Copyright and Interlibrary Loan: What are the rules really?

Katie Fortney
@kfortney
CONTU Guidelines
Section 108
The Copyright Clearance Center
Fair Use
Is this going to hurt?
Notes

Request complies with

[ ] 108(g)(2) Guidelines (CC9)

[ ] other provision of copyright law (CCL)

Authorization

Date of request

Lending library phone

Lending library fax

Lending library email

Lending library electronic delivery address
CONTU Guidelines, aka “the Rule of 5”

For each calendar year

For each periodical

5 copies of an article or articles

From the past 5 years of issues
Publishers & Libraries

Congress

The Courts
The President

Congress

The Courts
Publishers & Libraries

Congress

The Courts
Simple copyright rules
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(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating 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 substitute for a subscription to or purchase of such work.
§ 105. Limitations on exclusive rights: Reproduction by libraries and archives(a)

(a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are open to the public, or (6) available only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(b) The rights of reproduction and distribution under this section apply to any copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if—

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives;

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives;

(c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price, and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

shall be considered obsolete if the machine offered in that format is no longer manufactured or readily available.

(2) The right of reproduction under this section is a nonexclusive commercial advantage;

(d) provided, that notice pursuant to regulations that do not apply to any subsequent use or performace is authorized under this section does not apply to any subsequent use or performance is authorized under this section.

shall be considered obsolete if the machine offered in that format is no longer manufactured or readily available.
§ 108. Limitations on exclusive rights: Reproduction by libraries and archives
(a) Except as otherwise provided in this section and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (1) and (2), or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers associated with the library or archives or with the institution of which it is a part, but also to other persons seeking a search in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or contains a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unprinted work duplicated solely for purposes of preservation and security, or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if—

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(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

(d) The right of reproduction under this section applies to a single copy or phonorecord of a work for which the copyright has expired, or for which the reproduction is made pursuant to a decision of the Copyright Royalty Board, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage, and

(2) the copy or phonorecord is not produced for sale or for any other purpose of direct or indirect commercial advantage, and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or contains a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(e) The rights of reproduction and distribution under this section apply to any such copies or phonorecords if the library or archives has, after making a reasonable effort, determined that the copy or phonorecord cannot be obtained from the copyright owner or its agent at a fair price, and

(1) the copy or phonorecord reproduced is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives;

(2) the copy or phonorecord is not produced for sale or for any other purpose of direct or indirect commercial advantage, and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or contains a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(f) The rights of reproduction and distribution under this section apply to the work in the field, if—

(1) the property of the user, and the library or archives has, after a reasonable effort, determined that the work is not available in the public domain, and

(2) the copy or phonorecord would not be used for any purpose other than for preservation and security, and

(3) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage.

(g) The rights of reproduction and distribution under this section apply to any such copies or phonorecords if the library or archives has, after making a reasonable effort, determined that the copy or phonorecord cannot be obtained from the copyright owner or its agent at a fair price, and

(1) the copy or phonorecord reproduced is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives;

(2) the copy or phonorecord is not produced for sale or for any other purpose of direct or indirect commercial advantage, and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or contains a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(h) The rights of reproduction and distribution under this section apply to any such copies or phonorecords if the library or archives has, after making a reasonable effort, determined that the copy or phonorecord cannot be obtained from the copyright owner or its agent at a fair price, and

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(2) the copy or phonorecord is not produced for sale or for any other purpose of direct or indirect commercial advantage, and

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(i) The rights of reproduction and distribution under this section apply to any such copies or phonorecords if the library or archives has, after making a reasonable effort, determined that the copy or phonorecord cannot be obtained from the copyright owner or its agent at a fair price, and

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(j) The rights of reproduction and distribution under this section apply to any such copies or phonorecords if the library or archives has, after making a reasonable effort, determined that the copy or phonorecord cannot be obtained from the copyright owner or its agent at a fair price, and

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(l) The rights of reproduction and distribution under this section apply to any such copies or phonorecords if the library or archives has, after making a reasonable effort, determined that the copy or phonorecord cannot be obtained from the copyright owner or its agent at a fair price, and

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108(d): Certain copies* of periodical articles for library users are okay...
(d) The rights of reproduction and distribution under this section apply to a copy, made from … a library or archives where the user makes his or her request or from that of another library … of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy … of a small part of any other copyrighted work, if— ...
108(d): Certain copies* of periodical articles for library users are okay…
(d) … if—

(1) the copy … becomes the property of the user, and the library or archives has had no notice that the copy … would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements [from] the Register of Copyrights...

[And 108(i) says you can’t do movies and stuff.]
108(d): Certain copies* of periodical articles for library users are okay...
108(d): Certain copies* of periodical articles for library users are okay…

108(g): Except when they’re not…
(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or
(2) engages in the **systematic reproduction or distribution** of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating 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 **substitute for a subscription to or purchase** of such work.
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108(g)(2)... and they’re not okay when they’re systematic. ILL isn’t systematic if it isn’t substituting for a purchase or subscription.
They're not... and they're not okay when they're not systematic if it isn't for a purchase or subscription.
periodical articles

And they’re not okay when they’re not...

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Authorization
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108(g)(2)... and they’re not okay when they’re systematic. ILL isn’t systematic if it isn’t substituting for a purchase or subscription.
the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.
the factors to be considered shall include—

(1) the **purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the **nature of the copyrighted work**;

(3) the **amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and

(4) the **effect of the use upon the potential market** for or value of the copyrighted work.
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Georgia State
(Cambridge University Press v. Patton)

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(4) the effect of the use upon the potential market for or value of the copyrighted work.
Sovereign Immunity
(for some of us)
504(c)(2)
Good Faith Fair Use Defense
(for everyone working in libraries)
Don’t get caught in a bad license.
Read the law. Read guidelines. 
(Know which is which.)

Evaluate YOUR local needs.

Get junk out of your licenses that takes away rights you have under the law.
Questions?

P.S. I made you a reading list. It’s at bit.ly/NWILL15copyright
Photos

[That picture of the photocopied hair and hands]. Title: Photocopy | Source: https://www.flickr.com/photos/jdickert/305722013/ | Author: ilovebutter | license: CC BY 2.0


[That picture of a small pile of money]. I took that.


All other photos © The Regents of the University of California. http://ucop.webdamdb.com/