

DRAFT REVISION: Copyright: An Interpretation of the Code of Ethics

Article IV of the ALA's *Code of Ethics* states that library workers "respect intellectual property rights and advocate balance between the interests of information users and rights holders."

Copyright¹ is the aspect of intellectual property law that has the most impact on libraries.

Copyright, as authorized by the U.S. Constitution² and implemented through the Copyright Act (Title 17, U.S. Code, as amended), is a system of rights granted by law combined with limitations on those rights.

Copyright law encourages authors, artists, and others to create and share their works by granting them specific exclusive rights in their works³. Those rights are balanced by user rights such as fair use, a vibrant public domain, and limitations and exceptions favoring the public interest. These rights are necessary to ensure an equitable copyright system that protects creators while also preserving freedom of information and freedom of expression.

Both copyright law and libraries aim to benefit the public by advancing knowledge and culture through the creation and dissemination of information and creative works. In pursuit of this goal, copyright law should balance the public's right⁴ to access, use, remix and transform informative and creative works with the rights holder's interests.

Libraries represent the very best of this balance in U.S. copyright law. Libraries serve the economic purpose of copyright through the acquisition of copyrighted materials (such as books, journals, films, art, and music) for libraries. Libraries serve the "use and access" purpose of copyright by circulating copyrighted items. Libraries are thus economic benefactors to creators and providers of access to knowledge and culture to the public.

Libraries have both the opportunity and the obligation to work toward that balance when they engage in activities such as acquiring information resources for their communities, curating and preserving cultural heritage, establishing services and programs to enhance access to information, and lending books and other resources.

Copyright law provides a copyright holder with an exclusive legal right to reproduce the work, create derivative works based on the original, distribute the work to the public, and perform or display the work in public. However, copyright law also provides the public the right to make fair

¹ Copyright protects "original works of authorship fixed in any tangible medium of expression." Copyright Act of 1976, 17 U.S.C. § 102 (2012). <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title17/html/USCODE-2011-title17.htm>

² Article 1, Section 8 of the U.S. Constitution empowers Congress to pass laws "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

³ The exclusive rights of a copyright owner include reproduction, the creation of derivative works, distribution, public performance, public display, and the public performance of sound recordings by means of digital audio transmission. Copyright Act of 1976, 17 U.S.C. § 106 (2012).

⁴ "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits." Universal Declaration of Human Rights, Article 27.1

use⁵ of the copyrighted work. Additionally, there are restrictions to the exclusive rights of copyright holders, such as the First Sale Doctrine, which allows the public to borrow, loan, sell, or transfer a purchased, particular copy of a work.⁶ The public has unlimited use of the work when its copyright term expires and it enters the public domain.

Copyright law also provides numerous specific exceptions for libraries, archives, and nonprofit educational institutions. Depending on the nature of the institution, these exceptions may include the ability to make reproductions for users; preserve and make replacement copies of works; create accessible copies for print-disabled users and; perform or display works for educational purposes.

Libraries and their parent institutions have a responsibility to promote and maintain policies and procedures that are consistent with their ethical obligations, their institutional missions, and the applicable law. Such policies and procedures should measure legal risk and respect the rights of both copyright holders and users of copyrighted works. It is the library's responsibility to make sure all of the workers, not just librarians, are familiar with aspects of copyright law which affect library services.

Library workers are increasingly critical resources for copyright information in their communities. Consequently, they should be informed about copyright developments and maintain current awareness of copyright issues. Library workers should develop an awareness of the law, its purpose, and the details relevant to library activities.

Library workers should use these skills to identify their rights and the rights of their users. Further, they should be ready to conduct outreach on copyright topics and refer users with questions pertaining to copyright to reliable resources. However, library workers should avoid providing legal advice. They may provide information about the law and copyright, but should recommend that patrons consult an attorney for legal advice.

Library workers should also be prepared to explain restrictions on patron use of content based on digital licensing agreements. Licensed e-content, including e-books, databases and video streaming services, may have limitations on use beyond those present in copyright law.

Libraries have a proud history of advocating for the public interest. They recognize that copyright law should not expand the rights of copyright holders without sufficiently considering the benefit to the public interest. When the balance between rights holders and information users needs to be restored, library workers should engage with rights holders and legislators to advocate on behalf of their users and users' rights.

⁵ Whether a use qualifies as fair depends on these four factors: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality used, and the potential effects on the market for the work. In addition, courts may consider whether the use is transformative. Copyright Act of 1976, 17 USC § 107 (2012).

⁶ Copyright Act of 1976, 17 U.S.C. § 109 (2012).

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See also:

“Copyright.Gov” United States Copyright Office, <https://www.copyright.gov/>.

Trina Magi and Martin Garnar, “Copyright,” in [*Intellectual Freedom Manual*](#), 9th ed. (Chicago: ALA Editions, 2015), 145-156.