

Copyright and E-Reserves Discussion - Jon Chenette, Associate Dean of the College

Associate Dean Chenette provided some history about the College's current Copyright Policy which dates from 1995. The policy is no longer adequate so a task force was created summer 2005. Current membership of the task force includes Gail Bonath (Library), Chenette, Mike Connor (CTS), Bill Francis (ITS), Richard Fyffe (Library), Ralph Helt (AV Services), John Kalkbrenner (College Services), Cecilia Knight (Library), Sam Rebelsky (Computer Science), Catherine Rod (Library), and Mark Schneider (Physics). The next meeting will be on October 10.

Chenette summarized the memo sent on June 30. The memo essentially stated that copyrighted materials posted in the College's Pioneer Web course management system are subject to federal copyright laws; the College does not condone posting of any material that violates copyright laws; and faculty members seeking to make copyrighted materials available electronically to students should employ the e-reserve system at the library. <http://www.grinnell.edu/its/faculty/ereserves/>

Chenette enumerated the considerations being made by the task force on copyright policy. These considerations include copyright law, including the Fair Use provisions in that law, various accepted practices in libraries governing the purpose and procedures of ILL and library reserve, the pedagogical needs of faculty, the College's general interest in promoting the ethical use of expressions and ideas of others, and the desire to stimulate campus awareness and debate.

There are 1,292 e-reserve requests to date, which is at least three times the comparable semester last year. 89 requests have been denied by the rights holders which is 6.8 % of the total. The cost of paying for these rights has been nearly \$17,000 which is substantially more than the library's budgeted amount.

Chenette invited questions and discussion by the faculty.

[Transcription of discussion begins. Posted with permission from all those who spoke.]

Reynolds: This isn't about a Fair Use issue directly, but I was asked a question about the composition of the committee, was there an attempt to have divisional representation on that committee?

Chenette: No, and that has been pointed out to me as a problem. We tried to address that a little bit at the last Instructional Support Committee meeting. There is an Instructional Support Committee representative to this committee and we tried to identify a representative from outside the science division but did not succeed in that meeting. We have another on Wednesday, and hope that we succeed in broadening the divisional representation at that meeting. It's also rather heavily library people right now, as well. One reason for that is that the default Instructional Support Committee representative is the chair of the Instructional Support Committee who happens to be Cecilia Knight from the library. And she is willing to serve as long as ISC doesn't find somebody else that is willing to do so. Sam?

Rebelsky: So, I wasn't the one who wrote to you that we should be aggressive in our interpretation of Fair Use. I do believe that if we don't defend Fair Use, we will lose it. I worry that some of this gives up what has traditionally been accepted as Fair Use. Most particularly, there are signs by every photocopier that essentially suggest that the person making the copying has the right to decide whether or not what they are doing is Fair Use, and this is removing that from faculty. If we are making our own copies, they are telling us we no longer have the right to make that decision. And I question whether that is appropriate.

Chenette: And, of course, you did send me that comment in advance of the meeting.

Rebelsky: And I did send that comment.

Chenette: I will tell you why I didn't incorporate it in this draft of the document.

Rebelsky: I don't mind that you didn't incorporate it as long as you consider this concern seriously.

Chenette: The first reason is because I thought it was an arguable enough proposition that it needed further discussion by the copyright committee, and so it will be one of the issues that the copyright committee looks at. I have to say for myself I was uncomfortable with the thought of saying "here are some guidelines that are going to apply to a certain segment of college employees but not to another segment of college employees." It seemed to me like it was unwise to make such distinctions, and so, that is the essence of why I thought it needed more discussion.

Rebelsky: I wanted to remind you and I want to remind all of us that the committee thinks there are other issues too such as the use of video tapes and DVDs and whether or not we can videotape concerts and lectures. So, we have a lot more on our plate than just e-reserves.

Chenette: Right, this is simply—I won't say the greatest hits, because there are some things that are relatively obscure on this list. I'm not exactly sure why we put music scores in there for instance, because that affects relatively few people, other than to emphasize there are very different laws for different kinds of materials. And, yes, there are many other areas to address.

(Sarah Purcell announced the nominees for FOC and that the ballot will go out the following day. The nominees have been listed above.)

Chenette: Do you want to keep going Sam?

Rebelsky: No, I think those are my main comments for now, I can wait until the rest have had a chance to speak.

Schrift: To echo Dan's point, having on this committee more than just divisional representation is, I think, important. There is a sizable chunk of the humanities division (but not all of the humanities division) that depends upon duplication of materials through Xerox as the way we do our work. And this new policy is for many of us extremely disruptive. I'd like to see somebody on that committee who actually is going to have their job seriously transformed by what the results of this committee are—not as the library's job would be transformed by them having to do a lot of work—but particularly from the other end of the teaching. The other thing is that I just don't understand how we get from the Fair Use clause to the description under number 2. That just seems to me to be a far more conservative meaning of that clause.

Chenette: You're talking about I. 2?

Schrift: Roman numeral I, 2 "Prose excerpts of up to 1,000 words."

Chenette: These are widely published guidelines. There's a document the copyright office put out called Circular 21 that summarizes copyright law for librarians and educators -- I think it may be referenced at the end of this draft -- which did translate the Fair Use guidelines into those sorts of specifics, and this is exactly the language from the copyright office. And it is also widely used on other copyright policies, I think. Did I say something wrong, those of you who are more knowledgeable about copyright than I am?

Rebelsky: I can give a little different history which is that this is text authored by the American Library

Association and the American Association of Universities as an attempt to come up with specific guidelines for Fair Use. There is no proof that if you meet these guidelines you are immune from suit and there is no proof that if you do worse than these guidelines you are in danger. But they are common and almost every institution takes some variant. I think they are much too conservative.

Chenette: But they are pretty widespread rules, don't you agree?

Rebelsky: There are many institutions that say that these are the recommended policies from the law but that it is up to the individual faculty or staff members to make their own interpretations of the law.

Chenette: I think that by putting this down on paper... well, I was going to say something about what the College takes on in terms of defending you if you are brought to court for putting in a poem of 249 words—making multiple copies of a poem with 249 words. Am I right, Jim? We would basically be saying that we're going to rise to your defense then, but if it is 251 you might be on your own?

Montgomery: Let me ask a question that is very fundamental. What if I come in in the dead of night, and I have a Xeroxed article that I want to give to my 30 students. And I Xerox it and the next morning I put it under my sweater, I go into the class, and I pass it out. What bad thing can happen to me?

Chenette: There's no investigative arm of the Dean's office. The worse thing that could happen is that one of your students is the son or the daughter of the publisher of that document and so the publisher's lawyer will be after you.

Montgomery: Well, but I would be liable, not the college.

Chenette: Correct.

Rebelsky: Mark, Jon. Wouldn't Mark be more liable with this policy in place than the current policy? Then, in fact, the publisher could show this policy in court and say the college interprets fair use in this way.

Chenette: We actually have a policy about photocopying. In fact the current policy addresses multiple photocopying of articles. But, I'm not sure, is that right, Jim? I have it here but I'm not going to take up our time looking for it. I think that that particular case is covered under the existing policy so there is no difference in liability.

Montgomery: But what if I told the students "I didn't Xerox this, I came in in the morning, it was outside my door, and there was a little pair of handmade shoes." So, who's going to know? Who finds me guilty?

Stone: I think I can answer that. With the current Xerox machines you can probably staple and sort. With the next generation of computers in particular and Xerox machines shortly after that, when you copy copyrighted materials, you will be reported to the rights holders.

[Unidentified questioner] Looking at the same one, I. 2, "You also may request or make multiple copies of current news periodical and newspapers articles for classroom use." "Current" seems somewhat vague.

Chenette: Certainly it means that if yesterday's New York Times has an article that you feel would be valuable for your class you may copy that, make multiple copies and give it to your class. Where does it run out? All I can say is the library's experience is that most copyright clearances are handled relatively quickly, 75% within 10 days. So, could you have written to the New York Times? If it's a month from

now, could you have written to the New York Times about this, or could the library have corresponded with the New York Times about the copyright? To be absolutely certain, I guess, there is a threshold somewhere in there and this currently expresses it as well as we can. Does Richard or anyone else want to add to that answer?

Fyffe: I think that's the best we have.

Chenette: It certainly means last week's Time Magazine, Newsweek, whatever—that's current.

Bateman: I want to ask a question about number III.1. I have, historically, said to my designated writing classes, that I will select a day that I designate as an "in-class" writing day. On that day, I photocopy some students' essays or papers (with the names removed) and circulate them in the class for discussion. Unless I receive a message from the students telling me that they don't want their papers shared or they tell me after class that they don't want this paper circulated, I then Xerox them and hand them out. Is that okay?

Chenette: It sounds like you fulfilled the spirit of the requirement; the students had the chance to deny you permission. My guess is that if someone wanted to bring the case that you embarrassed them in class or they want to accuse you of harassment or something, it would be a lot better if you had a signed statement I suppose than their lack of objections to an email. And I should tell you another thing that I think we need to do for that particular case is to have a college-wide recommendation form for students to sign giving permission. I've downloaded Macalaster's and may ask them for permission to adapt it.

Bateman: What about exercises in classes? When I make students exchange their papers and mark them, and write letters to each other about their writing, can I still engage in that sort of an exercise? Can I still do that?

Chenette: I hope so.

Rebelsky: That may have more to do with FERPA than with copyright.

Fyffe: There are the two issues here. Copyright isn't an issue when you are exchanging papers. Then it is a question of whether you are violating the privacy rights as FERPA defines those. And since the extent of sharing is so limited, I would guess that if the students have some sort of an opt-out option that this is not a major problem. But there may be FERPA experts here who can say more definitively.

Chenette: I'm wondering even if there is a statement in your syllabus that this will be a basic mode of teaching in this class and if anyone objects to this, sending the objection in writing would be enough to address it for the entire semester.

[Unidentified questioner] In other words, how much of this statement under III.1 is simply our or our lawyer's...somebody's interpretation of what the rules might be as opposed to what the rules may actually be, in some legal case or whatever, as case laws demand. I have the same kind of problem as Brad has. I use discussion boards. I could read this as saying that students answering questions on a discussion board in Blackboard need to give their written permission.

Purcell: I think you absolutely need to do that, because anything that students write is their work and therefore requires their consent for sharing. I suppose that if they are posting on Blackboard then they are silently consenting.

[Same unidentified questioner] But sometimes it is a requirement of the class.

Purcell: It's required for the class, yeah.

[Same unidentified questioner] So that would be really interesting if the students can opt out. Or we could have a rule that says if they opt-out then they are out of the class—though that seems rather extreme to me.

Chenette: This is an issue that we have not addressed, I don't believe.

Purcell: Actually, that is a very important statement about Blackboard.

Chenette: And I will add that to my list of things that the copyright committee...that the task force needs to look at.

Purcell: Thank you.

Benoist: Similarly, I would like to have clarification about number 3. "Are there any limitations on how much material I may place on reserve for a course?"

Chenette: Number 3?

Benoist: Yes, 3 under I. 3. I would like to know, is that the law? Is that the law or is that the position of Grinnell College?

Chenette: I believe the first sentences there "Copying, including library reserve and electronic reserve is intended to supplement the core texts which students purchase for their courses. It is not intended to create, replace or substitute for anthologies, collective works or," you should probably add "course packs" there, is basically the ethical and legal rationale for libraries to have reserve systems.

Benoist: Well, that is linked to everybody else's point here. I think that very much limits how we can teach effectively in some of the disciplines. I think languages and literature and probably social studies are going to have a very big impediment, and this is why we have course packets. Because we don't have anthologies that cover everything we need to cover and we therefore build our own reading material.

Chenette: Right.

Benoist: I think, and this is going back to Dan's comment, we really need to have a more diverse committee, people not only from the three divisions, but people who are aware of what the differences in the disciplines are. Because there might be a person from humanities from music, let's say, who might not be aware of the impact for languages or for literature in general. And the second point I would like to make is the impact it is having on our academic support staff. And in the case of ARH and languages, the person who does this job is gone during the whole summer and that created a big problem for this year. If we don't change the timing it's going to create another big problem for next year because she is not here physically to work with us and to scan in this material.

Chenette: I'll answer that in two ways. First of all, the academic support assistants do work as teams and if you do have a problem like that you should call Angie Story who can find try to find somebody else who can help. And secondly, I think the library is thinking about deadlines, by which if you can meet these deadlines we will guarantee that... or we will make every effort to get the clearances for your class

and hopefully those deadlines will be sufficient for your pedagogical needs and also for getting the material ready in time.

I want to emphasize—you can still do course packs the way you’ve always done course packs through the bookstore. Almost nobody is doing that anymore. You can, I mean, the extreme case is -- and I won’t say this ever happened but it could happen -- say an instructor gets the text book for a course or the major reading for a course, and says “oh, this book costs \$250.00, that’s outrageous; let’s ask the support assistant to photocopy this and post it online.” I think that you would all recognize that that is not working within Fair Use guidelines. And then there are the things that clearly are within the Fair Use guidelines. But as Sam said, in all of this there is a big gray area in the middle of all this and legal procedures are sorting that out. Therefore, although I agree with the sentiment of the humanities people who are using course packs a lot or this style of material a lot that it is very important for the committee to look at this issue, I’m not 100% sure... well I’m pretty much 100% sure that we are not going to be able to go back to basically posting whatever people want to post on Blackboard.

Benoist: I’d like to add one more remark, and I said it at the humanities meeting as well. I think you might want to work on the timing of e-reserves and the photocopy packet due dates so that we can try e-reserves and still have ample time after they are denied to then make photocopy packets. Since they are so expensive for students that we really want to try to maximize the use of e-reserves, if that is possible?

Chenette: Yes, thank you.

S. Strauber: I have two questions. Do you know if there are different institutions working out their interpretations of Fair Use policies and have any knowledge of what the faculty are using at these institutions to provide teaching materials? And the second one is, is there a consortium of educational institutions that are working to support Fair Use?

Chenette: This, I can tell you, is not an issue that we are facing alone. We got a phone call from a peer institution several hours north of here in the last week, asking about this very issue and I have a phone conference with that person tomorrow to tell what we are doing about copyright issues. I also know anecdotally, having children in various colleges around the country, that some of them are operating very much like what we have been doing up until this year. That practice of posting materials within course management sites is common, but I think it will increasingly be examined. And I think it needs to be examined not just because of the potential legal liabilities. There has been at least one case where a university was subpoenaed for a list of information posted on their course management site because they were under suspicion for being out of copyright compliance. (I lost track of my thoughts...) Oh yes, “Is there a consortium?” No, but I talked about this actually with Chris Welna, the new President of the ACM, last week when he was on campus. I talked about it with him as something that the ACM could be very helpful in changing ideas among these campuses that are accustomed to working together and have similar liberal education values and are dealing with the same legal and moral and ethical circumstances as us. So, I think we could help each other; I would like to see that sort of sharing. And it’s sort of beginning with this conversation with the college to our north and will expand to the ACM and other places.

Fyffe: Jon, just to add to that, it might be worth noting that the Association of Research Libraries, which doesn’t represent colleges like Grinnell but still shares our interests, has a very active presence in Washington lobbying on behalf of the widest possible interpretation of Fair Use for educational purposes and pays attention to these kinds of issues, lobbies on the Hill, and organizes collective action where that’s possible. Similarly, AAU has been involved in this kind of issue, and the American Library Association is very active in education on copyright issues and lobbying on behalf of educational use. So,

we're not entirely alone but the liberal arts colleges or college community hasn't been organized in quite the same way.

Chenette: Monessa.

Cummins: Perhaps this objection is implicit in what other people have said, but I would like to say it explicitly and that is that my teaching is very much a dynamic process. Much of what I do in class is reactive to what I get, and I will have many inspirations, some of them good and some of them bad, to add materials at the last possible moment for illustration, inspiration, goading, whatever the motivation. And all of that except nine instances per semester of short materials has just been taken out of my hands. I have been stripped of all spontaneity, I feel. And that is a very serious hit to my teaching.

Chenette: Again, it depends on the extent of the material used.

Cummins: Nine instances in the whole semester. Not a single site plan, not a single map, not a single paragraph. It's a big hit.

Chenette: Again, we're dealing with a law and an interpretation of the law and attempts to interpret the law by various libraries and we'll just have to do our best to follow that law and factor it into our course planning. I'm sorry we don't have more options. Dan.

Reynolds: Well, this gets back to an earlier point. I'm still rattled by your answer to the question about I.1. The answer that you said about how the college would not provide legal defense if it was a 250 word poem but would if it was a 249 word poem. I guess the point I want to make, and this ties in with what Monessa was just saying, it seems to me that the guiding principle in this interpretation of law is a "CYA" policy in terms of the College, "How can we protect ourselves legally?" instead of a proactive "How can we maximize what our mission in education is here and how can we take a lead in it? It's a reactive policy and not a proactive policy. It's an overly cautious policy and it's one that utterly abdicates any kind of place for the individual to make an informed decision. I guess there is a voice coming to you from the faculty giving you the charge of perhaps thinking about these priorities.

Chenette: Again, I am trying to manage a process that represents a meeting point for the institution that includes faculty voices, the College lawyer, administrators, and staff members.

Reynolds: But our primary mission is an educational mission and I would like that to be primary.

Chenette: And a big part of our mission is to respect intellectual property.

Reynolds: Absolutely, no one is suggesting that we do otherwise.

Chenette: and cultivate good citizenship...

Reynolds: And no one suggests advocating for the opposite of that.

Chenette: It also includes resistance to things that we think are unfair and so I agree with you on that.

Purcell: I know that I was absent for some of this discussion due to other duties and may have missed this. The document mentions sheet music in the public domain, but are poems, articles, stories, prose assumed to never be in the public domain? Is there any mention of that, or did I just miss it?

Chenette: It's mentioned in I.1 and I.2.

Purcell: But, I will say this. Some faculty in the history department, I believe, have been having trouble with texts in the public domain and getting I-don't-know-who to believe that it really is in the public domain and isn't covered by copyright and there may be, for instance, other ways that—Monessa, like your things—we could find alternate versions that are in the public domain. Maybe it's a service question on one hand. Is there some way we can have some people dedicated to looking for public domain sources for things when they exist? And the second thing being, I would really like to make sure that we are clear on not being too cautious when things aren't copyrighted or when they are not protected any more.

Chenette: John.

Stone: As my answer to Mark's question earlier hints, I am really concerned about the prospects for Fair Use in the next couple of generations of technology. I think that, increasingly, digital rights management is going to be an enforcement mechanism and in fact an encroachment mechanism on Fair Use in the published domain. I think that many of these technological mechanisms will be put in place as the defaults and you will have to prove to the machine that something is in the public domain before you even copy it. I welcome anything the College can do, individually or in collaboration with other colleges on this point. I think that this is going to be an increasingly difficult struggle. Partly for that reason I also want to direct the attention of everyone that is here today to another kind of community or consortium that is mentioned in here under Part III.3, Creative Commons licenses. This is a mechanism by which someone can technically own the copyright, can assure people formally and be legally protected in doing so, that other people have the right to copy something for particular purposes or for non-commercial kinds of arrangements if that is something you would like to stipulate. This is a rapidly growing movement. MIT's faculty members all issue their course materials with Creative Commons copyrights on them now, so that people at other institutions can borrow them and copy them without having to worry about negotiating and paying for rights. I think that Grinnell College faculty should be using this on their own course materials whenever it's possible to do so, and I think that we should be encouraging our colleagues at other institutions who may be producing more things that we could use. There are a variety of different Creative Commons licenses in which the author keeps different combinations of rights and gives different combinations away. The minimal ones say just so long as the attribution is correct you can go ahead and copy freely. Other constraints that you can put on by choosing one license or the other are noncommercial or you can choose to sort of force others to belong to the community too by saying that if anyone wants to copy and modify this and make their own materials based on the license they have to issue them on the same license, to try and pull people into that kind of share-all mechanism.

Kamp: I think we ought to be really concerned about some of this not only as teachers, although obviously there are all kinds of issues there. We should all be concerned as scholars because one of the things that is happening is it is becoming harder to get wide dissemination of our own work if there is an issue every time we make a copy. My question, however, was about number I. 3. Can they be serious about these monetary limits, \$150 for an item or \$1,000 for a class? If you have say 20 articles in a course and 30 students in the class, are you automatically up against this thousand dollar limit?

Chenette: Okay. So first of all I should have mentioned when someone, I don't remember, asked. That part of it is purely institutional. There is no legal requirement that you spend no more than a thousand dollars, that's budgetary management. And there is the final sentence "Exceptions may be requested from the Librarian of the College." There have been exceptions this semester already to those financial limits. We need to honor the spirit of Fair Use. It should not replace everything you've got in your class. It should not be the only material for your class.

Kamp: I'm trying to get this. For example, in a typical class I usually use three to four books and I have maybe 20 articles that supplement that and they are not in a book, so I can't buy the book. To me it's not violating the spirit of fair use because I am having the students buy books on Aztecs, Incas, and Mayas but then supplementing that writing with articles. I'm assuming that 50 dollars for a copyright which is what my permissions would have to average would be pretty low, am I right or wrong?

Fyffe: It varies tremendously according to publisher—30 dollars, 150 dollars, 200 dollars. It depends on the publisher and it's really difficult to draw any more generalizations than that.

Kamp: Well, but what will the library do if I go over my over my limit?

Fyffe: Right now, we are in such a period of experimentation that it's hard to know what kinds of guidelines are reasonable. Partly because there has never been a—so far as I know—there's never really been a gathering into one system or one practice all of the electronic sharing of course materials for students. It's been scattered in a variety of systems. So we just don't know how much is typical and therefore what the whole budgetary cost for the institution would look like. This semester we are just trying to find out.

Swartz: And one thing is that there may be material, I mean, there are materials that we have already paid for -- that we already have electronic access and permission to use.

Fyffe: Right and we are looking for that routinely.

Swartz: So then that doesn't have to be paid for.

Kamp: Do you have to pay every time we use an article in a course?

Fyffe: Well, if we subscribe on an annual basis to a database of articles or a collection of electronic journals.

Kamp [inaudible]

Fyffe: Exactly, so we check the reserve requests immediately to be sure that we are not then going out and asking for permission to use something that we already subscribe to.

Swartz: So that's one thing that instructors can do. Another thing that we can do along the lines of what John is saying -- I'm not sure how powerful we are but it's worthwhile to say -- is that all of the material that we are talking about originally came from scholars, and when we are negotiating with publishers who are publishing our things, we sign copyright agreements and we can encourage publishers to adopt liberal policies for granting rights.

Fyffe: Well, more than encourage, you can modify your contract so that these kinds of rights for educational sharing are part of your contract. That's part of what's gotten us into this. It's the transfer of intellectual rights from the scholarly author to the publishers, who are then the owners of your rights, who then come back to colleges like us and say "It's going to be 200 dollars if you want to post this in course reserve." And that's what's fundamentally broken about this system.

Chenette: You've had your hand up for a long time...ok.

Purcell: Ok, I'm going to say this knowing that I might sound worse than I mean it to, so take it advisedly

friends. If there is a committee going to be looking at this, then it seems me that just as student authorship and posting on Blackboard needs consideration so do faculty and administrative authorship and posting on Blackboard. I say this having worked in another institution where intellectual property rights like syllabi and paper topic assignments were a big issue because the university wanted to do online courses and they just used faculty's material. I didn't see anything about that in here. So technically, you need our written permission to post syllabi on the web then, right, if you need students' permission to post their work? I'm just saying this as a "What if? Gee..." Perhaps, we ought to think about it if we're going to get really niggling and technical about the student's right or if we're going to draw a line perhaps where we think that proper written permission is needed on this side and not on that side, we ought to think about the whole use of Blackboard and the website, which is even more public than Blackboard. My chair asked me for my syllabus to go on the department webpage—I wrote it.

Chenette: It would be a good idea if your chair added the copyright to the posting.

Purcell: Sure. I'm sure she'd love to.

Chenette: Or if you added it before you turned it over.

Purcell: Maybe I'll just put....

Whitaker: I'll just point out that this kind of discussion is why we should be resisting this bad law. Because, its ramifications extend unexpectedly into areas where they are not intended to and now we're all quivering about whether we are allowed to write three sentences of a quote on the blackboard.

And this is maybe an unintentional consequence, but the whole interpretation of Fair Use is based on the idea that it now is allowed to create entirely new rights for the powerful to extract money from the powerless. And everything that I do, as far as I can see, is covered by Fair Use. The materials that I copy and distribute were written by scholars to be distributed. The scholars almost never receives any monetary compensation for this so I am not abridging their monetary rights. The whole issue is control of knowledge and I think, as John has implied, it's only going to get worse. This is something that the College as an intellectual leader and as a large money institution with lots of legal backing should be taking a stand on.

(Applause)

Chenette: Further comments. Eliza.

Willis: I guess that I will I confess that I was the one at least this summer who wrote to say that I thought we should take an aggressive stance on this issue and so I agree completely with the comments along those lines. If we are going to be timid, however—this has been said and I just want to reinforce it—that then the question arises "who pays?" The students or the College? Prices for course packets have been ridiculous...completely outrageous. That's why we resorted to putting material on Blackboard in the first place because the course packets were just out of control. So, I hope that if we decide to be timid—I hope we aren't timid I hope we fight—but if we decide to be timid then we ought to raise the amount of money that we are going to put into reserves or e-reserves for courses and we ought to expand the number of online databases that we are willing to subscribe to so that we increase the options and not have it fall back on the students who are already paying a lot of money for textbooks. I think there are those cases that you suggested—possibly people are abusing the system—but I don't think that's a very big problem. We mostly want to post things that the library already has purchased. And if you have to pay additional amounts to post e-reserves then we should do that. I think that if we are going to go in that direction then

we ought to incur some of the costs of our decision to enforce this policy.

Chenette: One consequence of pursuing e-reserves as the standard mode for distributing these materials is we will have a much better handle on what the fees need to include for these materials. Formerly we had no way of knowing.

Willis: The presumption of the one numeral I.3 is that the library is intended as kind of a back up to the packet and not as a substitution.

Chenette: Right.

Willis: Maybe we need to reverse that and put that as the first one.

Chenette: You mean...

Willis: That e-reserves should be the first option and not the packets.

Chenette: My understanding is that undercuts the basic principle by which reserve systems work, but I'm not an expert; that's what I heard.

Fyffe: It's a contested area. The publishers' associations are certainly raising the concern, though it hasn't hit the courts so far as I know, that course reserve fundamentally undermines their market because if instead of assigning 30 students to buy the fifty dollar book you buy one fifty dollar book and ask the 30 students to share it, you've undercut their market. Our reply as librarians, as owners of that book, is we can share it with whomever we'd like. That's the first sale doctrine, and that pretty much falls within copyright law; that's how we circulate books through libraries in the first place. That's important. Pat Schroeder of the American Publishers' Association has challenged that. So it's not as if we are being so timid as to back down on all of these points. This is a fundamental thing that we do do and we should continue to do. The question is "how far do you push that?" And if we want to continue to claim Fair Use rights we need to show and demonstrate some respect for the way the market works and not allow reserve to be an entire substitute for asking students to do any purchasing within the market. And for the most part, we're not. But I think that there are cases where you can see that there's an imbalance: everything a student is asked to read is dealt with through reserve rather than there being a mix.

Chenette: In the interest of time, we should cut this discussion short.

Benoist: I would just like to make a suggestion. And I don't like change, but three years ago, apparently, three or four years ago, we changed the people who were doing the photocopy packets. And I remember back then having lots and lots of problems having things not arriving on time and being badly done, so I would like to make a suggestion that if we are going to have to go back to that system that we make sure that it works.

Swartz: We did change vendors and things got quite a bit better.

Benoist: So we are working with a third vendor?

Swartz: We did change vendors, but I'm not sure whether that was before or after the time you are referring to.

Benoist: Because the problems were after we changed vendors, so I don't know if we changed them a

third time.

Chenette: We'll work on that. I just want to thank everybody for engaging so fully in this discussion. I was just dreading coming to this meeting, but it was only a little bit painful. Please keep sending me notes. I will bring every comment to the committee. I really want you to feel like this is something about which your input is heard, and whether we can do exactly what you want, we'll see.

Dean Swartz thanked everyone for their efforts.