MEMBER QUESTION

Topic: Coursepacks and Copyright  
Date submitted: July 31, 2017

WNYLRC/RRLC ATTORNEY’S RESPONSE

From: Stephanie A. Adams, Esq.  
Date: 

A member asks...

I have had several requests by faculty to approve the coursepacks they have put together. All of them contain articles from various journals; some contain book chapters (1 chapter or less than 10%) as well, and they are intended to be sold in the campus book store to recoup copying costs. The rationale given to me is that they can do this for the 20 or more students in their classes because it is educational use. I have repeatedly pointed out Federal rulings on coursepacks, the difference between a single copy and multiple copies, but am usually met with disbelief, consternation, and occasional comments as to my qualifications for my job. Therefore, in case I am indeed wrong in my thinking, I thought I’d ask your advice and your opinion regarding coursepacks.

The attorney answers...

You are not wrong in your thinking. You are protecting your institution. Further, by educating your faculty, you are helping them educate students.

That said, you are up against a tough issue. It is one of the strongest copyright myths out there: the strident belief that if a copy is for educational and/or a not-for-profit use, it can’t be an infringement.¹

Of course, all myths come from somewhere, and the origin of this one is easy to pinpoint: Fair Use—an exemption from infringement—considers educational and commercial factors.

¹ This is unfortunate, because Fair Use does offer a great deal of protection to academia, as can be seen in the recent case https://www.copyright.gov/fair-use/summaries/cambridgeuniv-becker-11thcir2016.pdf. But it is not a simple or over-arching protection!
But librarians and other information professionals know that Fair Use involves additional factors, and requires case-by-case analysis. To Illustrate this (and helping faculty), many larger higher education institutions maintain excellent, easy-to-use guides.

Here are some of the better ones I couldn’t presume to improve upon:

NYU
Columbia
Stanford
Harvard

Given the wealth of excellent material out there already, I have nothing new to add, unless you would find posting this short, punchy bit of doggerel helpful:

*When it comes to coursepacks, here’s the rule:*
*Copyright applies in school.*
*Sure, not-for-profit education*
*Can help a “Fair Use” designation,*
*But articles, books, and chapters used*
*Without a license can get us sued.*
*Ten percent is no sure guide...*
*Fair Use factors slip and slide!*
*So if the work’s not satirized,*
*Nor juxtaposed, nor criticized--*
*But copied just to help them learn--*
*Then I’m afraid we must be stern.*
*Don’t become some lawyer’s mission!*
*Let us help you get permission.*

*(After all...)*
*If someone used your dissertation,*
*Perhaps you’d want some compensation?)*

You have a license from me to post this, if it will help. Sometimes a short couplet can succeed where charts and paragraphs fail (but maybe leave off that last part).

I wish you a strong heart, and much support, as you protect and guide your institution.
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