



ACLS

May 8, 1997

Peter N. Fowler
Steering Committee Convenor
Conference on Fair Use (CONFU)
U.S. Patent and Trademark Office

via FAX: 703-305-8885

Dear Peter:

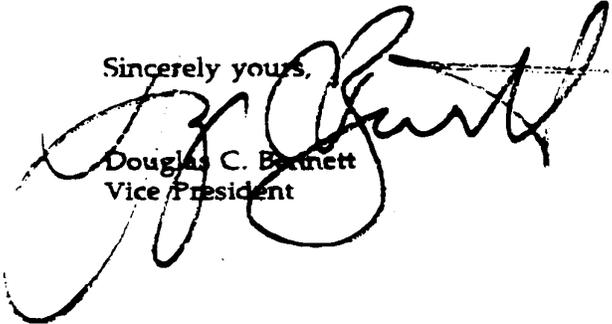
Attached is a statement on Fair Use and CONFU adopted by the Board of Directors of the American Council of Learned Societies at its May 1 meeting.

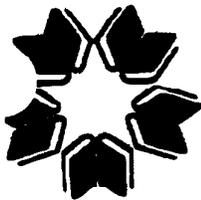
ACLS has been an active participant in the work of CONFU from the very beginning. We represent both scholar/users and scholarly society/publishers. Thus, we are very much in the middle on many copyright questions. Our fundamental concern is with the vitality of scholarly communication for research and education. It is in this context that we care passionately about fair use.

We believed at the beginning of CONFU, and believe at that end, that guidelines can be very useful for giving practical guidance to teachers, scholars, librarians and others who work with copyrighted materials and are not lawyers. We had hoped we would be able to endorse more sets of guidelines, but we can only endorse those which adequately respect fair use.

We know that there is a good deal more discussion needed in finding ways to carry fair use into the digital environment, and pledge to continue to participate fully in such discussions. We very much appreciate your good efforts, and the efforts of others on the Steering Committee, over the course of CONFU's work.

Sincerely yours,


Douglas C. Bennett
Vice President



ACLS

Statement on Fair Use and CONFU
 AMERICAN COUNCIL OF LEARNED SOCIETIES
 May 1, 1997

The American Council of Learned Societies believes 'fair use' is a critical element in the balance at the heart of U.S. copyright law between the needs of copyright holders and the needs of users. Fair use is especially vital to scholarship and education. We will continue our efforts to see that it remains a central element in U.S. copyright law, and is respected in international copyright agreements. We are pleased at the recognition given to fair use in the recently concluded Diplomatic Conference of the World Intellectual Property Organization (WIPO).

ACLS participated actively in the work of the Conference on Fair Use (CONFU), both in the plenary discussions and in the small working groups on digital images, distance learning, electronic reserves, and interlibrary loan. CONFU proved a valuable forum for exploring how fair use will be extended into the digital age. In general we support the development of guidelines which give practical guidance to scholars, teachers, students, librarians and others who make daily decisions about what is fair use of copyrighted materials in library and educational settings.

With regard to the particular draft guidelines prepared by CONFU:

(1) We ENDORSE the distance learning guidelines. These guidelines cover only real time performance and display, and not asynchronous delivery of distance learning over a computer network. Thus they do not address the forms of distance learning which are newer and will become more prevalent in the future. Nevertheless, we believe these guidelines embody useful, balanced guidance, and should lay a foundation for the extension of these guidelines to asynchronous modes in the future.

(2) We DO NOT ENDORSE the guidelines on digital images. We believe they constitute a constructive effort to develop an approach to fair use of digital images that is consistent with current law. We do not endorse them, however, for two reasons. First, we believe that the procedures they prescribe are unworkable in practice and would pose an unreasonable burden on scholars and educators who use digital images. Second, because digital images pose many new and special problems for the fair use tradition, we believe that further exploration of how digital images are actually used in education and scholarship may clarify how we understand what constitutes fair use of digital images. We believe these draft guidelines may prove a useful starting point for future discussions of guidelines in this area.

(3) We DO NOT ENDORSE the guidelines on educational multi-media. We believe these do not embody an acceptable understanding of fair use, particularly in the specific portion limitations they establish. We note that these guidelines have been rejected by a large number of organizations representing users, and we are dismayed that these guidelines have been advertised by the Consortium of College and University Media Centers as having received wide endorsement. While we believe guidelines are needed for educational multi-media, we also believe it would be harmful to fair use to see these proposed guidelines become the established norm. A fresh effort is needed.

With regard to two other areas of CONFU effort:

(4) We believe the draft guidelines developed by a small working group on electronic reserves constitutes a promising approach, one that is workable, and one that respects both fair use and the legitimate rights of authors and publishers. Using these draft guidelines as a basis, we hope there will be further discussions among librarians, publishers, scholars and educators to develop and implement broadly accepted electronic reserves systems.

(5) We are disappointed that no guidelines were developed for interlibrary loan or document delivery. We hope there can be renewed efforts to develop guidelines in this area.

The American Council of Learned Societies is a private, non-profit federation of national scholarly organizations. The purpose of the Council, as set forth in its constitution, is "the advancement of humanistic studies in all fields of learning, and the maintenance and strengthening of relations among national societies devoted to such studies." There are currently 60 learned societies, which represent more than 350,000 scholars and teachers throughout the United States and Canada. ACLS is governed by a 15-member Board of Directors and a Council composed of representatives of the member organizations.

ACLS sponsors a major humanities fellowship program, and provides significant administrative support to the member societies. It carries out program activities concerned with the internationalization of scholarship, liberal education, and scholarly communication. ACLS also has a significant publications program and sponsors scholarly projects in documentary editing and reference works.