



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON D C 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Copyright Law as Revised in 1976
P.L. 94-553; Title 17 U.S. Code
Effective on January 1, 1978

FROM: Benjamin H. Bochenek, Patent Counsel *BH Bochenek*
Grants, Contracts, & General Administration
Division (A-134)

TO: Sarah M. Kadec
Library Systems Branch (PM-213)

I have received several inquiries regarding the new copyright law and its impact on EPA activities. The major concern has been with regard to activities by our various libraries. This concern apparently arises because of the conditions set down in Section 108 of the Act.

Section 108 permits limited copying by libraries if they meet certain conditions. One condition is that the library be open to the public or researchers other than just those employed by the organization with which the library is associated. Based on information I have, it is my opinion that essentially all EPA libraries meet these requirements.

Another requirement is that each library prominently display a warning notice prescribed by Copyright Office regulations at the point where it accepts orders for copies, and also includes said notice on its order form. Copies of the notice, in sign form, have been distributed by the EPA printing activity to each regional office and laboratory and you should make sure that each library displays a copy of the notice.

Appropriate order blanks (copy enclosed) should become available in January, and will be promptly distributed when ready. I recommend that in the interim each library be advised that normally it should make no more than a single copy in response to either an oral or written request, and that it keep a record of the item requested, and the requester. Such records need not be kept once the forms are available.

I emphasize that, except for library activities, the new law does not greatly alter any right to copy that existed under the old law. Whatever has constituted "fair use" under case law is still very likely to be considered fair use under the new law. As a matter of fact, Section 107 of the new Act recognizes "fair use" and provides some broad guidelines.

In essence, this section indicates that fair use, including such use as copying for scholarship, research or multiple copies for classroom use is not an infringement of copyright. The section then presents four broadly stated factors to consider in determining if the use is indeed fair use.

It is well recognized that fair use does not lend itself to precise definition. However, various non-government groups have been, and are continuing to formulate guidelines regarding copying. Also, there is an ongoing effort to formulate a government-wide policy regarding government copying.

At present there are some guidelines for library use that have been formulated by certain private organizations. These guidelines are presented in Copyright Office Circular R-21. Copies of the circular will be obtained by the EPA headquarters library and distributed to each EPA library by Mrs. Kadec, Library Systems Branch. In the meantime, an outline statement of library guidelines is enclosed; copies of this will also be distributed by Mrs. Kadec.

With regard to copying at unattended, non-library copying machines, and at attended non-library machines, the following notice should be placed adjacent each such machine.

"The U.S. Copyright Law (Title 17 U.S. Code) governs the making of photocopies of copyrighted material. The person using this equipment may be liable for any infringement.

Ordinarily, making of a single copy of a portion of such material for research or related purposes is ordinarily permissible. Any questions by EPA employees regarding reproduction of copyrighted material should be directed to legal counsel."

In addition to posting the above notice at non-library copying machines, each such machine should be provided with a stamp with the following notice, which should be stamped on photocopies of copyrighted material in order to put subsequent users of the material on notice

NOTICE: This Material May Be Protected by Copyright
Law (Title 17 U.S. Code)

Liability For Copyright Infringement

Please advise library and other concerned EPA personnel that pursuant to 28 U.S.C. Section 1498(b) (copy enclosed), the Government, not its employee, is the one liable for any copyright infringement that is the result of copying for government purposes.

Senate Report No. 1877 of August 22, 1960, reproduced in 1960 U.S. Code Cong. and Admin. news, page 3344 (copy enclosed) makes it amply clear that a major purpose of the legislation resulting in 28 U.S.C. Section 1498(b) was to protect the Government employee from personal liability for copyright infringement that occurs when the employee is acting in the scope of his authority.

If there are any questions regarding whether any particular copying situation is within the law and/or EPA policy, please direct such questions to me. I ask that I be contacted, since I am coordinating this subject within EPA, and with my counterparts in other agencies, so as to evolve a consistent policy regarding copyright matters.