes the results of an email survey sent to 79 academic librarians at institutions of a similar level of research activity, designed to examine attitudes toward fair use and awareness of the Association of Research Libraries’ recently published Code of Best Practices in Fair Use for Academic and Research Libraries. Results showed that slightly more than half of respondents had read the Code. Those who had read it were likely to agree that it was relevant and useful to their library’s mission, but they did not report relying on fair use in copyright-related decision making at a higher rate than those who had not.

Headings:

Academic libraries -- Law & legislation

Fair use (Copyright)

Library copyright policies
CODES OF BEST PRACTICES AND DECISION-MAKING ON FAIR USE QUESTIONS IN ACADEMIC LIBRARIES

by

Emma E. Pinault

A Master’s paper submitted to the faculty of the School of Information and Library Science of the University of North Carolina at Chapel Hill in partial fulfillment of the requirements for the degree of Master of Science in Library Science.

Chapel Hill, North Carolina

April 2013

Approved by

______________________________

Barbara B. Moran
Table of Contents

Table of Contents .................................................................................................................. 1
INTRODUCTION .................................................................................................................... 2
LITERATURE REVIEW ........................................................................................................ 22
METHODOLOGY .................................................................................................................. 27
RESULTS ............................................................................................................................... 30
CONCLUSION ....................................................................................................................... 35
BIBLIOGRAPHY .................................................................................................................... 38
APPENDIX A ........................................................................................................................ 41
APPENDIX B ........................................................................................................................ 43
INTRODUCTION

Academic and research libraries, like the institutions they serve, exercise a vital function in supporting teaching, learning and scholarship among their patron communities. This mission involves collecting, preserving and providing access to information resources and other materials, many of which are protected under the copyright laws of the United States and, in some cases, under specific licensing terms. Librarians have long struggled to balance the need to provide information and effective service to their patrons with the need to respect the rights of content creators and vendors, while avoiding the possibility of entangling their parent institutions in potentially costly litigation.

Statute law related to these issues has been left intentionally vague, in many areas, and case law is still evolving; this makes it difficult for librarians to judge whether a particular use of copyrighted material is appropriate, and to advise their patrons on such questions. The Code of Best Practices in Fair Use for Academic and Research Libraries was created by the Association of Research Libraries (ARL) in an attempt to clarify what uses of copyrighted material should be considered fair, to address the problem of excessive caution in librarians’ copyright-related decision making and to establish a standard for these decisions based on the values of the library profession and the knowledge and experience of working librarians (ARL, 2012). The Code was designed to assist librarians in making copyright decisions, and this study examines whether librarians are using it in the way its makers intended.
The rapid growth of digital technology in the 1990s and the beginning of the twenty-first century has brought increased opportunities for libraries and users to access information and scholarly resources, while introducing a host of new complications related to copyright law (Wagner, 2008). It is possible today for students and researchers to access scholarly content remotely, without visiting the library; the rise of electronic journals also decreases the need for storage space and makes it easier to search (Gerhardt & Wessel, 2010). Today’s tech-savvy researchers have come to expect content to be delivered instantly to their computers wherever they are (Section 108 Study Group, 2008).

The rise of electronic scholarly content also creates new legal questions, as many laws - including the Copyright Act of 1976 - were written with physical books and paper journals in mind, with “some now-outmoded assumptions about technology, behavior, professional practices, and business models” (Section 108 Study Group 2008, p. i). Under the first sale doctrine, a library or educational institution can lend out or place on reserve a hard copy of a book or journal; the library does not have to pay additional royalties to rights-holders for sharing the book or allowing multiple patrons to use it. While in theory an electronic copy would be even more convenient (with the potential for allowing multiple users to access it simultaneously) in practice licenses for allowable uses of digital content can be much more restrictive. (Gerhardt & Wessel, 2010)

**Copyright Law Related to Libraries**

The United States Constitution provides the basis for American copyright law in Article I, Section 8, which aims “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” (US Constitution Article I Sec 8). The Copyright Act of 1976 clarified the rights belonging to authors and users of copyrighted works. Section 102 of the Act describes works protected under copyright as "original works of authorship fixed in any tangible medium of expression"; copyright does not "extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery" (USC 17 Sec 102).

Both the phrasing in the Constitution itself and the wording of subsequent laws and court rulings make it clear that historically, copyright protection was given to authors and other creators of copyrightable content for the purpose of encouraging the creation of more such content, by allowing creators to profit from it. Copyright exists because the creation of new content is seen as a public good, “to produce a more robust intellectual and artistic culture,” and not primarily to protect the author's commercial interests (Parchomovsky & Goldman, 2007).

This has been affirmed by the courts in several cases. In 1984, a Supreme Court ruling declared that in copyright law, “the monopoly privileges that Congress may authorize are neither unlimited nor primarily designed to provide a special private benefit. Rather, the limited grant is a means by which an important public purpose may be achieved” (Sony Corp. of Am. v. Universal City Studios, Inc., 1984). And again in 1994, the Supreme Court said that “from the infancy of copyright protection, some opportunity for fair use of copyrighted materials has been thought necessary to fulfill copyright's very purpose” (Campbell v. Acuff-Rose Music Inc., 1994).

The exclusive rights granted to authors are detailed in Section 106, and include the rights to reproduce their work, prepare derivative works, distribute copies, and
perform or display their work publicly (USC 17 Sec 106). These rights come with some limitations; Sections 107, 108 and 110 are of particular interest to librarians and educators, and are described by the Association of Research Libraries as essential “in order to accomplish the routine tasks of their profession” (Adler et al., 2010, p. 2).

Too strict an interpretation of copyright law undermines the useful purpose those laws were enacted to advance; the law is meant to strike a balance between the interests of content creators and the interests of users and the general public (Bechtold, 2004). If the balance tilts too far in one direction, content creators will have no incentive to create new content; in the other direction the public will be prevented from accessing or benefiting from that content (Parchomovsky & Goldman, 2007). Too strict an interpretation of copyright law also runs afoul of the First Amendment, and would hamper the ability of scholars to quote other scholars to make their arguments or the right of authors to criticize or parody other authors (Crews, 2001).

Teaching, research and scholarship (all activities of concern to academic librarians) have traditionally been recognized as furthering the public good, and as such they enjoy some (but not unlimited) freedom from copyright restrictions (Crews 2001). Section 107 of the Copyright Act of 1976 establishes that some uses of copyrighted work without permission may be considered fair, based on what sort of work is being used, how it is used, how much is used and how the use affects any potential market for the work (USC 17 Sec 107).

Section 107 has been described by some as “the most hopelessly vague of legal standards” and potentially “a lure that draws into its trap fools who underestimate the wrath … of many copyright proprietors” (Crews, 2001, p. 605). Whether or not a use is
fair is difficult to determine with any certainty, as the wording of the statue is deliberately left open to interpretation (Crews, 2001).

Since the 1970s, parties representing the interests of educators, rights-holders and others have often attempted to agree on more clearly defined guidelines to help users determine if a proposed use is fair or not (Crews, 2001). However, these guidelines can be “strict, narrow and more focused on metrics than on the nature of the educational enterprise”, and convincing parties with opposing interests to agree on such guidelines in the first place is difficult (Jaszi, 2012, p. 3). Despite (or perhaps because of) its lack of clarity, Section 107 is an essential tool for librarians and educators alike, and there is a danger in ignoring it in favor of clearer but more restrictive guidelines, as shown by many rights-holders’ “irrepressible tendency to interpret guidelines that were designed to create ‘safe harbors’ as outer limits on permissible use” (Jaszi, 2012, p. 3).

Negotiated guidelines are not the only tool available to librarians and educators outside reliance on fair use; Section 108 and Section 110 of the Copyright Act offer specific rights to these groups, and advocacy efforts could be directed toward convincing Congress to strengthen or add to them, in recognition of new technological realities. However, while some attempts in this direction have been made, it is unlikely that this approach alone will be successful (Jaszi, 2012). Attempts by legislators and other concerned interest groups to update and modernize the provisions for librarians and educators outlined in Sections 108 and 110 have met with limited success; it is likely that the persistent differences of opinion among industry and user communities will prevent any changes in the law from keeping pace with the rapid advance of technology (Neal, 2009).
Attempted Legislative Solutions

Some progress has been made in updating the statute, however. Section 110 allows for a copyrighted work to be performed or displayed "in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom" (USC 17 Sec 110). In November 2002 Congress passed the Technology, Education and Copyright Harmonization Act, called the TEACH Act, with the aim of extending exceptions to copyright protection designed for educators to apply to online distance education courses (Hutchinson, 2003). Section 110 of the Copyright Act allows an instructor to perform or display copyrighted content in a face-to-face classroom setting. By 2002, online education programs were growing in popularity; such courses offered increased access to educational opportunities for students with disabilities, or those who were geographically isolated or attempting to balance classwork around other responsibilities such as work or childcare (Hutchinson, 2003).

However, the cost in staff time and money to acquire licenses for digital content that could be used legally (without paying a fee) in a traditional classroom setting could be prohibitively high; Hutchinson (2003) describes obtaining such licenses as “one of the highest costs of providing high-quality online education” (p. 2211-12). In some cases, the inability to acquire such licenses meant that “students in online courses [had] less engaging and effective educational experiences” (Hutchinson, 2003, p. 2213).

The TEACH Act attempts to fix this problem by allowing some unlicensed copyrighted content to be used in online courses, under certain conditions, by “a government body or accredited non-profit educational institution” (Crews, 2010, p. 2). The new rules require certain additional actions; the institution must have a copyright
policy, and make it and information encouraging students to comply with copyright law available to students (Crews, 2010). Access to the materials must be restricted to students enrolled in the course, and technological measures must be in place to prevent students from keeping materials after the course is over or distributing them to others (Hutchinson, 2003). This imposes an additional burden on instructors (or their institutions’ IT departments); merely password-protecting the course material only controls access, not retention (Hutchinson, 2003). However, rights-holders feel the additional protections are necessary as technology has made large-scale unauthorized distribution of copyrighted content very easy (Bechtold, 2004).

Also, the TEACH Act assumes an online experience similar to a traditional lecture format, and permissions are designed to fit such a format; students may “not necessarily be able to store the materials or review them later in the academic term” (Crews, 2010, p.2).

Hutchinson (2003) describes the TEACH Act as “likely the most educator-friendly legislation that Congress will produce in the near future” (p. 2207). However, a guide written by the Director of the Copyright Advisory Office at Columbia University advises that educators and librarians assisting them “should be prepared to explore fair use and other alternatives when the new law does not yield a satisfactory result” (Crews, 2010, p. 7).

For all its limitations, legislation has been passed updating Section 110. Bringing Section 108 into the twenty-first century has proved even more difficult. Section 108 specifically addresses libraries and archives holding collections that are open to the public or “available not only to researchers affiliated with the library … but also to other
persons doing research in a specialized field” (USC 17 Sec 108). This section allows a library to make a limited number of copies of an item, for preservation or replacement of an item that is “damaged, deteriorating, lost or stolen, or if the existing format in which the work is stored has become obsolete”, if “a reasonable effort” does not find “an unused replacement … at a fair price” (USC 17 Sec 108). Obsolete formats are defined as a format where the machine needed to read or display the content is no longer produced or “reasonably available in the commercial marketplace” (USC 17 Sec 108).

Addressing concerns that advancing digital technology had so changed the nature of libraries’ operations to the point where the provisions of Section 108 were no longer useful or sufficient, and the possibility that copyright law as presently written presented “a potentially serious impediment to the preservation of important digital collections” (Section 108 Study Group, 2008, p. 3) the US Copyright Office and the Library of Congress’s National Digital Information Infrastructure and Preservation Program convened the nine-member Section 108 Study Group in April 2005. The purpose of the group was to examine possible revisions that could be made to existing copyright law, in ways “reflecting the range of stakeholder interests” (Section 108 Study Group, 2008, p. I), with the aim of presenting Congress with recommendations for new legislation.

On the one hand, digital technology makes it easier to copy and distribute copyrighted content; this can cause increased convenience for users, but also makes illegal copying easier. At the same time, the rise of electronic content has led to a situation where in many cases libraries no longer own much of the material in their collections, but only license it from vendors. The Study Group aimed to address areas
where advancing digital technology caused new concerns for scholars and librarians, as well as for vendors and rights-holders (Section 108 Study Group, 2008).

Assembled with the expectation of drafting recommendations for legislation within 18-20 months, the group spent nearly three years drafting a report over two hundred pages long, in which “few recommendations came forward without outstanding concerns that … require resolution in the legislative process” (Neal, 2009, p. 199). The Study Group included a diverse array of representatives from user communities and the content industry alike, and while one participant describes how “the commitment to civility, mutual learning, understanding and consensus generally held up,” few substantive recommendations could be agreed on and many issues were not even discussed (Neal, 2009, p. 199).

Recommendations advanced by the group were those on which all members achieved consensus (Section 108 Study Group, 2008). These included expanding Section 108’s exceptions to cover museums as well as libraries and archives, adding new eligibility criteria for libraries and archives to be covered under Section 108, and extending some of the exceptions under Section 108 to cover outside contractors working on a library’s behalf (Section 108 Study Group, 2008).

The Study Group also recommended revising the conditions that must be met for a replacement copy to be made; members recommended allowing replacement copies of works deemed “fragile” even if they are not yet deteriorating. The group also recommended requiring libraries to seek out a “usable” replacement, rather than an “unused” one, and suggested that a work can be replaced by licensing, rather than buying, a replacement. (Section 108 Study Group, 2008)
Issues on which no agreement could be reached included whether virtual libraries without a physical address should be eligible for Section 108 exceptions, whether digital rights management technological measures could be legally circumvented for purposes allowed under Section 108 exceptions, and whether Section 108 can, in some cases, override the terms of a license agreement (Neal, 2009). While efforts to update the provisions of this section are clearly needed, many necessary activities of libraries still must rely on Section 107’s more flexible provisions.

**Fair Use**

In contrast to the detailed provisions laid out (and later argued over) in Section 108, Section 107 provides rights that are both broader and less easily defined. Many activities vital to the work of an academic research library fall under 107’s more vaguely defined idea of “fair use”. This can be both a strength and a weakness; the flexibility of fair use makes it invaluable in the context of quickly changing technology, allowing its provisions to “accommodate an indefinite number of new situations” while “enabl[ing] important new uses where specific exemptions stop short” (Adler et al., 2010, p. 2). In practice, however, Section 107’s provisions have been described as “hopelessly unpredictable and indeterminate” (Netanel, 2011, p. 716).

According to Section 107, fair use (i.e. acceptable use of copyrighted work without paying the rights-holder) can include copies made “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research” (USC 17 Sec 107).

Factors considered by a court in determining whether a use is fair under Section 107 include:
“1) the purpose and 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 substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work.” (USC 17 Sec 107)

Why is fair use necessary to the mission of academic research libraries and the institutions they serve? One function of fair use is to attempt to reconcile the contradiction between copyright and free speech (Gerhardt & Wessel, 2010). If the use of quotes in critical commentary on a creative work always required permission from the author, this could be used by authors to silence criticism of their work; likewise, a rights-holder could withhold permission (and some have attempted to do so) to use their works from scholars whose conclusions or viewpoints they disagreed with (Gerhardt & Wessel, 2010).

Fair use is also recognized as a vital tool in attempting to address the inequality of access between institutions with greater or lesser financial resources (Gerhardt & Wessel, 2010). The possibility of “an information divide heaped on top of a digital divide” and “the creation of classes of users driven by licensing terms” (Neal, 2009, p. 201) may be somewhat alleviated by a robust culture of fair use. In light of the escalating costs of licensing electronic journal subscriptions and other digital content (one online course paid $1200 for the rights to make a single article from the Washington Post available to students electronically) the reliance on fair use is increasingly necessary (Hutchinson, 2003).

While the differences in resources and opportunities available at wealthy institutions compared to less wealthy ones cannot be fixed by fair use alone, ignoring or
underusing fair use rights can “exacerbate inequalities that affect both students and scholars” (Gerhardt & Wessel, 2010, p. 466). Without fair use, scholars and instructors at libraries with small collections budgets would be seriously constrained in what they could access, hurting their own research and their students’ learning (Gerhardt & Wessel, 2010). The academic community has “a moral and philosophical imperative to understand and exercise rights to fair use”, some authors argue, and access to information is not only a scholarly issue but one of social justice as well (Gerhardt & Wessel, 2010, p. 465).

However, the uncertainty inherent in applying and relying on fair use often deters those libraries and universities who would benefit most from taking advantage of it (Gerhardt & Wessel, 2010). Librarians and educators wishing to determine if a use is fair must have the time to pay careful attention to the courts, as case law in this area is still evolving (Gould et al., 2005). But where the statute is vague the case law can be too specific to provide useful guidance to anyone not in a strictly similar situation to a particular court case (Mazzone, 2009).

**Licensing Contracts as a Substitute for Fair Use**

Some have argued that market forces can solve (or have already solved) this problem; in the absence of clarity from Congress or the courts licensing markets are becoming a more common way to specify which particular uses are permissible and which are not (Mazzone, 2009). This model raises several problems.

First, the cost of such licenses can be extremely high. Scientific journal prices especially are rising more quickly than libraries’ collection budgets; also, in many cases a library’s collections will be covered by a number of different licenses, all of which
specify different terms of use (Gerhardt & Wessel, 2010). Institutions who can afford to hire experts to negotiate such agreements may receive lower prices and more favorable terms (Gerhardt & Wessel, 2010). However, in addition to the cost of purchasing the license, a library must also consider the cost of enforcing whatever access restrictions the vendor requires (Neal, 2009).

The cost of allowing private licensing agreements to govern libraries’ and scholars’ use of electronic copyrighted materials is not only financial. Courts pay attention to community practice in issuing fair use rulings, and if the practice of licensing any use of copyrighted content becomes widespread enough it will come to be seen as necessary (Simon, 2010).

A licensing contract is a form of private law, only binding on the parties involved; in cases where both parties agree on the terms after negotiation, a license allows the expectations each has of the other to be spelled out in a way that is both clear and legally binding (Winston, 2006). The terms of a private licensing contract may be used to protect copyright owners’ rights where public law does not go far enough, or it may be used to clarify expectations where the law is unclear (Winston, 2006). However, many content owners take this further; a private contract can override provisions in public copyright law meant to protect users (Winston, 2006).

Copyright law was written to strike a careful balance between protecting owners’ profits and users’ rights for the public good; giving power to regulate copyright to private contract law upsets that balance and unfairly favors copyright owners (Winston, 2006). Winston (2006) describes the growing trend of relying on private contracts to regulate copyright as a “slippery slope” (p. 112) leading to a version of copyright that fails to
serve the public interest. The effect of many licenses is not to supplement or clarify public copyright laws but to undermine or get around them (Winston, 2006). Licensing allows content owners to get around not only the first sale doctrine, which prevents the seller from controlling how a product is used once it is sold, but fair use as well, and indeed many contracts explicitly deny permission for uses that would be considered fair (Winston, 2006).

Licensing products instead of selling them first became popular with software, but today licenses are routinely applied to products ranging from electronic music downloads to soybean seeds (Winston, 2006). As early as 1998 library organizations were acknowledging licenses as “a fact of life in conducting business in the electronic environment” (Schottlaender, 1998, p. 50). For a copyright owner, licensing content instead of selling it allows the owner a certain degree of control over how that content is used, and provides protection against the possibility of widespread illegal copying and distribution and the potential for lost profits (Winston, 2006). That control can include actual encryption of the content (Bechtold, 2004) or strict terms of service shifting the burden of preventing unauthorized access and use onto the purchaser (Schottlaender, 1998).

Mazzone (2009) argues strongly against the idea that market forces should define fair use, which should be “free use” (p. 395). “Nobody is meant to be paying for the privilege of using a copyrighted work in a manner that the law deems not to infringe the copyright” (Mazzone, 2009, p. 395), but many are willing to pay for the certainty that their use will not expose them to liability.
Licensing terms are not the only way for vendors to control access and use of their content. Digital rights management (DRM) technology can be used to encrypt content so that it cannot be copied or used in ways the vendor does not authorize, even when fair use would obviously apply (Bechtold, 2004). DRM can be used for “controlling the use of and access to arbitrary data”, including content that may not be under copyright or even copyrightable (Bechtold, 2004). Despite this, the Digital Millennium Copyright Act (DMCA), passed in 1998, makes it illegal to circumvent DRM encryption even for uses that would be unambiguously legal (Bechtold, 2004). This, in effect, gives copyright holders “an absolute veto over any fair uses of their work” (Parchomovsky & Goldman, 2007, p. 1489). Only the Librarian of Congress can issue exemptions from the DMCA’s anti-circumvention provisions, and this is done only rarely (Mazzone, 2009).

The move toward electronic licensing and the increasing use of DRM technology are not the only threats facing fair use. The very reluctance of many scholars, instructors and librarians to rely on the doctrine plays a part in weakening it (Gerhardt & Wessel, 2010).

Both uncertainty about the law itself and misconceptions about the risk of liability affect librarians’ willingness to rely on fair use (Gerhardt & Wessel, 2010). A study done by the Association of Research Libraries interviewed practicing librarians about these issues; researchers found that many were cautious about fair use out of concerns that a lawsuit might be brought against their library or their university (Adler et al., 2010). The law allows for high statutory damages in cases of copyright infringement, up to $150,000
per work infringed (USC 17 Sec 504(c)); smaller institutions with less resources are often especially reluctant to take that risk (Gerhardt & Wessel, 2010).

Fair use exists “to promote socially beneficial uses of protected content” (Jaszi, 2012, p. 8). However, while taking a risk on fair use can offer benefits to society as a whole, by helping research and scholarship and advancing knowledge, the cost of taking such a risk falls on the individual or the institution employing them (Parchomovsky & Goldman, 2007). The imbalance of power between a researcher and a large academic publisher makes it tempting to avoid such risks (Gerhardt & Wessel, 2010). Even when a scholar believes a use is fair and is willing to take the risk, the institution may not allow it (Parchomovsky & Goldman, 2007).

The fear of lawsuits is not entirely unfounded; even state institutions are not completely protected by sovereign immunity, as the recent suit against Georgia State University over its use of copyrighted material in electronic course reserves has shown (Cambridge University Press et al. vs. Patton et al., 2012). However, it should also be remembered that the plaintiffs who sued Georgia State did not even seek statutory damages, only an injunction clearly stating that the university’s use of material in course reserves was not fair; it should also be remembered that they lost (Cambridge University Press et al. vs. Patton et al., 2012). The possibility that an innocent mistake by a librarian or faculty member will cost the university hundreds of thousands of dollars is less likely to come true than many imagine (Gerhardt & Wessel, 2010). Even private non-profit institutions, while not protected by sovereign immunity, are given some protection by Section 504(c) of the Copyright Act of 1976, which states that statutory damages shall be remitted “in any case where an infringer believed and had reasonable grounds for
believing that his or her use of the copyrighted work was a fair use under section 107, if
the infringer was: (i) an employee or agent of a nonprofit educational institution, library,
or archives acting within the scope of his or her employment” (USC 17 Sec 504(c)).

In recent cases, courts have also placed a strong emphasis on whether or not a use
is “transformative”, either in changing the work itself or using the work for a different
purpose (Jaszi, 2012). Many educational and scholarly uses transform the original work,
making it “a foundation to communicate original ideas and critical analysis” (Gerhardt &
Wessel, p. 517). A transformative use can sometimes be considered fair even if it is a
commercial one (Bill Graham Archives v. Dorling Kinderley, Inc., 2006).

Some scholars suggest that the best way to preserve fair use rights and give users
confidence to assert them safely is the creation of an administrative agency within the
government. Mazzone (2009) suggests that such an agency be located in the executive
branch of the federal government, and be empowered to override state laws and render
contracts in which users must waive fair use rights unenforceable. Such an agency could
also develop regulations laying out more clearly which uses are fair and which are not.
Mazzone (2009) describes two potential models for such an agency.

In the first model, this agency would have the power to impose civil penalties on
copyright owners or anyone attempting to prevent fair uses of copyrighted content
(Mazzone, 2009). The second model proposes an office in which copyright owners must
file a complaint before bringing a lawsuit for infringement, allowing the user to respond;
the agency would then issue a ruling finding the use fair or unfair (Mazzone, 2009).
Another proposal suggests the creation of a similar agency devoted solely to questions of
fair use related to education (Simon, 2010).
Others advocate the establishment of legally-binding safe harbors for fair use (as opposed to the various unofficial guidelines that have, at times, tried to serve that role) (Parchomovsky & Goldman, 2007).

The Code of Best Practices in Fair Use in Academic and Research Libraries was created through a series of discussions among professional academic librarians, between October 2010 and August 2011; the librarians gathered in small groups to talk about several hypothetical fair use situations similar to those they frequently encounter at work (ARL, 2012). The consensus that developed among participants was the basis for the code; it is not a document reflecting negotiations or agreements with rights holders (ARL, 2012). It is not meant to be exhaustive, or to cover every situation, but it is meant to be a statement of this community’s values and considered professional judgment; it is hoped that knowledge of their peers’ consensus on certain issues will allow librarians to assert their rights under fair use with greater confidence (ARL, 2012).

The Code specifically addresses eight situations commonly encountered by professional academic librarians; these include:

- “Supporting teaching and learning with access to library materials via digital technologies
- Using selections from collection materials to publicize a library’s activities, or to create physical and virtual exhibitions
- Digitizing to preserve at-risk items
- Creating digital collections of archival and special collections materials
- Reproducing material for use by disabled students, faculty, staff, and other appropriate users
- Maintaining the integrity of works deposited in institutional repositories
- Creating databases to facilitate non-consumptive research uses (including search)
- Collecting material posted on the web and making it available” (ARL, 2012a).

The Code asserts that librarians should be able to provide “appropriately tailored course-related content” to students online, and further states that if appropriate for the
educational purpose the entire work may be used; it also says that using the same material year after year should be allowed if it is still the right material for that course (ARL, 2012, p. 14).

The Code also asserts that libraries can post material on the web as part of an online exhibit to promote the library and its collections (ARL, 2012). In the case of fragile items or items in nearly-obsolete formats, a library should be able to digitize the item for preservation if a digital copy is not available for a fair price; this would apply to items such as VHS tapes, which are not yet obsolete but which can be damaged easily (ARL, 2012).

Other uses considered fair under the Code include creating digital copies of items needed by patrons with disabilities (and keeping those copies afterward, in case they are needed again in a similar situation), creating collections of material gathered from the Internet, allowing public access to works in institutional repositories without redacting copyrighted content quoted under fair use, and creating databases using copyrighted material which can be used for “nonconsumptive research”, such as searching for specific terms in a wide range of texts (ARL, 2012, p. 25).

Each of the eight principles under the Code is accompanied by a set of statements about the limitations of that particular use, as well as a list of enhancements, or additional actions librarians can take to strengthen their fair use case (ARL, 2012). These may include actions such as instituting technological measures to prevent downloading of copyrighted content over the Internet by unauthorized users, or providing a convenient email address for copyright owners to express complaints or concerns about the use of their work (ARL, 2012).
The Code has been endorsed by the American Library Association, the Association of College and Research Libraries, the Art Libraries Society of America, the College Art Association, the Music Library Association and the Visual Resources Association (ARL, 2012).
LITERATURE REVIEW

As the Code was published fairly recently, no studies have yet been done examining whether or not it has had the intended effect on libraries’ decisions. However, a number of recent studies have addressed related issues, examining some of the factors contributing to librarians’ reluctance to rely on fair use. These factors include a lack of legal training among librarians, persistent misconceptions regarding unofficial guidelines that have attempted to clarify fair use law, and misconceptions about the liability risks involved.

The American Library Association’s new Core Competencies of Librarianship, adopted in January 2009, state that “a person graduating from an ALA-accredited master’s program in library and information studies should know and, where appropriate, be able to employ … the legal framework within which libraries and information agencies operate” (American Library Association, 2009, p. 1-2). A study done in April 2010 examined course offerings, course requirements, and legally-trained faculty at ALA-accredited master’s programs; the researchers concluded that the education library school students receive in legal issues related to the profession is “a mixed bag at best” (Cross & Edwards, 2011, p. 545).

Forty-two programs were found to offer at least one course in legal issues; less than a quarter of the programs offer two or more courses, and only eight offer four classes or more (Cross & Edwards, 2011). The course catalogs listing this information often did not show how frequently the courses were offered (Cross & Edwards, 2011). Only 17% of programs had more than one LIS faculty member with a JD degree; an
examination of faculty biographies on program websites showed that in many cases, legal
issues courses are taught by law school faculty, who may not be familiar with the kinds
of problems that arise in a library setting. (Cross & Edwards, 2011)

Only four of the fifty-seven ALA-accredited master’s programs offered a
specialization or certificate in legal issues; twelve programs offered no courses in legal
issues at all, and none of the programs required students to take a course in legal issues in
order to graduate (Cross & Edwards, 2011). The researchers concluded that “many
academic librarians graduate without a robust knowledge of the law and its applications
in libraries” (Cross & Edwards, 2011, p. 540).

Seeking clear answers, many libraries and universities rely on the Classroom
Guidelines published in the House of Representatives report along with the Copyright
Act of 1976; these guidelines were negotiated by a committee in consultation with
representatives of many different stakeholder groups, but they are not a part of the law
and were not intended to be enforced as such (Simon, 2010). They were originally meant
as a minimum safe harbor within which users could feel safe, and the U.S. Copyright
Office in a 1999 report emphasized that uses outside the guidelines’ scope might also be
fair uses (Gould et al., 2005). However, over the years copyright owners have treated the
limits set out in them as the maximum level of copying allowed under fair use (Simon,
2010).

Fair uses according to the guidelines are characterized by “spontaneity”,
“brevity”, and “cumulative effect”; among other things, the guidelines set out limits for
how many courses a particular article or chapter may be used in without permission, how
many items from the same author or source may be used, and how frequently (Simon,
In some cases, the guidelines offer specific percentages or page limits (Gould et al., 2005). While these and other unofficial guidelines can provide a place to start, when coming up with specific policies for a particular institution, many universities adopt them as official rules without examining more recent case law or their community’s particular needs (Gould et al., 2005).

Relying on percentages can pose other dangers besides restricting uses that might be fair. The statute specifies that not only the “amount” of the work but also the “substantiality” of the portion be considered in judging a use fair or unfair (USC 17 Sec 107). In one case, a use was found unfair in part because the amount copied was considered to be the “heart of the work”, even though it was only several hundred words out of an entire book (Harper & Row, Inc. v. Nation Magazine, 1985).

One study sent out surveys in spring of 2003 to examine policies ARL libraries are using to regulate photocopying and using photocopied materials in course reserves, and how those policies compare with evolving case law on the subject (Gould et al., 2005). One hundred and fifteen surveys were sent out and seventy-eight responses were received.

Approximately 36% of respondents had a policy allowing copies of no more than a certain percentage of a work; of those, more than half set that limit at 10% (Gould et al., 2005). Thirteen respondents reported that their university had a committee that made decisions on copyright issues, though nearly half of those committees did not include a representative from the library (Gould et al., 2005). Only 4.5% of respondents said that they used case law in making decisions about copying (Gould et al., 2005).
Work on the Code of Best Practices in Fair Use for Academic and Research Libraries began with a study by the Association of Research Libraries (ARL), in cooperation with the Center for Social Media and the Washington College of Law Program on Information Justice and Intellectual Property, exploring how and to what extent librarians at academic research libraries relied on fair use in making judgments about copyright questions. Researchers interviewed sixty-five librarians at academic research libraries, addressing questions related to “support for teaching and learning, support for scholarship, preservation, exhibition and public outreach, and serving disabled communities” (Adler et al., 2010, p. 1). Responses suggested that many felt unable to fully exercise their or their patrons’ rights under fair use, due to a lack of understanding of the law and its implications, and they felt this hindered their ability to fulfill their mission (Adler et al., 2010).

This study found that many librarians, while deeply concerned about the impact of this uncertainty on their libraries’ mission to support research, teaching and learning, felt a lack of confidence in their own knowledge of fair use law and so erred on the side of an overly conservative interpretation, often at the expense of providing good service (Adler et al., 2010). Many librarians, when faced with a question of copyright, frequently relied on more specific, quantitative rules as far as what was appropriate (including the specific provisions in Section 108), and “hesitated to apply fair use where another rule [gave] a simpler answer, even if the answer seemed to be ‘no’” (Adler et al., p. 17).

Many of the librarians interviewed frequently found themselves to be “de facto arbiters of copyright practice for their institutions” (Adler et al., 2010, p. 5) when asked to provide materials by faculty or students; while committed to serving their mission and
their patrons, they frequently employed “risk management strategies” due to concerns about lawsuits against the library or the university (Adler et al., 2010, p. 6). In many cases those risk management decisions “were not grounded in a full understanding of their legal rights” (Adler et al., 2010, p. 6) and librarians reported that “they did not understand their rights with sufficient confidence to warrant taking them into account” (Adler et al., 2010, p. 6)
METHODOLOGY

This study aimed to explore academic librarians’ familiarity with and opinions about the Code as it relates to their professional practice, and sought to address these questions:

1. Are academic librarians outside of ARL libraries aware of the Code?
2. Do these librarians consider the Code relevant and useful in their professional practice?
3. Does awareness of the Code and of the consensus of their peers on fair use lead to a greater reliance on fair use in copyright-related decision making?

The Association of Research Libraries (ARL) is a non-profit organization of 125 North American academic libraries at universities with a high or very high level of research activity, as defined by the Carnegie Foundation’s classification system for institutions of higher education. Membership qualifications include “the research nature of the library and the parent institution’s aspirations and achievements as a research institution” (ARL, 2009). However, questions related to fair use and the appropriate handling of copyrighted material in a library or educational setting are not limited to such libraries; institutions with lower levels of research activity face similar issues, including how much of an article can be placed on an e-reserve website (and how often), and how best to provide access to patrons with disabilities.

Potential study participants were selected using the Basic Classification System established by the Carnegie Foundation for the Advancement of Teaching. The Basic classification is a revised version of the classification system originally adopted by the Carnegie Foundation in 1970, and most recently updated in 2010 (Carnegie Foundation
2010a). The system includes three categories under “doctorate granting universities”; a doctorate granting university is one that gave at least twenty research doctoral degrees in 2008-09 (Carnegie Foundation, 2010). Those categories include 108 RU/VH institutions (research universities with very high research activity) of which 87 (81%) are ARL members, 99 RU/H institutions (research universities with high research activity) of which 20 (20%) are ARL members, and 90 DRU institutions (doctoral/research universities) of which 3 (3%) are ARL members (Carnegie Foundation, 2010). A number of factors influence which category an institution belongs to, including research and development expenditures and number of research staff (using data collected by the National Science Foundation) and number of doctoral degrees granted (Carnegie Foundation, 2010a). This study focuses attention on academic libraries associated with institutions in the third category.

Data Collection

Potential study participants were found by examining the list of 90 universities under the DRU classification on the Carnegie Foundation’s website. Institutions without a library website available to the public were removed from the list, along with those whose library’s website did not list email addresses for either staff librarians or a reference desk; 11 were removed, leaving 79 potential participants.

The survey included seven multiple choice questions, two of which allowed participants to add a longer response (see appendix A). Questions sought to determine if participants had read the Code, and if they had, whether they felt it was relevant and useful; further questions sought to determine what statutes or guidelines participants relied on to make decisions on copyright questions. The survey also asked if participants’
libraries had a written policy on copyright, and if plans existed to revise it in light of the Code.

The survey was constructed using Qualtrics software, and a link was emailed to 79 potential participants with an invitation to answer it (see appendix B). Where the library’s website listed an email address for a staff librarian responsible for collection development or access services or a similar copyright-related function, the email was sent to this address; in other cases the email was sent to the main library reference address. The email included a brief explanation of the study, an assurance that all responses would be kept anonymous and a link to the survey. The first email invitation was sent on February 15, 2013; a reminder email was sent to all potential participants on March 4, 2013, and a second reminder was sent on March 13, 2013.
RESULTS

Of the 79 participants invited to take the survey, 21 (27%) responded. Fourteen respondents completed the entire survey, while 7 only answered the first question. While this was a small sample size to draw general conclusions, it did show some interesting patterns.

Question 1 asked respondents, “Have you read the Association of Research Libraries’ Code of Best Practices in Fair Use for Academic and Research Libraries?” Twenty-one respondents answered this question; 12 (57%) said “yes” and 9 (43%) said “no”.

<table>
<thead>
<tr>
<th>Answer</th>
<th># of Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12</td>
<td>57%</td>
</tr>
<tr>
<td>No</td>
<td>9</td>
<td>43%</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100%</td>
</tr>
</tbody>
</table>

Questions 2 and 3 were only displayed to those who answered “yes” to the first question, and asked respondents to rate their level of agreement with a statement. For Question 2, 5 respondents agreed with the statement “The Code is relevant to our library’s operations and will be helpful in making copyright decisions where no clearer standard (i.e. specific terms of service in a licensing agreement) obviously applies”. One respondent strongly agreed, and one neither agreed nor disagreed.
Table 2 (Question 2)

<table>
<thead>
<tr>
<th>Answer</th>
<th># of Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>1</td>
<td>14%</td>
</tr>
<tr>
<td>Agree</td>
<td>5</td>
<td>71%</td>
</tr>
<tr>
<td>Neither Agree nor Disagree</td>
<td>1</td>
<td>14%</td>
</tr>
<tr>
<td>Disagree</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>100%</td>
</tr>
</tbody>
</table>

For Question 3, 4 respondents agreed with the statement “When evaluating or negotiating licensing agreements with content vendors, the Code is a useful tool to help librarians understand what their rights are and how the law of fair use can be applied in a library setting”. Two respondents strongly agreed, and one neither agreed nor disagreed.

Table 3 (Question 3)

<table>
<thead>
<tr>
<th>Answer</th>
<th># of Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>2</td>
<td>29%</td>
</tr>
<tr>
<td>Agree</td>
<td>4</td>
<td>57%</td>
</tr>
<tr>
<td>Neither Agree nor Disagree</td>
<td>1</td>
<td>14%</td>
</tr>
<tr>
<td>Disagree</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>100%</td>
</tr>
</tbody>
</table>

Question 4 asked “When faced with questions about whether a specific use of library materials is allowed under copyright law (in the absence of clear guidelines from a licensing agreement or university policy), how does your library make these decisions?” This question allowed multiple answers. Of 14 respondents, 13 (93%) considered whether the proposed use fits the four factors of fair use as defined by Section 107; 10
(71%) considered whether the proposed use falls into one of the categories protected under Section 108; 3 (21%) consulted university counsel. Four respondents selected “other” and provided comments describing how they would decide (see Table 4.1 below).

**Table 4 (Question 4)**

<table>
<thead>
<tr>
<th>Answer</th>
<th># of Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consider whether the proposed use fits the four factors of fair use as defined by Section 107 of the Copyright Act</td>
<td>13</td>
<td>93%</td>
</tr>
<tr>
<td>Consider whether the proposed use falls into one of the categories protected under Section 108 of the Copyright Act</td>
<td>10</td>
<td>71%</td>
</tr>
<tr>
<td>Consult university counsel</td>
<td>3</td>
<td>21%</td>
</tr>
<tr>
<td>Other (please describe)</td>
<td>4</td>
<td>29%</td>
</tr>
</tbody>
</table>

**Table 4.1**

<table>
<thead>
<tr>
<th>Other (please describe) from Table 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>research that particular [sic] instance</td>
</tr>
<tr>
<td>look at guidelines published by associations</td>
</tr>
<tr>
<td>Insure [sic] that the item is not governed by a license</td>
</tr>
<tr>
<td>Consult a colleague [sic]</td>
</tr>
</tbody>
</table>

Question 5 asked respondents, “When faced with questions about whether a specific use of library materials is allowed under copyright law (in the absence of clear guidelines from a licensing agreement or university policy), which of the options listed below is the **MOST** important when making a decision to allow or not allow a specific use of library materials?” This question allowed only one answer. Of 13 respondents, 8 (62%) said they considered whether the proposed use fit Section 107; 3 (23%) considered whether the proposed use fit Section 108; the other 2 selected “other” and provided comments describing how they would decide (see Table 5.1 below).
Table 5 (Question 5)

<table>
<thead>
<tr>
<th>Answer</th>
<th># of Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether or not the proposed use fits the four factors of fair use as defined by Section 107 of the Copyright Act</td>
<td>8</td>
<td>62%</td>
</tr>
<tr>
<td>Whether or not the proposed use falls into one of the categories protected under Section 108 of the Copyright Act</td>
<td>3</td>
<td>23%</td>
</tr>
<tr>
<td>Opinion of university counsel</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Other (please describe)</td>
<td>2</td>
<td>15%</td>
</tr>
</tbody>
</table>

Table 5.1

Other (please describe)  
from Table 5

Check with vendor or author if possible.  
Case law

Question 6 asked “Does your library have a written policy on the use of copyrighted works?” Of 14 respondents, 11 (79%) answered “yes” and 3 (21%) answered “no”.

Table 6 (Question 6)

<table>
<thead>
<tr>
<th>Answer</th>
<th># of Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>11</td>
<td>79%</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>21%</td>
</tr>
<tr>
<td>Total</td>
<td>14</td>
<td>100%</td>
</tr>
</tbody>
</table>

Question 7 asked “Does your library plan to revise this policy (or have revisions already been made) to reflect the best practices described in the Code?” Of 13 respondents, 4 (31%) answered “yes” (see responses in Table 7.1 below) and 9 (69%) answered “no”.


Table 7 (Question 7)

<table>
<thead>
<tr>
<th>Answer</th>
<th># of Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>4</td>
<td>31%</td>
</tr>
<tr>
<td>see Table 7.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>9</td>
<td>69%</td>
</tr>
<tr>
<td>Total</td>
<td>13</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 7.1

Yes (please describe proposed revisions)

from Table 7

might consider writing one or advising university to revise its regulation

I am unsure at this time
CONCLUSION

The conclusions that can be drawn from such a small amount of data are limited; the number of responses does not show if the results have any statistical significance. However, a few things can be observed. The study examined three questions:

1. Are academic librarians outside of ARL libraries aware of the Code?
2. Do these librarians consider the Code relevant and useful in their professional practice?
3. Does awareness of the Code and of the consensus of their peers on fair use lead to a greater reliance on fair use in copyright-related decision making?

To the first question, one can confidently give a positive answer; more than half (57%) of those surveyed indicated that they had read the Code. It is surprising, however, that this percentage is not higher; perhaps this indicates that the ARL could do more to advertise the Code to institutions outside its ranks who could find it useful.

The second question can be answered positively as well. The second and third survey questions addressed respondents’ views on the Code’s relevance to their libraries’ operations; the majority of those surveyed agreed or strongly agreed that the Code can be useful both in negotiating licensing agreements and in making decisions where no license applies. While one respondent was neutral on each of those questions, no one disagreed.

Results from the third question do not show a greater reliance on fair use; comparing answers to the first and the fifth survey questions shows that the same number of respondents chose Section 107 as the most important consideration regardless of whether or not they had read the Code.
Future studies conducted over a longer period of time could address these issues in more detail. The Code’s publication was fairly recent, and so it is possible that whatever effect it will have will take more time to become obvious.

Future surveys examining each of the eight specific areas of practice mentioned in the Code could provide more useful information. It might be useful to compare answers to future surveys on this subject with available online information about the respondents’ home institutions, i.e. publicly available collection policy statements or copyright guidelines on the institutions’ websites. Also, future studies could examine publicly available policy statements and guidelines to see if revisions have been made to reflect the provisions in the Code, or how frequently library websites link to the Code when discussing copyright issues.

While this study focused on research-oriented institutions of a particular size and character, the issues addressed here are relevant and important to institutions of higher learning outside this particular group; schools without graduate programs or significant research activity can still benefit from a greater understanding of and reliance on fair use in classroom learning activities. Future studies might also focus on different types of schools, from community colleges to small liberal arts colleges; widening the field of potential participants could also provide a greater number of responses to examine.

If further studies continue to show that academic librarians find the Code relevant and helpful, professional organizations of librarians can take action to increase awareness of it through outreach at conferences and in professional publications.

There is very little use in having rights if they are never exercised. The flexibility of the fair use doctrine can be an asset to academic and research libraries, and one that
allows them to provide better service to the scholarly community; a clear consensus among knowledgeable professionals in the field, as represented by the Code of Best Practices, will hopefully inspire confidence among librarians in the absence of clearer case law or legislative guidance.
BIBLIOGRAPHY


APPENDIX A

Survey on Codes of Best Practices in Fair Use in Academic and Research Libraries

Yes
No
(If No is selected, the survey will skip to Q4)

Q2. The Code is relevant to our library’s operations and will be helpful in making copyright decisions where no clearer standard (i.e. specific terms of service in a licensing agreement) obviously applies.
Strongly Agree
Agree
Neither Agree nor Disagree
Disagree
Strongly Disagree

Q3. When evaluating or negotiating licensing agreements with content vendors, the Code is a useful tool to help librarians understand what their rights are and how the law of fair use can be applied in a library setting.
Strongly Agree
Agree
Neither Agree nor Disagree
Disagree
Strongly Disagree

Q4. When faced with questions about whether a specific use of library materials is allowed under copyright law (in the absence of clear guidelines from a licensing agreement or university policy), how does your library make these decisions? (check ALL that apply)
Consider whether the proposed use fits the four factors of fair use as defined by Section 107 of the Copyright Act
Consider whether the proposed use falls into one of the categories protected under Section 108 of the Copyright Act
Consult university counsel
Other (please describe)

Q5. When faced with questions about whether a specific use of library materials is allowed under copyright law (in the absence of clear guidelines from a licensing agreement or university policy), which of the options listed below is the MOST important when making a decision to allow or not allow a specific use of library materials? (check ONE)
Whether or not the proposed use fits the four factors of fair use as defined by Section 107 of the Copyright Act
Whether or not the proposed use falls into one of the categories protected under Section 108 of the Copyright Act
Opinion of university counsel
Other (please describe)

Q6. Does your library have a written policy on the use of copyrighted works?
   Yes
   No

Q7. Does your library plan to revise this policy (or have revisions already been made) to reflect the best practices described in the Code?
   Yes (please describe proposed revisions)
   No
APPENDIX B

Email invitation sent February 15, 2013

To Whom It May Concern:

My name is Emma Pinault. I am a graduate student currently in my final semester working towards an MSLS degree at the School of Information and Library Science at the University of North Carolina at Chapel Hill. As part of my studies I am conducting a research project examining how academic librarians make decisions related to uses of copyrighted library materials.

Attached to this email is a link to a brief online survey on how you and your library make decisions when questions arise about copyright and fair use. Survey responses will be kept anonymous and no identifying information will be collected. Participation in the survey is voluntary; submission of responses will be considered consent to have your responses used in the research project. Please feel free to contact me if you have any questions.

The survey can be found at this link: https://unc.qualtrics.com/SE/?SID=SV_a5a0BU408FSquhf

Thank you very much for your time!

Sincerely,
Emma Pinault
MSLS Candidate 2013, UNC-CH
pinault@live.unc.edu
732-533-4053
IRB # 13-1121
Faculty Advisor: Dr. Barbara Moran
First reminder email sent March 4, 2013

To Whom It May Concern:

My name is Emma Pinault. I am a graduate student currently in my final semester working towards an MSLS degree at the School of Information and Library Science at the University of North Carolina at Chapel Hill. As part of my studies I am conducting a research project examining how academic librarians make decisions related to uses of copyrighted library materials.

A few weeks ago I sent out an email with a link to a brief online survey on how you and your library make decisions when questions arise about copyright and fair use. I am writing at this time to invite you again to take this survey if you have not already done so. If you have completed the survey already, please disregard this email.

Survey responses will be kept anonymous and no identifying information will be collected. Participation in the survey is voluntary; submission of responses will be considered consent to have your responses used in the research project. Please feel free to contact me if you have any questions.

The survey can be found at this link:
https://unc.qualtrics.com/SE/?SID=SV_a5a0BU408FSquhf

Thank you very much for your time!

Sincerely,
Emma Pinault
MSLS Candidate 2013, UNC-CH
pinault@live.unc.edu
732-533-4053
IRB # 13-1121
Faculty Advisor: Dr. Barbara Moran
Second reminder email sent March 13, 2013

To Whom It May Concern:

My name is Emma Pinault. I am a graduate student currently in my final semester working towards an MSLS degree at the School of Information and Library Science at the University of North Carolina at Chapel Hill. As part of my studies I am conducting a research project examining how academic librarians make decisions related to uses of copyrighted library materials.

A few weeks ago I sent out an email with a link to a brief online survey on how you and your library make decisions when questions arise about copyright and fair use. I am writing at this time to invite you again to take this survey if you have not already done so.

The survey should take only a few minutes. I will be using the information collected to write a master’s paper on this topic, and if you have time your response would be very much appreciated. If you have completed the survey already, please disregard this email.

Survey responses will be kept anonymous and no identifying information will be collected. Participation in the survey is voluntary; submission of responses will be considered consent to have your responses used in the research project. Please feel free to contact me if you have any questions.

The survey can be found at this link:
https://unc.qualtrics.com/SE/?SID=SV_a5a0BU408FSquhf

Thank you very much for your time!

Sincerely,
Emma Pinault
MSLS Candidate 2013, UNC-CH
pinault@live.unc.edu
732-533-4053
IRB # 13-1121
Faculty Advisor: Dr. Barbara Moran