

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 established by the U.S. Constitution² and the Copyright Act, is a system of rights granted by law combined with limitations on those rights.

Copyright law was established to encourage authors, artists, and others to create and share their works by granting them specific exclusive rights in their works.³ Those rights are limited by certain exceptions like fair use or the term of copyright. These limitations are necessary to ensure a well-functioning copyright law that protects creators' rights while also preserving freedom of information and freedom of expression.

A shared purpose of copyright and libraries is to benefit the public through the creation and dissemination of information and creative works. In pursuit of this goal, copyright law should balance the public's need to access and use informative and creative works with the economic interests of right's holders.

Libraries represent the very best of this balance in U.S. copyright law. Libraries serve the economic purpose of copyright through billions of dollars spent on copyrighted materials for libraries (such as books, journals, motion pictures, art, and music). Libraries serve the "use and access" purpose of copyright by circulating billions of copyrighted items annually. Libraries are thus economic engines of both copyright law and knowledge distribution.

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 or other resources.

Copyright law provides a copyright holder with an exclusive legal right to make copies of 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 use⁴ 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. The public has unlimited use of the work when the copyright term expires.⁵

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 copies 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 law, including copyright 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 copyright law that 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 all copyright issues. Library workers should develop a solid understanding of the law, its purpose, and the details relevant to library activities. This includes the ability to read, understand, and analyze various copyright scenarios, including fair use and other copyright limitations, using both good judgment and risk mitigation practices.

Library workers should use these skills to identify their rights and the rights of their users. Further, they should be ready to perform outreach surrounding 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.

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¹ Copyright protects “original works of authorship fixed in any tangible medium of expression.” Copyright Act of 1976, 17 U.S.C. § 102 (2011). <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.

⁴ Fair use applies when considering these four factors: purpose and character of use, the nature of the copyrighted work, the amount and substantiality used, and potential effects on the market for the work. Copyright Act of 1976, 17 USC § 107.

⁵ Copyright Act of 1976, 17 U.S.C. § 109.