

A summary of the U.S. Copyright law, and its relevance to information professionals

U.S. copyright law is defined by Title 17 of the United States Code. Copyright is a federal law passed by Congress to promote progress by allowing authors to hold a limited monopoly over the intellectual property rights over their own creative works. Title 17 expands Article 1, Section 8 of the U.S. Constitution, whereby innovations in the arts and sciences are encouraged by allowing authors and inventors exclusive rights to their original creative works.¹

Through Title 17, an author maintains Exclusive Rights—described in Section 106—to make reproductions and derivative works (such as editions, translations, and sequels), sale and transfer ownership, and publicly perform or display their work. If others wish to use copyright protected work, they must generally obtain permission or license from the copyright owner. In this way, copyright law seeks to preserve a balance between two motives: to protect and reward authors' investments and risks by encouraging them to share their intellectual property with others without the risk of losing their ability to secure a fair return for their creative labor, and a national interest in sharing ideas for public benefit. The legal exceptions and limitations of copyright are generally concerned with maintaining a balance between these two potentially conflicting interests. Works that are in the public domain are not bound by copyright law.

The types of creative expressions that may be copyrighted listed in Section 102 include: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial graphic and sculptural works; audiovisual works; sound recordings; and architectural works. A requirement of eligibility for copyright protection states that the work must be captured in a fixed state and possess some degree of creativity.² Some works—such as ideas, common symbols, and applied arts—are not eligible for copyright protection.

Although copyright has existed in the U.S. since 1787, the framework for current U.S. Copyright law was enacted in 1976. In 1988 the U.S. implemented the Berne Convention and significant amendments to copyright law were made to comply with international copyright laws. Important changes to current copyright law include that copyright is automatically and immediately present once an idea is in a fixed state; Works no longer have to be published to be fully protected by copyright; Works no longer have to bear a formal copyright mark or be registered with the

¹ "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." "The Constitution of the United States," Article 1, Section 8, Clause 8. Quoted in "U.S. Constitution - Article 1 Section 8," *U.S. Constitution*, https://usconstitution.net/xconst_A1Sec8.html

² "Fixed" implies that the work is captured in a sufficiently permanent medium that allows for perception (with the human senses), reproduction, and communication. Some unfixed manifestations—such as unannotated choreography and improvisation—may be protected by common-law copyright, which is a state-based law.

Copyright office;³ And, the duration of copyright ownership protection is been extended to life of the author *plus* 70 years.⁴

Because libraries are stewards of some of the largest collections of copyright-protected content, the library profession is directly impacted by copyright law on intrinsic levels—including even such commonly overlooked aspects such as the legality of lending copyrighted work to their patrons.⁵ Additionally, librarians are frequently consulted to advise in copyright law. It important that librarians and other information professionals familiarize themselves with copyright law, and common limitations and exceptions that their communities are directly impacted by.⁶

The most frequent part of copyright law that libraries encounter is probably Section 107, or Fair Use, which imposes limitations on an author’s exclusive rights. Fair Use permits unlicensed use of copyright protected works in certain circumstances where considerations of public benefit may outweigh private-property protections. Fair Use is a defense rather than a natural right; Thus, the boundaries and details of Fair Use are defined through interpretation, based on previous court rulings, and must be determined on a case-by-case basis. In addition to Fair Use exceptions, librarians should also be familiar with the TEACH Act, which allows additional provisions for educators.⁷

Section 107 and Section 108 cover exceptions that allow to non-profit libraries to make prints or digital copies in certain situations. Section 108 specifically concerns exemptions for libraries and archives, which permit these users to legally make copies of works for the intent of access and preservation. For the case of interlibrary loan, Section 108 allows a single unlicensed copy of *part* of a copyright-protected work in the library’s collection to be made, provided that the copy is used for non-profit research and does not represent a substantial part of the entire published work.⁸ These sections cause a great deal of confusion and complication because they are descriptive rather than prescriptive; Legal counsel is recommended when advise is needed.

Another crucial aspect of copyright law that allows contemporary librarianship to exist is Section 109, which regards the concept of “first sale.” Here it is described that the author’s physical ownership is exhausted after the sale of the individual tangible item; Authors retain their copyright over the work, yet property ownership of individual items is transferred to the buyer. This detail is what crucially allows libraries the freedom to lend (lawfully-made) works in their collection. It also allows them to publicly display or exhibit, sell, mark up, and dispose of their

³ Though the current *Valancourt Books v. Temple* lawsuit questions how the Copyright Office is actually upholding these changes, as Section 407 still requires deposits from publishers or threatens them with fees. See “Valancourt Books v. Temple,” *Copyright Alliance*, <https://copyrightalliance.org/copyright-law/copyright-cases/valancourt-books-v-temple> (Accessed November 17, 2019)

⁴ Initially the protection was limited to 50 years beyond the life of the author; The plus 70 years extension was implemented in 1998 with The Sonny Bono Copyright Term Extension Act.

⁵ The impact of copyright on the library profession is represented by ALA’s webpage “Copyright,” *American Library Association*, <http://www.ala.org/advocacy/copyright> (Accessed October 28, 2019)

⁶ Although numerous publications offer secondary-source materials concerning copyright law, I would strongly recommend that librarians focus primarily on the actual written law.

⁷ The Technology, Education, and Copyright Harmonization (TEACH) Act was passed in 2002.

⁸ Section 107 and 108 are especially nuanced, and though there are a lot of common frameworks that are widely used (such as “the 20% rule” or “the rule of 5”) these frameworks are not law-based and can only be used as guidelines.

purchased copies.

In addition to these copyright sections, librarians must be able to fully understand license contracts, which define how a library may use resources that it does not own full copyright of. The ability to navigate license agreements are crucial on the acquisition stage for archival collections, where copyright owners (authors or donors) may choose to retain some of their rights and release others. Typically archives prefer to have a contract agreement with copyright holders that transfers full copyright ownership of all acquired materials to the library or archive, but there are times when libraries or archives will possess physical ownership yet not intellectual ownership of collection items. Licensing also directly impacts the scope of e-resource agreements, in which case libraries have temporary success rights rather than the “first use” right described above; Library subscribers must negotiate contracts with providers for contextual rights to access licensed materials—stipulations may include how many patrons may access a work simultaneously, where patrons may access materials from, the quantity of materials accessible, the duration of the access, and fees.⁹ Creative Commons is a popular type of license whereby an author may release certain inherent copyrights and retain others.¹⁰

Finally, it is important to note that copyright law varies significantly throughout the world, and that even common international concepts—such as first sale, public domain, natural rights, and moral rights—are neither universally defined nor applicable.

A review of recent legislation, court decisions, regulations, and similar developments

The U.S. Copyright law is a living law. Amendments, limitations, and exemptions to Title 17 are regularly added as necessary to clarify the law and to include new concerns and technologies.

March 2019, *Fourth Estate Public Benefit Corp. v. Wall-Street.com* — In this case, Supreme Court ruled that a author’s application to register copyright must complete processing at The United States Copyright Office before the author can seek copyright infringement damages,¹¹ effectively drawing attention to problems of current backlogs and lengthy processing times.

April 2019, Attribution and Integrity— The United States Copyright Office has completed a study investigating attribution and integrity rights of authors, which are recognized internationally in many other countries that participate in the Berne Convention as “moral rights.” The office has put forth recommendations for enhancing moral-right protections.

September 2019, S. 1273, the “Copyright Alternative in Small-Claims Enforcement Act of 2019” — Currently, copyright owners who have been damaged at a value of less than \$20,000 are at a great disadvantage in being able to seek equal copyright protections under the law. The United States Copyright Office is aware of this barrier and passed a bill to create a Copyright Claims Board within the Copyright Office. H.R.2426 passed in the House in October 2019.

⁹ The Digital Millennium Copyright Act (DMCA) was enacted in 1998.

¹⁰ See “Creative Commons licenses,” *Creative Commons*, <https://creativecommons.org/use-remix/cc-licenses/>.

¹¹ *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 892 (2019).

October 2018, Amendments to the Copyright Act as a result of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”) — This addition to copyright protection enhances digital and mechanical copyright registrations for musical works that are submitted in bulk. This act largely effects Sections 114 and 115. It will become enacted in 2021.

October 2018, Amendments to the Copyright Act as a result of the Marrakesh Treaty Implementation Act — This addition to limitations on an author’s exclusive rights offers users exemption for reproductions made specially to increase accessibility by providing copies or derivatives of works in formats specifically designed for people with disabilities. It largely effects Section 121.

September 2017, Study and Discussion Document: Section 108 — The United States Copyright Office completed a study and released a Discussion Document declaring its intentions to update Section 108 to make important revisions induced by digital works and to clarify preservation rights. It also announces intentions include museums within this exemption. The goal is to “grant libraries, archives, and museums more flexibility to make preservation and security copies of works covered by licensing and purchasing agreements.”¹²

January 2017, Study: Section 1201— The United States Copyright Office completed a public study assessment of section 1201. Section 1201 is part of the Digital Millennium Copyright Act “prohibits the circumvention of technological measures employed by or on behalf of copyright owners to protect access to their works... as well as the trafficking in technology or services that facilitate such circumvention.” The Copyright office is considering exemptions in cases where circumventions may enable “assistive reading technologies and the repair of devices.”¹³

Recommended strategies for staying current on the U.S. Copyright Act

Staying current on events related to the U.S. Copyright Act is relatively simple, as all updates are published on government websites as they occur. Visiting these websites at least twice a year will help you to keep up-to-date on important issues.

Federal Register Notices – announcements, rules, and notices issued by the U.S. Copyright Office in the *Federal Register*

<https://www.copyright.gov/fedreg/>

Legislation updates — information regarding actions on bills presented to House and Senate Search Legislation/“Copyright Act”

<https://www.congress.gov/>

Full texts of Supreme Court rulings on Copyright

<https://www.supremecourt.gov>

¹² “Revising Section 108: Copyright Exceptions for Libraries and Archives, *Copyright.gov*, <https://www.copyright.gov/policy/section108/>

¹³ “Section 1201 Study,” *Copyright.gov*, <https://www.copyright.gov/policy/1201/>

A membership organization that advocates for copyright justice, including updates on legal cases
Copyright Alliance
Copyright law/copyright cases
<https://copyrightalliance.org/copyright-law/copyright-cases/>

Bibliography

Compendium of U.S. Copyright Office Practices 3rd Edition (United States Copyright Office, 2017). Accessed November 17, 2019. <https://www.copyright.gov/comp3/> [note: a new edition is expected to be released soon]

“Copyright.” *American Library Association*. Accessed October 28, 2019.
<http://www.ala.org/advocacy/copyright>

Copyright Alliance. Accessed November 17, 2019. <https://copyrightalliance.org/copyright-law/copyright-cases/valancourt-books-v-temple>

“Copyright for Educators and Librarians.” *Coursera* (Duke University, 2015). Accessed July 11-August 3, 2019. <https://www.coursera.org/learn/copyright-for-education>

“Copyright Law of the United States, and Related Laws combined in Title 17 of the United States Code.” *Copyright.gov*. Accessed November 17, 2019. <https://www.copyright.gov/title17/>

“Creative Commons licenses.” *Creative Commons*. Accessed October 28, 2019.
<https://creativecommons.org/use-remix/cc-licenses/>

“U.S. Constitution - Article 1 Section 8.” *U.S. Constitution*. Accessed November 17, 2019,
https://usconstitution.net/xconst_A1Sec8.html