

Copyright and Fair Use Policy (revised Dec. 21, 2015)

1. Introduction
2. Fair Use and Single Copy Reproduction
3. Multiple Copying of Copyrighted Works
4. Copying Database Search Results
5. Audiovisual Materials
6. Patron's Copying of Copyrighted Works

1. Introduction

The purpose of this Copyright and Fair Use Policy is to provide guidance to library employees on reproductions by the employee and by library users under "fair use" and the Library Exemption, rather than by authorization from the copyright owners. This policy is meant to provide guidance on the library's current and future practices. Copyright law and fair use is governed by § 107 and 108 of the Copyright Act.

This Policy describes conditions under which fair use and the Library Exemption should generally apply. A particular use that exceeds these Guidelines may or may not be a fair use. The more one exceeds this Policy, the greater the risk that fair use does not apply or an exemption is unavailable. This policy is based on the American Association of Law Libraries (AALL) and the Commission on New Technology Uses of Copyright Work. However, only the courts can determine authoritatively whether a particular use is a fair use or when a library's actions are exempt.

This Policy covers the reproduction, distribution, transmission, and display of copyrighted works, or substantial portions thereof, whether published in print or digital formats, as well as audio-visual materials. Copying may be analog (e.g., photocopying or microform) or electronic (e.g., scanning or transmission). This Policy assumes that the library's "original" copy is a legal copy.

The limitations and conditions set forth in this Policy do not apply to works in the public domain for which there are no restrictions (such as facts, U.S. government works, or works in which copyright has expired), or to works for which the institution has obtained permission for the particular use. License agreements or contracts may govern the uses of some works, in particular, electronic information products; users should refer to the applicable license or contract terms for guidance on the use of those works, if any.

2. Fair Use and Single Copy Reproduction

2.1. Fair Use: § 107

Fair use is a legal principle that limits the exclusive rights of copyright owners. There is no simple test to determine what is fair use. Section 107 of the Copyright Act lists four factors that must be considered to determine whether a use is a "fair use;". Section 107 states:

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 itself bar a finding of fair use if such finding is made upon consideration of all the above factors.^[9]

For each factor, there are a number of considerations that can be used to determine if the proposed duplication of the copy righted work would be unlawful. These may include:

2.1.1 Purpose of Use:

- In favor of fair use: teaching, research, scholarship, non-profit educational institution, criticism, changing the work of a new purpose, parody
- Against fair use: commercial activity, profiting from the use, entertainment, denying credit to original author

2.1.2 Nature of Work

- In favor of fair use: published work, factual or nonfiction based, important for favored educational objectives
- Against fair use: unpublished work, highly creative work, fiction

2.1.3 Amount Used

- In favor of fair use: small quantity, portion used is not central to entire work, or appropriate portions for educational purpose
- Against fair use: large portion or whole work used, portion used is central to work

2.1.4 Market Effect

After evaluation of the first three factors, they should be compared to the market effect factors listed below, and if the use is likely to become wide-spread and negatively impacts the marketability for the copyright holder then permission should be obtained.

One exception to this is the difficulty, one would have in determining how to obtain permission. For example, if the copyrighted work is so new that there is no identifiable way to reach the copyright holder.

- user lawfully acquired or purchased copy of original work, one or few copies made, no significant effect on the market or potential market for copyrighted work, lack of licensing mechanism
- avoids payment or royalties/permissions, significantly impairs market or potential market for copyrighted work or derivatives, licensing mechanisms is reasonably available, permission is available, numerous copies made, placed on web or other public forum, repeated or long-term use.

2.2. The Library Exemption: § 108

Section 108(d) provides that a library which meets the § 108(a) requirements may, at the request of a user, reproduce one copy of an article from a periodical issue or other contribution to a collective work either from material the library owns or from material owned by another

library. The copy must become the property of the user. If the library does engage in such reproduction, the library must post the warning prescribed in 37 C.F.R. § 201.14 at the place where the orders are placed and on the order form, if any. Further, the library should have no notice that the user will use the copy for other than fair use purposes.

Under § 108(d), a library employee may provide a single copy to an external user upon request from that user. The copy may be either a photocopy or an electronic copy. Consistent with § 108(a)(1), the library may charge a fee for making the copy as long as the charge does not exceed reasonable cost recovery.

2.3.1 Copies of Printed Works

To satisfy a user's request, a library employee, may make a photocopy or other printed copy of a printed work such as an article, a chapter or portions of other copyrighted works.

To satisfy a user's request, a library employee may scan an article from a periodical issue, a chapter, or portions of other copyrighted works and provide an electronic copy to the user in lieu of a photocopy. Because the copy must become the property of the user, the library may not retain the scanned image.

2.3.2 Copies of Digital Works

Unless prohibited or otherwise restricted by the terms of a valid license agreement, a library employee may print a copy of an article, a chapter, or portions of other copyrighted works at the request of a user.

Unless prohibited or otherwise restricted by the terms of a valid license agreement, a library employee may download a copy of an article, a chapter, or portions of other copyrighted works at the request of a user and forward it electronically to the user.

2.4 Obtaining Copies from another Library

2.4.1 Interlibrary Loan Copies

A library employee may request single copies of articles, book chapters, or portions of other copyrighted works from the collection of another library to satisfy user requests as described above. The receiving library may deliver the copy to the user in print or electronic format. Neither the borrowing nor lending library may retain the print or digital image. Libraries may request print or electronic copies of works through interlibrary loan, but borrowing libraries of all types should be aware of the CONTU Guidelines (National Commission on New Technological Uses of Copyright Works) suggestion of six copies or six requests coming from a given work (including a collective work) within a calendar year for periodicals less than five years old. The more a library exceeds the suggestion of six, the less likely it is that the interlibrary loan request is exempt.

2.4.2 Access to Digital Works by External Users

The terms of a valid license agreement may prohibit access to or reproduction of digital works for external users, including interlibrary loan, or may limit the number of constituents to which a library may supply either print or electronic copies of digital works. If the license agreement is silent on providing copies to via interlibrary loan or to the number of constituents, then the library may make either printed or digital copies in both instances as otherwise permitted.

3. Multiple Copying of Copyrighted Works

3.1 Multiple Copying in General

Multiple copying is limited under the Copyright Act. The Library Exemption is generally restricted to single copies. There are, however, instances in which multiple copying might be considered fair use under § 107 or exempt under § 108.

3.2 Preservation

Under § 108, a library employee may make three copies of either a published or unpublished work for preservation purposes under specified conditions (see 3.2.1 and 3.2.2). These exceptions apply to both print and audiovisual works.

3.2.1 Unpublished Works

A library that has a copy of an unpublished work in its collection may make three copies of that work for either: a) preservation and security or b) deposit in another library that qualifies for the Library Exemption. Digital copies cannot be distributed digitally or used outside the premises of the library.

3.2.2 Published Works

A library that has a copy of a published work in its collection may make three copies of that work for either a) replacement of a damaged, deteriorating, lost, or stolen copy, or b) replacement of a work stored in an obsolete format. Such copies may only be made if, after a reasonable effort, the library determines that an unused replacement cannot be obtained at a fair price. Digital copies cannot be made available to the public outside of the premises of the library.

3.2.3 Obsolete Devices

Under § 108(c), a library employee may make three copies of a published work when the format in which the work is stored is a) obsolete and b) the library, after a reasonable effort, has determined that it cannot obtain an unused replacement at a fair price. A format is obsolete if the equipment or device necessary to perceive the work is no longer manufactured or not reasonably available in the commercial marketplace.

3.3 Copying Newsletters

The Library may reproduce only a small portion of copyrighted newsletters, but should avoid multiple copying of newsletters, routing newsletters, or allowing patrons to make such copies if they have knowledge or reason to believe that recipients will reproduce the newsletter or articles therein for later use or to create personal libraries.

4. Copying Database Search Results

4.1 Signed License Agreements

Any license agreement that the library enters into must comply with the terms of a valid license agreement. License terms may be binding even if they conflict with copyright.

4.2 Redistribution of Results—Single Copy to a User

Distribution of database search results to a single user is permitted under fair use unless prohibited by a valid license agreement. This includes providing a copy of search results to any library patron. Public domain information is not subject to any of these limitations.

4.3 Redistribution of Results—Multiple Users

Absent a license agreement that restricts redistribution of non-public domain research results, redistribution to multiple users may be permitted. The Library should seek permission for multiple distributions of research results, whether by print or via electronic means, if that use exceeds this Policy.

5. Audiovisual Materials

5.1 Lending

The loan of videos for a patron's personal use is permitted under § 109 and the first sale exception.

The loan of a video for use in a face-to-face classroom is permitted as an exception under § 110(1). The recording cannot be streamed over a course web page. In addition, the following conditions must be met:

- The teaching activities are conducted by a **non-profit education institution**.
- The performance is in connection with face-to-face teaching activities.
- The performance takes place in a classroom or similar place devoted to instruction.
- The person responsible for the performance has no reason to believe that the videotape was unlawfully made.

5.2 Public Performances

Patrons who check out a library video for their own viewing, or viewing with a small group of friends or family in the library or other semi-public space, are not engaging in a public performance of the video. Public performance occurs when a video is shown in an open, public space, or where a substantial number of persons outside a normal circle of friends or family are gathered to view it. In those situations that rise to a public performance, in house or in library viewing is permitted if the video is purchased with public performance rights, or public performance rights are obtained separately from the copyright holder.

5.3 Preservation

The library may not create backup copies of a published video recording, or convert a recording from one format to another **unless** the original version is in an obsolete format (see 5.4), or the original copy is damaged, deteriorated, lost or stolen, and the item cannot be obtained at a fair price in the commercial marketplace.

5.4 Obsolete Devices

Under § 108(c), a library employee may make a copy of an audiovisual work if the format in which the work is stored is a) obsolete and b) the library cannot obtain an unused replacement at a fair price. A format is obsolete if the device needed to display the work is no longer manufactured or is not reasonably available in the commercial marketplace.

6. Patron's Copying of Copyrighted Work

The library may make available to all patrons a copy machine and may charge patrons for such copies as it deems reasonable to recover costs of use. Library employees are not responsible for any copyright infringement provided that a notice is displayed informing patrons that copying is subject to copyright law.

A library employee does not have the duty to determine if a patron's reproduction is lawful, but if the library employee is aware that the patron's anticipated use does infringe on the copyright, the library employee must prohibit any patron from making such unlawful copies or prevent any other activity that would infringe on the copyright.