

# Copyright 101: Everything You Wanted to Know About Copyright But Were Afraid To Ask

Sponsored by ALA Office for Information Technology Policy, Copyright Advisory Committee and Copyright Advisory Network Team, and Office of Government Relations Committee on Legislation, Intellectual Property Subcommittee.

## Preservation & Replacement

Section 108 of the U.S. copyright code expressly provides for libraries & archives to make reproductions of copyrighted works, under certain conditions, without seeking permission from the copyright holder. The two major purposes detailed here are for the preservation of unpublished works and for the replacement of published works

### General Conditions

- The library or archives must be open to the public (or to any specialized researchers, regardless of affiliation)
- A copyright notice must be included on each reproduction
- Any reproductions in digital form may not be distributed or made available to the public outside of the library or archives
- Reproductions are not made for direct or indirect commercial advantage

### Preservation

- Up to 3 copies of an unpublished work may be made for preservation or security purposes, if the work is already part of the library's or archive's collection.

**Example:** Your library's Special Collections owns a small collection of unpublished photographs of buildings by an important local architect. Several have been damaged or have disappeared over the years. The library would like to create viewing copies so that the originals can be preserved.

### Replacement

- Up to 3 copies may be made to replace a published work that has been lost, stolen, damaged, is deteriorating or is manifest in an obsolete format\* if an unused replacement is not available at a fair price.

\* A format is considered obsolete if the device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

**Examples:** Your library owns an out-of-print 1972 documentary on a local historic district on ¾ inch U-matic tape. You would like to transfer it to VHS, as your ¾ inch tape player is no longer functional and a new player is unavailable.

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Your library's bound issues of Fortune magazine for 1937 have been stolen. You request a copy of the missing issues on ILL, make a copy and have them bound to replace the stolen copies.

## Last 20 Years of Protection\*

- Published works in their last 20 years of copyright protection may be reproduced, distributed, displayed, or performed if the purpose is preservation, scholarship or research. This includes only those works that are not subject to normal commercial exploitation and cannot be obtained at a fair price.

\* Many works covered by this provision (and many more besides) should also be covered by the less restrictive "Orphan Works" legislation currently before Congress.

**Example:** Your library's Special Collections has an extensive collection of rare 1930s Soviet children's books, printed on poor quality paper. To cut down on wear and tear, you create color viewing copies.

## Legislative News

### Section 108

Section 108 is currently being considered for modification. A study group was created to prepare findings and make recommendations to the Librarian of Congress by mid-2006. For more information on this group visit:

<http://www.loc.gov/section108/>

**Some areas of potential modification include:**

- Provisions for preserving "born digital" documents & websites,
- New parameters for off-site access to digital replacement copies,
- Provisions for making replacement or preservation copies of items in "at risk" formats,
- Revisiting the scope of institutions eligible for Section 108 exceptions

## Orphan Works

"Orphan works" are copyrighted works for which an owner cannot be found. An Orphan Works bill is currently before Congress, which would allow for the use of these works should, after "due diligence," a copyright holder not be found. Should this become law, it would dramatically expand the range of works available for libraries to preserve and provide access to. For more information on Orphan Works legislation visit:

<http://www.copyright.gov/orphan/>