

Copyright Matters!

Libraries and National Copyright Reform Initiatives

Copyright and Other Legal Matters



The U.S. Experience

Copyright Limitations and Exceptions For Libraries and Archives



Nancy E. Weiss
nweiss@ostp.eop.gov

Copyright laws have long recognized the essential role of libraries



- The Statute of Anne (1710)
- Required delivery before publication of copies of books for use of the Royal Library, university libraries, and the library belonging to the faculty of advocates at Edinburgh, a law library.

International Engagement

- **“The United States is proud to have a series of specific exceptions** and limitations in our copyright law, including for education, libraries, and persons with print disabilities.

The law of the United States has these exceptions because we believe access to information, cultural expression, and ideas is essential and we know that governments have a role to play in facilitating that access and reducing barriers to information, education and full participation in a democratic society. So while the United States believes profoundly, in the words of our Supreme Court, that **copyright law is “the engine of free expression,” we are also** committed to policies that ensure everyone has a chance to get the information and education they need and to live independently as full **citizens in their communities.”**

- United States Statement on Copyright Exceptions and Limitations for Persons with Print Disabilities before the Standing Committee on Copyright and Related Rights, World Intellectual Property Organization (2009)

Objectives & Principles



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DATE: _____
ORIGINAL: ENGLISH

Standing Committee on Copyright and Related Rights

Twenty-sixth Session
Geneva, December 16 to 20, 2013

OBJECTIVES AND PRINCIPLES FOR EXCEPTIONS AND LIMITATIONS
LIBRARIES AND ARCHIVES

Document presented by the United States of America

ADOPTION OF NATIONAL EXCEPTIONS

Objective:

Encourage Member States to adopt exceptions and limitations in their national laws, consistent with their international obligations, that facilitate the public service role of libraries and archives, maintaining the balance between the rights of authors and the larger public interest, particularly education, research, and access to information.

Principles:

Exceptions and limitations, which are an integral part of national copyright systems, play a critical role in enabling libraries and archives to meet the needs of the public, helping individuals to achieve their full potential and engage with others.

Exceptions and limitations for libraries and archives help these institutions to assist individuals in seeking, receiving and imparting information so that they may participate meaningfully in public life.

Exceptions and limitations also advance knowledge by preserving and providing access to the world's cultural, artistic, and scientific heritage.

Both affirmative protections for authors and exceptions and limitations, including those for library and archival services, are vital to achieving the copyright system's goals of encouraging creativity, innovation, and learning.



U.S. Copyright Limitations & Exceptions

- Title 17 of the United States Code
- Section 108 – Library Exception
- Section 107 – Fair Use Doctrine
- Section 109 – First Sale Doctrine
- Section 121 – Reproduction for Blind or Other People with Disabilities
- Section 1201 – Exemption to Anti-Circumvention Provisions
- Sections 504, 1203, 1204 – Liability Limitation

Section 108 – Library Exception

- Section 108 permits libraries and archives to reproduce and distribute some copyrighted works for:
 - Preservation & Replacement
 - Research and Study
 - Interlibrary loan
- Ground Rules:
 - Must be made without direct or indirect commercial advantage;
 - Library or archives must be (i) open to the public, or (ii) not available only to researchers affiliated with the institution, but also to other persons doing research in a specialized field; and
 - Reproduction or distribution of the work must include a copyright notice
- Nothing in this section . . . in any way affects the right of fair use as **provided by section 107.**”

Section 108 – Library Exception

- Preservation, security, replacement:
 - 108(b) -- several copies of an *unpublished* work for preservation or security or deposit for research use in another library if the work is currently in the collection of the library making the copy.
 - 108(c) -- several copies of a *published* work if the copies are solely for replacement of an item that is damaged, deteriorating, lost or stolen, or if the existing format in which the work is stored has become obsolete.
 - library or archive must conduct a reasonable investigation and conclude that an unused replacement cannot be obtained at fair price. A format is considered obsolete if the machine or device necessary to render a work perceptible is no longer manufactured or reasonably available in the commercial marketplace.
- If copies are made for preservation or replacement of library materials, the scope of materials is broad. A library may make copies of manuscripts, pictures, sound recordings, and any other works, including audiovisual.

Section 108 – Library Exception

- Research:
 - 108(d) & 108(e): the library can make a copy at the request of a user of:
 - no more than one article or other contribution to a copyrighted collection or periodical issue, if the library has no notice that the copy would be used for any purpose other than private study, scholarship, or research, and
 - an entire work, or a substantial part of it, if first determined after a reasonable investigation that a copy cannot be obtained at a fair price
 - Conditions:
 - the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright
 - that copy becomes the property of the user, and
 - The library has no notice that the copy would be used for any purpose other than private study, scholarship, or research, and
- 108(f)(1): relieves libraries of liability for the unsupervised use of reproduction equipment located on its premises, provided that the equipment displays a copyright notice

Section 108 – Library Exception

- Interlibrary Loans:
 - Under 108(g)(2), a library or archives may participate in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to for a subscription to or purchase of such work
- During the last 20 years of any term of copyright of a published work, a library or archives may reproduce, distribute, display, or perform in facsimile or digital form, a copy or phonorecord of such work, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that:
 - the work is NOT subject to normal commercial exploitation
 - a copy of the work can NOT be obtained at a reasonable price; or
 - the copyright owner has NOT provided notice that either of these conditions applies

Section 107 – Fair Use Doctrine



- Fair use has enabled libraries to:
 - Digitize collections
 - Enable full-text search and data-and-text mining of digitized resources
 - Facilitated digital preservation
 - Provide accessible-format copies to print-disabled patrons
- Fair use has also enabled:
 - For-profit legal databases to archive and make available legal briefs and filings
 - Search engines to flourish
 - Universities to offer excerpts in electronic course reserves to students enrolled in particular courses
 - Development of a database to check student work for plagiarism

Sections 504, 1201, 1203, 1204 Limitations on Liability

- 17 U.S.C. § 504(c)(2), which sets forth remedies for copyright infringement, provides that libraries, archives, and their employees and agents acting in the scope of their employment are not liable for statutory damages for the reproduction of works or phonorecords **if they “believed and had reasonable grounds for believing” that their action was a fair use under Section 107 of the Copyright Act.**
- In 17 U.S.C. § 1201(d), under certain circumstances, the Digital Millennium Copyright Act (DMCA) includes an exemption from the prohibition on circumventing a technological measure that effectively controls access to a copyrighted work for a nonprofit library or archive that gains access to a commercially exploited copyrighted work solely to make a good faith determination of whether to acquire a copy of the work to engage in conduct permitted under the DMCA.
- The DMCA also contains a provision requiring courts not to impose civil damages in any case in which a nonprofit library or archive sustains the burden of proving that it was not aware of and had no reason to believe that its acts constituted a violation of Section 1201 or 1202 of the DMCA. See 17 U.S.C. § 1203(c)(5)(B).
- These entities are also exempt from any criminal liability for such violations regarding technological measures or the integrity of copyright management information. See 17 U.S.C. § 1204(b).

Communities have an evolving view of services libraries should provide



The Labs, D.C. Public Library



The 4th Floor, Chattanooga Public Library

These new roles may seem novel, but
have always been anticipated



**“Tell me and I forget.
Teach me and I remember.
Involve me and I learn.”**

- Benjamin Franklin

How is the United States Helping the Public Adapt?

- All three branches of the United States Government **are actively involved** in reviewing the nation's copyright laws



Caselaw

- *Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351 (2013)
- ***Author's Guild v. HathiTrust***, 755 F.3d 87 (2d Cir. NY 2014)
- *Cambridge University Press v. Patton (Georgia State)*, 769 F.3d 1232 (11th Cir. 2014)

(Slip Opinion)

OCTOBER TERM, 2015

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KIRRTSAENG, DBA BLUECHRISTINE99 *v.* JOHN WILEY & SONS, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 15–375. Argued April 25, 2016—Decided June 16, 2016



Congressional Review of Copyright Law



COPYRIGHT ISSUES IN EDUCATION AND FOR THE VISUALLY IMPAIRED

HEARING
BEFORE THE
SUBCOMMITTEE ON
COURTS, INTELLECTUAL PROPERTY,
AND THE INTERNET
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
SECOND SESSION

NOVEMBER 19, 2014

Serial No. 113-119

Printed for the use of the Committee on the Judiciary



THE SCOPE OF FAIR USE

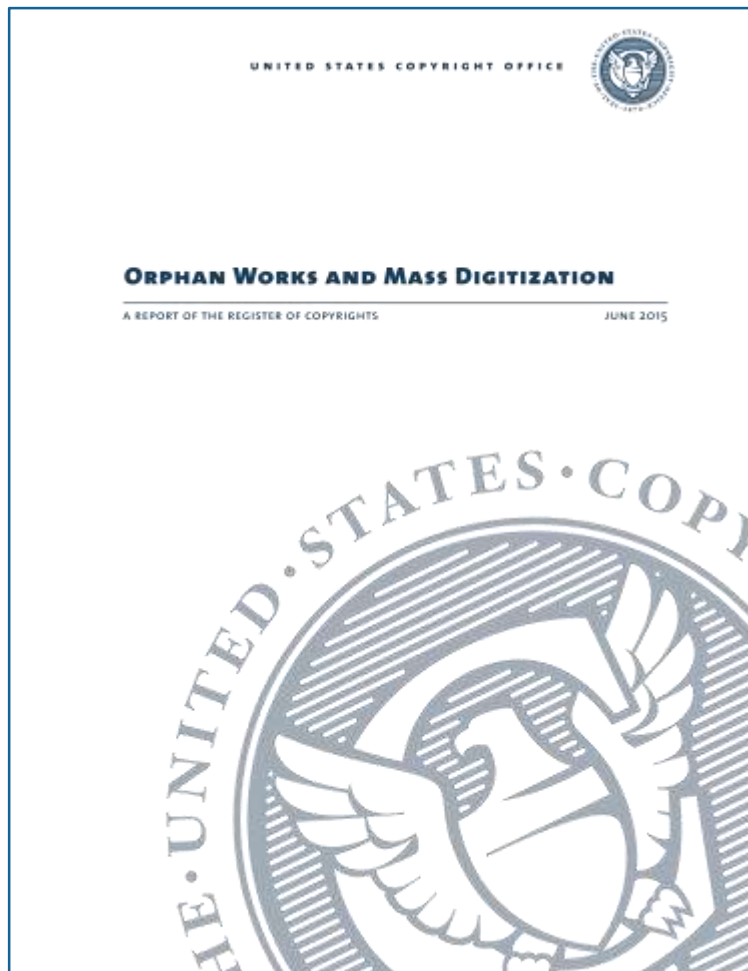
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JANUARY 28, 2014

Serial No. 113-82

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United States Copyright Office Policy Studies & Reports



LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2015–8]

Section 1201 Study: Notice and Request for Public Comment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The United States Copyright Office is undertaking a public study to assess the operation of section 1201 of Title 17, including the triennial rulemaking process established under the DMCA to adopt exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works. To aid this effort, and to ensure thorough assistance to Congress, the Office is seeking public input on a number of key questions.

Section 108 Study Group

The Section 108 Study Group Report

An Independent Report
sponsored by the United
States Copyright Office
and the National Digital
Information Infrastructure
and Preservation Program of
the Library of Congress

March 2008

- Recommendations for legislative change included:
 - Adding museums to the institutions protected by Section 108
 - Creating a new exception to allow **libraries to make a “preservation only” copy of at-risk works** prior to deterioration
 - Adding an exception to allow libraries and archives to capture and reproduce publicly available websites and online content for preservation purposes, and make those copies accessible to users for private study, research, and scholarship
 - Allow libraries to have flexibility in making the necessary number of copies of copyrighted works to ensure their long-term preservation rather than limiting them to three lawful preservation copies

Conference on Section 108 Reform: Copyright Exceptions for Libraries in the Digital Age



Kernochan Center for Law, Media, and the Arts

KERNOCHAN CENTER
FOR LAW, MEDIA, AND THE ARTS

Section 108 Reform

Copyright Exceptions for Libraries in the Digital Age:
Section 108 Reform

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February 8, 2013

Copyright Office Notice of Inquiry

LIBRARY OF CONGRESS

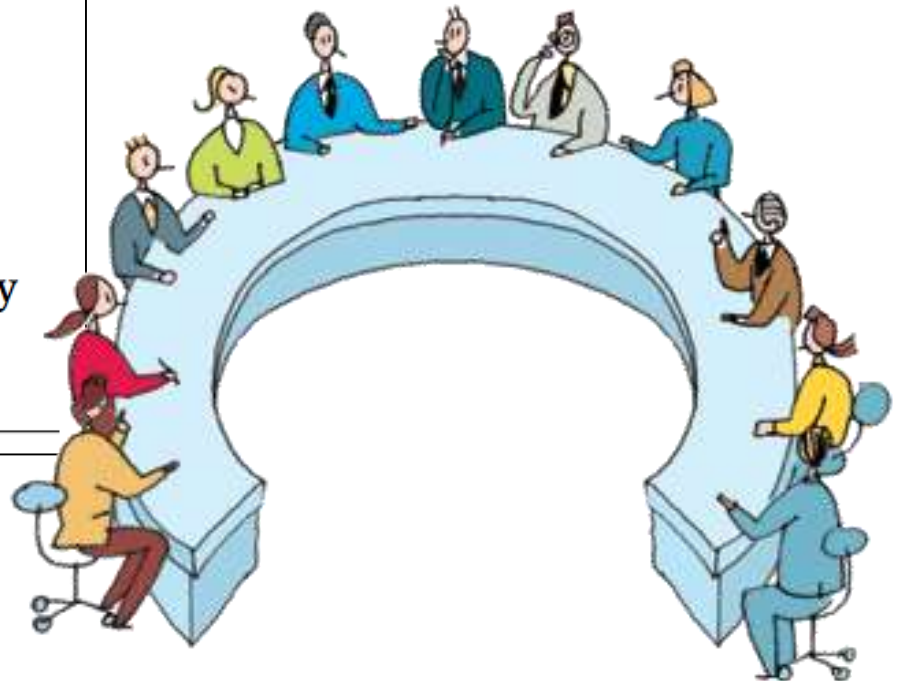
Copyright Office

[Docket No. 2016-4]

Section 108: Draft Revision of the Library and Archives Exceptions in U.S. Copyright Law

AGENCY: U.S. Copyright Office, Library
of Congress.

ACTION: Notice of inquiry.



Executive Branch Engagement in Copyright Policy (Examples)

- Department of Commerce
 - United States Patent and Trademark Office
 - National Telecommunications and Information Administration
- Department of Justice
 - Office of the Solicitor General
- Office of the United States Trade Representative
- Department of State
- Department of Education
- Institute of Museum and Library Services

Implementation of the Marrakesh Treaty

- White House transmitted to the Senate on February 10, 2016.
- Draft Marrakesh Treaty Implementation Act of 2016:
 - <https://www.uspto.gov/sites/default/files/documents/MarrakeshTreaty-transmittal.pdf>

Commerce Internet Policy Task Force



COPYRIGHT POLICY, CREATIVITY, AND INNOVATION IN THE DIGITAL ECONOMY

THE DEPARTMENT OF COMMERCE
INTERNET POLICY TASK FORCE
July 2013

- The Paper, intended to serve as a blueprint for further action, focused its activities on five major issue areas:
 - **Improving the operation of the DMCA's** notice and takedown system
 - The appropriate role for the government, if any, to help the private sector improve the online licensing environment
 - The legal framework for the creation of remixes
 - The relevance and scope of the first sale doctrine in the digital environment
 - The application of statutory damages in the context of individual file-sharers and secondary liability for large-scale online infringement

Commerce Internet Policy Task Force



White Paper on Remixes, First Sale, and Statutory Damages

Copyright Policy, Creativity, and Innovation
in the Digital Economy

THE DEPARTMENT OF COMMERCE
INTERNET POLICY TASK FORCE

January 2016

- First sale: Did not recommend extending first sale to digital transmissions.
- Did note that further action may be appropriate, particularly if it becomes apparent that libraries are unable to appropriately serve their patrons due to overly restrictive terms.
- Recommends creating a multistakeholder forum to establish best practices to improve **consumers' understanding of** license terms and restrictions in connection with online transactions
- Remixes: Increasing educational efforts aimed at broadening an understanding of fair use

Internet Policy Task Force



White Paper on Remixes, First Sale, and Statutory Damages

Copyright Policy, Creativity, and Innovation
in the Digital Economy

THE DEPARTMENT OF COMMERCE
INTERNET POLICY TASK FORCE

January 2016

- Statutory Damages: The Task Force recommended legislative changes to better balance the needs of copyright owners, users, and intermediaries, including:
 - Incorporating into the Copyright Act a list of factors for courts and juries to consider in determining the amount of a statutory damages award
 - Implementing changes to the copyright notice provisions that would expand eligibility for the **lower “innocent infringement” statutory damages awards**
 - In cases involving non-willful secondary liability for online services offering a large number of works, giving courts discretion to assess statutory damages other than on a strict per-work basis
 - Creating a streamlined procedure for adjudicating small claims of copyright infringement.

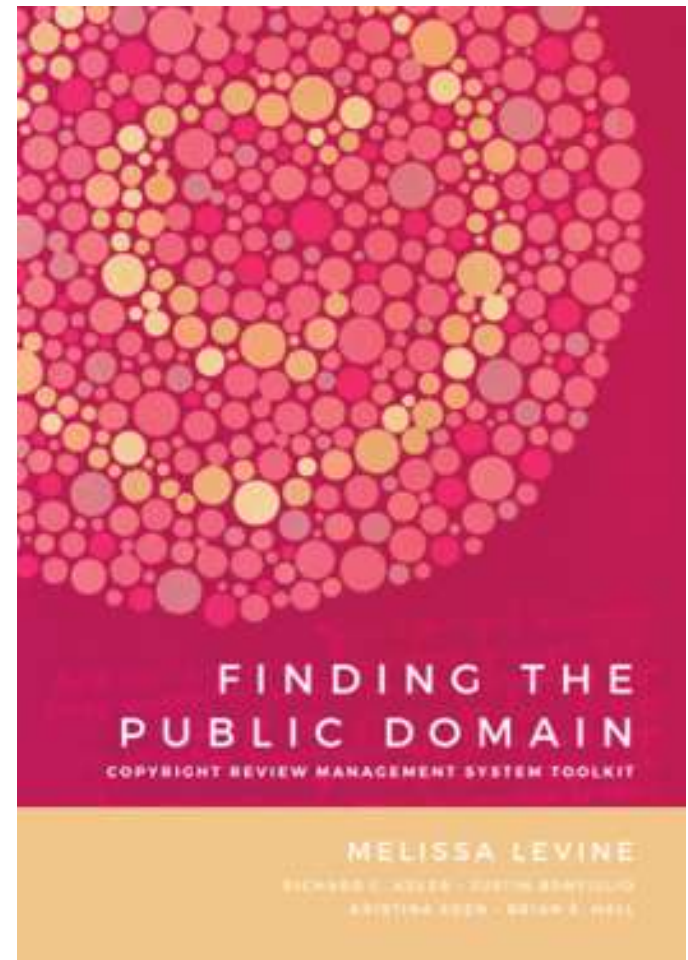
The Institute of Museum and Library Services

- IMLS awarded the University of Michigan Library a National Leadership Grant to create a Copyright Review Management System. The purpose of the project is to increase the reliability of copyright status determinations of books in the HathiTrust Digital Library.
- As of May 2016,
 - 334,316 U.S. works were evaluated, and 179,078 (~53%) were identified as being in the public domain.
 - 281,617 works from Australia, Canada, and the UK were evaluated, and 149,754 (~53%) volumes were identified as being in the public domain.



The Institute of Museum and Library Services

- IMLS funding supported the publication of *Finding the Public Domain* by the University of Michigan in June 2016.



Open Educational Resources



THE OPEN GOVERNMENT PARTNERSHIP

SECOND OPEN GOVERNMENT
NATIONAL ACTION PLAN FOR
THE UNITED STATES OF AMERICA

December 5, 2013

➤ ***“There is a growing body of evidence that the use of open education resources improves the quality of teaching and learning... The United States is committed to open education”***

➤ New Open Government Initiatives as part of the Second Open Government National Action Plan (September, 2014)

➤ Open Educational Resources are full courses, course materials, modules, and textbooks that are in public domain or released with copyright licenses allowing for their free use, continuous improvement, and modification by others, to meet new contexts and needs.

The Administration requires open licensing in several high-impact domestic and international education and training programs, and is developing technical assistance for agencies to expand the reach of government investments.

Open eBooks Initiative



- Brings together a coalition of literacy, library, and publishing partners to make thousands of popular and award-winning eBook titles available to students, targeted at low-income families (NYPL, DPLA, First Book, Baker & Taylor, Publishers, support from IMLS and Sloan Foundation.)
- Provides an additional pathway for students to access reading materials and to read widely
- www.openebooks.net



THE LIBRARY

Where all the cool kids hang out