|  |  |
| --- | --- |
| Association of College & Research Libraries50 E. Huron St. Chicago, IL 60611800-545-2433, ext. 2523acrl@ala.org, http://www.acrl.org |  |

# Board of Directors Action Form

To: ACRL Board of Directors

Subject: Endorsing *Code of Best Practices in Fair Use for Software Preservation*

Submitted by: Yasmeen Shorish, Chair of ACRL's Research and Scholarly Environment Committee

Date submitted: November 27, 2018

## Background

On September 24, 2018, the Association of Research Libraries (ARL) released a *Code of Best Practices in Fair Use for Software Preservation*, described in the announcement as providing:

clear guidance on the legality of archiving legacy software to ensure continued access to digital files of all kinds and to illuminate the history of technology.

This Code was made by and for the software preservation community, with the help of legal and technical experts. The publication provides librarians, archivists, curators, and others who work to preserve software with a tool to guide their reasoning about when and how to employ fair use—the legal doctrine that allows many value-added uses of copyrighted materials—in the most common situations they currently face.

Libraries, archives, and museums hold thousands of software titles that are no longer in commercial distribution, but institutions lack explicit authorization from the copyright holders to preserve these titles or make them available. Memory institutions also hold a wealth of electronic files (texts, images, data, and more) that are inaccessible without this legacy software. The preliminary report released by the project team in February documents high levels of concern among professionals worried that while seeking permission to archive software is time-consuming and usually fruitless, preserving and providing access to software without express authorization is risky. Meanwhile, digital materials languish, and the prospects for their effective preservation dim…Another interviewee invoked technology-investor Marc Andreessen’s argument that “software is eating the world,” observing that access to the digital cultural record is itself dependent on software.

The *Code of Best Practices in Fair Use for Software Preservation* will help this community overcome legal uncertainty by documenting a consensus view of how fair use applies to core, recurring situations in software preservation. Fair use has become a powerful tool for cultural memory institutions and their users, allowing them to realize the potential of stored knowledge with due respect for the interests of copyright holders. Fair use holds the same potential where software preservation is concerned, particularly given the transformative nature of the uses described in the Code.

Source: <https://www.arl.org/news/arl-news/4629-software-preservation-best-practices-in-fair-use-to-help-safeguard-cultural-record-advance-research>

In early November ARL staff asked if ACRL would consider endorsing this new *Code*, given ACRL's past endorsement of the 2012 *Code of Best Practices in Fair Use for Academic and Research Libraries*. As the Research and Scholarly Environment Committee has subject expertise in this area, ACRL senior staff members asked us to evaluate the request and make a recommendation to the Board. I was already aware of this new *Code*, having seen a presentation at the Digital Library Federation Forum in October by one of the facilitators of the process to develop it (Brandon Butler, Director of Information Policy at the University of Virginia Library). In consultation with vice chair Nathan Hall, we think endorsement from ACRL is appropriate.

Read the full *Code of Best Practices in Fair Use for Software Preservation* at <https://www.arl.org/storage/documents/publications/2018.09.24_softwarepreservationcode.pdf>

**Stakeholders**

The ALA Washington Office has already endorsed this document.

## Action Recommended

That the ACRL Board of Directors endorses the *Code of Best Practices in Fair Use for Software Preservation.*

## Strategic Goal Area Supported

Please add additional sheets as needed to explain. Select the goal area that will be affected most by this action.

**[ ]** Value of Academic Libraries

Goal: Academic libraries demonstrate alignment with and impact on institutional outcomes.

**[ ]** Student Learning

Goal: Advance innovative practices and environments that transform student learning.

**[x]** Research and Scholarly Environment

Goal: Librarians accelerate the transition to more open and equitable systems of scholarship.

**[ ]** New Roles and Changing Landscapes

Goal: Academic and research library workforce effectively navigates change in higher education environments.

**[ ]** Enabling Programs and Services

ACRL programs, services, and publications that target education, advocacy, and member engagement.

## Fiscal and Staffing Impact

If approved, ACRL staff will work with ARL staff to include ACRL’s name and logo on the endorsement page/website.

### Motion

**[ ]** Above recommendation moved

**[ ]** No motion made

**[ ]** Motion revised (see motion form)

### Action Taken

**[ ]** Motion Approved

**[ ]** Motion Defeated

**[ ]** Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_