COPYRIGHT:
Coloring within the lines with ease

Gail Perkins Barton
Interlibrary Loan Librarian
Auburn University Libraries
gailpbarton@auburn.edu

Janice Shipp
Library Assistant II-Interlibrary Loan
Savannah State University
Asa H. Gordon Library
shippj@savannahstate.edu
The information given in this presentation is not a source of legal advice or assistance. This presentation is intended to give basic information about copyright as it relates to ILL.

Please speak with your institution’s designated copyright officer and legal counsel about the copyright practices for your institution to insure that your institution is copyright compliant.
Coloring within the lines…

• Interlibrary Loan Code for the United States
• Copyright Law (CCL)
• Copyright Guidelines (CCG)
• “The Rule of Five”
• Options for access after “the Five”
• “Fair Use”
Section 109: First Sale Doctrine
"First Sale Doctrine” or “Right of First Sale”

Allows libraries to borrow & lend “returnables” via interlibrary loan that they purchased.

- Books/theses and dissertations
- DVDs
- CDs
- Whole issues or bound volumes journals

Please Note: No copyright compliance needs to be indicated when requesting and supplying “returnables.
Section 108: Reproduction by Libraries & Archives

- Grants specific exceptions and allow Libraries & Archives to:
  - Provide Interlibrary Loan Service.
  - Make copies related to Preservation efforts.
  - Replace items that are damaged or lost.
  - ...and other activities specific to library functions.
Section 108
of the U.S. Copyright Code

Reproductions by Libraries or Archives for their Users, for Replacement, or for Preservation

Directions:
- Use your mouse to turn the wheel chart to the desired section [click & pull]
- Read the text in the box [mouse-over to magnify]
- Clicking for details will bring up any other important qualifying criteria or explanatory notes
- Click "Create PDF" to print or save your results, including all criteria/notes and any details you'd like to add.

Section 108 of the U.S. Copyright Code allows libraries & archives, under certain circumstances, to make reproductions of copyrighted materials without the permission of the copyright holder. This simple tool can 1) help you determine if your reproduction is covered by Section 108 and 2) collect information to support your use of the exception.

 DISCLAIMER
2010 Michael Brewer & The ALA Office for Information Technology Policy
Section 108 of the U.S. Copyright Code

Reproductions by Libraries or Archives for their Users for Replacement

Portions for users

Other Criteria:
1. The copy becomes the property of the user and the library has no reason to believe that it will be used for anything other than research, scholarship and private study purposes
2. A warning of copyright is placed where orders are accepted
3. The copies are not made for direct or indirect commercial advantage
4. A copyright notice is included on the copies
5. The library or archives is open to the public or to unaffiliated specialized researchers
6. Any requests for the same content, or for content from the same title, are isolated and unrelated

Notes:
*This section does not apply to musical, pictorial, graphic or audiovisual works/motion pictures. Pictorial or graphic works published as illustrations, diagrams, etc. or similar adjuncts to these works are allowed as are audiovisual works dealing with news.

Other Information:
If your intended reproduction is not covered by Section 108, it could still be covered by fair use [Section 107]. Visit the Copyright Advisory Network at http://www.librarycopyright.net or consult your local copyright specialist for more information.

"Know your rights. These are your rights" - The Clash

create PDF
Section 108
of the U.S. Copyright Code

Reproductions by Libraries or Archives for their Users, for Replacement

Entire works for users

Other Criteria:
1. The copy becomes the property of the user and the library has no reason to believe that it will be used for anything other than research, scholarship and private study purposes
2. A warning of copyright is placed where orders are accepted
3. The cop[ies] are not made for direct or indirect commercial advantage
4. A copyright notice is included on the cop[ies]
5. The library or archives is open to the public or to unaffiliated specialized researchers
6. Any requests for the same material are isolated and unrelated

Notes:
*This section does not apply to musical, pictorial, graphic or audiovisual works/motion pictures. Pictorial or graphic works published as illustrations, diagrams or similar adjuncts to print works are allowed as are audiovisual works dealing with news. **"Fair price" is not defined in the law.

Other Information:
If your intended reproduction is not covered by Section 108, it could still be covered by fair use [Section 107]. Visit the Copyright Advisory Network at http://www.librarycopyright.net or consult your local copyright specialist for more information.

Close Window
Notice Warning Concerning Copyright Restrictions


The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.
In 1978 members of the National Commission on New Technology Uses of Copyrighted Works (CONTU) negotiated guidelines to provide clarification for Section 108(g)2, which is to prevent libraries from using ILL as a substitute for a “subscription to” or “purchase of” copyrighted works.


2. Attempts to mitigate the effects of library subscription patterns on publication market and sales.

3. “Rule of Five,” or sometimes, the “Suggestion of Five”:

4. During one calendar year, no more than five copies may be received from any one title whose publication date is within five years of the date of the patron’s request.
CONTU Guidelines - Borrowing Library

- “Rule of Five,” or “Suggestion of Five.”
  - May receive five articles per journal title, published within the last five calendar years from the exact date.

- EXCEPTIONS:
  - Title on order
  - Current subscription
  - Title is owned or missing

- Receiving six or more articles from a single journal title exceeds the “Suggestion of Five.”
CONTU Guidelines - Borrowing Library

Once you have exceeded the CONTU Guidelines you can:

- Refuse to request the copy and cancel the request.
- Pay the royalties or get articles through an authorized delivery service.
- Attempt to borrow or purchase the journal/book or start a subscription.
- Request permission from the copyright holder.
- Refer the library user to a nearby library that has the journal/book.
- Purchase a copy of the article from the publisher’s web site.
- Try to find it “free” online and provide patron with link.
- Evaluate for Fair Use.
Borrowing Library: CCG or CCL

The borrowing library must indicate that it has complied with CONTU guidelines or copyright law.

1. **CCG**: Complies with CONTU guidelines
   a. Complies with Section 108.
   b. Falls within “Suggestion of Five” - CONTU guidelines.

2. **CCL**: Complies with other provision of copyright law.
   a. Falls outside of Section 108 and “Suggestion of Five” - CONTU guidelines.
   b. Public Domain works

3. **Keep records** of all filled photocopy requests for three (3) years.
   a. ILL management systems (ILLiad, CLIO, etc.)
   b. Spreadsheet, database, rolodex card file, etc.
   c. OCLC Usage Statistics
OCLC Usage Statistics
(http://www.stats.oclc.org)
OCLC Worldshare Interlibrary Loan>Institution>Copyright Compliance Payment Report

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Lending Library : CCG or CCL

The lending library must:

1. Ensure that requests for copies are marked either:
   a. CCG: Complies with Section 108 or CONTU guidelines.
   b. CCL: Complies with copyright law.
2. If request does not indicate copyright compliance:
   a. Respond conditional – “lacks copyright.”
   b. Do not supply if the library does not indicate copyright compliance.
3. Before filling requests for articles from e-journals check your license agreement.
4. Include the copyright statement from the book/issue with copies provided.
   a. Use a stamp when there is no copyright statement in the book/issue.
   b. Example: “Notice: This material may be protected by Copyright Law (Title 17 U.S.C.”)
Interlibrary Loan Code & Supplement

Interlibrary Loan Code & Clarifying text from Explanatory Supplement

5.12 The supplying library may suspend service to a requesting library if it fails to comply with the provisions of this code.

From the Explanatory Supplement: Suspension of Service
A supplying library may suspend service to a requesting library following repeated or egregious breaches of this code. Examples of actions that may result in suspension include repeated failure to return loans in a timely manner, multiple lost or damaged items, allowing "library use only" items to leave the library, or failing to pay the supplier’s charges. A supplying library should not suspend service without first attempting to address the problem(s) with the requesting library.

Association of Research Libraries (ARL) presents…

Code of Best Practices in Fair Use for Academic and Research Libraries
http://www.arl.org/focus-areas/copyright-ip/fair-use/code-of-best-practices#.W6949xFRfIU

Developed in partnership with Center for Social Media and Washington College of Law at American University.

Supported by a grant from The Andrew W. Mellon Foundation
A broad, flexible doctrine that allows libraries to meet the mission in the digital age.

- Factor 1: The Purpose and Character of the Use
- Factor 2: The Nature of the Copyrighted Work
- Factor 3: The Amount or Substantiality of the Portion Used
- Factor 4: The Effect of the Use on the Potential Market for Value of the Work ["In Lieu of Purchase"]
Is it a fair use?
Reviewing the Four Factors

FAIR USE is an important right in our copyright law. It lets you use copyrighted works without permission. It serves the critical purpose of balancing the interests of rights holders and the public good, ensuring that the law’s purpose—to “promote the progress of science and the useful arts”—is achieved. But determining whether a use is fair requires a careful and honest balancing of four factors. We’ll ask you some questions to help guide you.

FIRST FACTOR
Purpose and Character of the Use
Think about what you WANT TO DO with the work

Is your USE non-commercial?
Non-commercial uses are those that do not bring the user commercial advantage, either directly, such as through sales or ticket revenue, or indirectly through increased attention, sales of other products that were influenced by the use, or cost avoidance. Non-commerciality favors a fair use finding.

Is your USE transformative?
Transformative uses do just that. They TRANSFORM the work into something different than it was, often with a new purpose. If a use results in something substantially new, it could be transformative. Transformative uses are more likely to be fair. Parodies, indexes, and appropriation art are examples of transformative works that courts have found to be fair under appropriate circumstances.

Transformativeness Isn’t Everything
Though courts have recently focused heavily on transformativeness as a key to fairness, non-transformative uses (those that can serve as a substitute for the original) can also be fair. The law explicitly calls out “teaching, including multiple copies for classroom use” as an example of a fair use. Non-transformative uses rely more on non-commerciality and the public benefit to the use than do transformative uses.
SECOND FACTOR

Nature of the copyrighted work
Think about the WORK, itself

Is it primarily factual?
A more creative work (e.g., a poem) has more, or “thicker,” copyright protection. “Thinner” copyright protection applies to works that have less creative expression (e.g., non-fiction works). The “thinner” the copyright protection of a work, the more likely that its use will be fair.

Is it published?
Traditionally, unpublished works have a thicker copyright, due to the special recognition that has long been given to the author’s right to first publication; however, courts also have recognized limitations on that right and acknowledged that use of unpublished works is not presumptively unfair.

Is that all there is?
The second factor could also take into account other elements, such as whether the work was intended for sale, is out-of-print or commercially unavailable, or is an “orphan work” (the author is unknown or can’t be found). So far, the courts have restricted discussions of the second factor to the factual/creative content and publication status, but there may be more to consider.
THIRD FACTOR
Amount and Substantiality of the portion used in relation to the copyrighted work as a whole

Think about HOW MUCH of the work you want to use.
Have you used only what you need in order to achieve your purpose? Can you achieve your purpose without it?

Courts not only look at how much of a copyrighted work you’ve used; they also look at how you’ve used it. Using only what is needed is favored, though that can be a substantial amount (even the entire work).

When a use is transformative, more latitude is given to justify the amount used. In non-transformative cases, the amount used is given more scrutiny, and courts are more concerned with whether your use might affect the market for the work.

There is no maximum!
Even the use of an entire work can be fair, especially if the use is transformative.

There is no minimum!
Even the use of a small amount of work can be unfair under some circumstances. You have to weight all the factors.
FOURTH FACTOR
Effect of the use upon the potential market for or value of the copyrighted work.

Think about the MARKETS for the copyrighted work
Could your use result in lost sales? What would happen if everyone used the work as you plan to?

One must consider existing and potential markets, including secondary markets such as translations, movie rights, or images on coffee mugs. Uses that may result in lost sales for established markets or that could, were the practice widespread, are less likely to be fair. This is especially true when the market for the work is fragile, such as works that are useful only to a small number of people, or when the market is very current, as in a recently released blockbuster movie. Uses that cause minimal harm, or that could generate transformative markets weigh more heavily in favor of fair use. Markets created by transformative uses can create a new market that is not controlled by the original rights holder.

RESOURCES FOR FURTHER STUDY
Columbia University Fair Use Checklist: http://copyright.columbia.edu/copyright/Authors-Guild-v.-Google%20(2nd%20Cir.,%202016)
Bill Graham Archives v. Dorling Kindersley Ltd., 448 F 3rd, 605 (2nd Cir, 2006)

MORE QUESTIONS? CONTACT US!
OITP’s Copyright Advisory Network offers a host of copyright help tools, and a forum where you can ask our experts your questions! Find us at www.librarycopyright.net

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Let’s Review Fair Use Factors 1, 2, 3, 4

• Factor 1: Purpose and Character of the Use
• Factor 2: Nature of the Copyrighted Work
• Factor 3: Amount or Substantiality of the Portion Used
• Factor 4: Effect of the Use on the Potential Market for Value of the Work
Resources


http://archive.cmsimpact.org/fair-use-and-research-librarians

Resources cont’d


Thank you!

May you color beautifully within the lines.

Are there questions?