AVERETT UNIVERSITY COPYRIGHT POLICY

Copyright Defined

Copyright provides legal protection for “original works of authorship” as described in Title 17 of the United States Code. The U.S. Constitution (Article 1, Section 8, Clause 8) establishes the legal foundation for intellectual property, which includes copyright, patents and trademarks. In this section Congress is granted the authority “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.”

Creators of these works receive a monopoly to exploit the commercial value of their efforts, but only for a certain period of time to be set by the Congress. The ultimate goal is to encourage the creation of new works by offering a financial incentive to their creators while advancing the availability of new knowledge and discoveries for the common good.

Copyright attaches immediately to the creation of any original work embodied in a fixed form. Works eligible for copyright must fall into one of the following categories:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works
- Boat hull designs

The creator of the work is also the copyright holder unless the work was made “for hire” or the rights have been transferred to another party through a written, signed agreement. Multiple creators of a work share the copyright equally. Formal registration with the Copyright Office is no longer required, but certain legal rights can be guaranteed only through registration.

Exclusive Rights Defined

The monopoly granted to copyright holders is substantial and includes the right

- to reproduce the copyrighted work in copies or phonorecords;
- to prepare derivative works based upon the copyrighted work;
• to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

• to perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;

• to display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and

• to perform the copyrighted work publicly by means of a digital audio transmission, in the case of sound recordings.

Copyright Infringement

The copyright holder retains exclusive rights to a work for the duration of the copyright term. (When that term expires, a copyrighted item enters the public domain and is freely available for others to use.) Anyone who wishes to use the work must obtain a license for that use, which typically requires the payment of a royalty. The copyright holder sets the terms and conditions for the licensed use of the work and the required fee. Any unauthorized use, with a few important exceptions, constitutes infringement. Copyright protection authorizes the copyright holder to take legal action against an infringer, which can include the right to seize any unauthorized copies and the imposition of an injunction to prohibit any continuing use of the material, along with the payment of damages. Depending on the circumstances surrounding a particular infringement, the court can award damages up to $150,000 per incident.

FAIR USE

These exclusive rights are not absolute. To provide flexibility for certain uses of copyrighted material, some limitations are part of copyright law. One of these important exemptions is “fair use.” Section 107 of the copyright code (Title 17, U.S.C.) defines fair use and explains which activities are permitted under this exemption:

§ 107 · Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall 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.

The fact that a work is unpublished shall not in itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Title 17, Sections 106 and 106A establish both exclusive rights and the right of attribution for a work of art. The fair use of that work, along with any associated copies, does not constitute an infringement of these exclusive rights. The use of copyrighted material for criticism, comment, news reporting, teaching, scholarship, or research are all counted as fair, but each of these four factors must be evaluated when determining whether the circumstances warrant a fair use exemption.

Whether a use is fair or not is demonstrated on a case-by-case basis. There is no legal bright line that automatically designates a fair use from one that is not, and it is the responsibility of the individual using a copyrighted work to weigh these four factors carefully when making that determination. This evaluation can be made easier by completing a fair use checklist. For further guidance, please refer to the links provided below:

http://copyright.uncc.edu/copyright/teaching/fairuseworksheet

http://copyright.lib.utexas.edu/copypol2.html

http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/

http://fairuse.stanford.edu/

Under fair use the distribution of copies to the students in a class, “(including multiple copies for classroom use),” is permitted provided that the copies become the property of those students, a copyright notice appears on the first page of the copy, and any fee charged to the student does not exceed the actual copying cost. Fair use favors the reproduction of factual, non-fiction works over those of fiction. The distribution of multiple copies of creative works, therefore, might not be a clear fair use, especially if the copies contain most of the work or its substantiality, i.e., its essence. In this case, requiring the purchase of an anthology containing the works under study or placing it on reserve is a safer alternative to distributing copies.
Items in Averett library collections can be placed “on reserve” for students enrolled in a course. Faculty can request that print books and physical media be placed on Course Reserves in the Blount Library circulation area. For articles and minor portions of a work to be used in instruction, scanning for library electronic reserves is an option for faculty to consider (see “Electronic Reserves” below).

**Averett Library Digital Collections**

Journal articles, eBooks, sound recordings, images and film in subscription “research databases” licensed for Averett University students and employees are available electronically through IP authentication (on campus) and individual username and password (off campus). A fair use analysis is not needed when linking from courseware or syllabi to full content in a licensed database. Faculty may direct students to sources using permalinks found in a database citation, or with links formulated by Averett librarians.

For assistance in formulating persistent links to specific documents and media in subscription databases, please contact a librarian, or email the library at aclib@averett.edu.

**Electronic Reserves (E-Reserves)**

E-reserves offers additional convenience to the student by making sources readily available for the term of a specific course, to students enrolled in that course. Liaison librarians for each discipline create password-protected web guides citing sources available in Averett Library collections, and sources selected by the course instructor under fair use provisions in copyright law.

The following guidelines address fair use of copyrighted materials held in e-reserve.

1) Each item should be carefully evaluated to assure that its use in e-reserves meets the same fair use criteria as for print. Students should be advised that the reserve materials are intended solely for their own use and that they should not distribute any additional copies.

2) All reserve items must be posted on a password protected website with access restricted to students currently enrolled in the class. To prevent unauthorized access to the system, the password should not be obvious, such as the faculty instructor’s surname or the course number.

3) Access to any reserve material must not exceed the duration of the course, which typically is one semester. At the conclusion of the course, the materials should be removed from the e-reserve system or access to that system should be disabled.
4) If the items available through the e-reserve system meet the criteria for fair use, their re-use for the same class in subsequent semesters would also be considered fair.

Legal challenge to the fair use of copyrighted material

If a copyright holder contacts an Averett employee disputing the fair use of an item being used as part of course offered by the University, that employee should immediately contact an officer of the university. Responding to a formal written claim of copyright infringement without proper direction from the university attorney could place both the university and the employee in legal and financial jeopardy.

Policy Creation and Revision

Averett University Copyright Policy is communicated to the entire university community by way of a PDF document available under the “Learn” (orientation) tab on the library web home guide.

Procedures set forth in this policy are advisory, based on interpretations of U.S. Copyright Law.

Copyright policy is drafted and reviewed periodically by library faculty (James Verdini). Changes to the policy are referred to the Academic Policies Council for approval.