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July 2, 1997

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Professor L. Ray Patterson
University of Georgia School of Law
Herty Drive
Athens, Georgia 30602-6012

Dear Ray:

A long time ago you sent me a draft of the policy you have been developing for copyright and fair use at the University of Georgia. Let me apologize for not writing earlier. As you can imagine, my duties here at Indiana University are expanding and are demanding. I also have to admit that I have been thinking about and rethinking your draft policy. You can be sure that I have enormous respect for your research, theory, and arguments. I am torn, however, between the nature of the draft policy you sent me and my perspective of an appropriate policy for a research university. From my perspective, I see that you have written a brief arguing for a position on fair use that may ultimately be used to bolster the appropriateness of taking a proactive position on fair use at the university. I am concerned that the draft that you sent me, by itself, would not serve the needs of a diverse university community looking for a workable application of fair use.

Let me also make clear that I have come to the perhaps belated perspective that a university policy need not answer the detailed questions that faculty, librarians, and others that are likely to pose. The experience of participating in the Conference on Fair Use has revealed to me the shortcomings of the ideal of establishing policy that attempts to, or purports to, answer questions in detail. Consequently, here at Indiana University we are proposing an extraordinarily short and general policy that calls upon members of the university to exercise their fair-use rights in good faith. In fulfillment of that charge, should the proposed policy become formal policy of the university, we will issue informal detailed guidance to focus the quest for understanding fair use under specific circumstances. But such details are not expected to become formal university policy. Placing details in the policy means that changing the details with changing circumstances and changing law will become impracticable. Moreover, placing details in the policy also means that we are attempting to carry out the fiction of claiming that we can generalize answers about fair use under a law that in fact precludes such generalizations.

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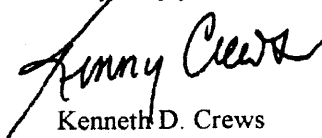
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In the end, I was once again grateful to have the opportunity to read more of your important work. On the other hand, I think that the work that you sent me is important reinforcement for a particular position related to fair use, but it is not the document that I would prefer to see go forward as a fair-use policy.

I know that I have been very late in answering, and I know that this letter is not exactly what you were hoping to receive from me. But I also would like very much to work with you and to continue to share ideas. Please let me know if I have understood your vision of the proposed policy, and please let me know how we might work together to continue sharing ideas and moving forward with a constructive and flexible perspective on fair use that can best serve the promotion of the progress of learning and knowledge consistent with the constitutional mandate. I always look forward to the opportunities to work with you.

Very truly yours,



Kenneth D. Crews
Associate Professor of Law and of
Library and Information Science
Director, Copyright Management Center

KDC/jlh

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