



ASSOCIATION OF RESEARCH LIBRARIES®

## **Intellectual Property: An ARL Statement of Principles**

The primary objective of copyright is not to reward the labor of authors, but “[t]o promote the Progress of Science and useful Arts.” To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.

—Justice Sandra Day O’Connor

## **Affirming the Rights and Responsibilities of the Research Library Community in the Area of Copyright**

The genius of United States copyright law is that it balances the intellectual property rights of authors, publishers and copyright owners with society’s need for the free exchange of ideas. Taken together, fair use and other public rights to utilize copyrighted works, as established in the Copyright Act of 1976, constitute indispensable legal doctrines for promoting the dissemination of knowledge, while ensuring authors, publishers and copyright owners protection of their creative works and economic investments. The preservation and continuation of these balanced rights in an electronic environment are essential to the free flow of information and to the development of an information infrastructure that serves the public interest.

The U.S. and Canada have adopted very different approaches to intellectual property and copyright issues. For example, the Canadian Copyright Act does not contain the special considerations for library and educational use found in the U.S. Copyright Act of 1976, nor does it place federal or provincial government works in the public domain. Because of these differences, this statement addresses these issues from the U.S. perspective.

Each year, millions of researchers, students, and members of the public benefit from access to library collections—access that is supported by fair use, the right of libraries to reproduce materials under certain circumstances, and other related provisions of the copyright law. These provisions are limitations on the rights of copyright owners. The loss of these provisions in the emerging information infrastructure would greatly harm scholarship, teaching, and the operations of a free society. Fair use, the library and other relevant provisions must be preserved so that copyright ownership does not become an absolute monopoly over the distribution of and access to copyrighted information. In an electronic environment, this could mean that information resources are accessible only to those who are able to pay. The public information systems that libraries have developed would be replaced by commercial information vendors. In the age of information, a diminished scope of public rights would lead to an increasingly polarized society of information haves and have-nots.

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Librarians and educators have every reason to encourage full and good-faith copyright compliance. Technological advancement has made copyright infringement easier to accomplish, but no less illegal. Authors, publishers, copyright owners, and librarians are integral parts of the system of scholarly communication and publishers, authors, and copyright owners are the natural partners of education and research. The continuation of fair use, the library and other relevant provisions of the Copyright Act of 1976 applied in an electronic environment offer the prospect of better library services, better teaching, and better research, without impairing the market for copyrighted materials.

Although the emerging information infrastructure is raising awareness of technological changes that pose challenges to copyright systems, the potential impact of technology was anticipated by the passage of the Copyright Act of 1976. Congress expressly intended that the revised copyright law would apply to all types of media. With few exceptions, the protections and provisions of the copyright statute are as relevant and applicable to an electronic environment as they are to a print and broadcast environment.

The research library community believes that the development of an information infrastructure does not require a major revision of copyright law at this time. In general, the stakeholders affected by intellectual property law continue to be well served by the existing copyright statute. Just as was intended, the law's flexibility with regard to dissemination media fosters change and experimentation in educational and research communication. Some specific legislative changes may be needed to ensure that libraries are able to utilize the latest technology to provide continued and effective access to information and to preserve knowledge.

The Association of Research Libraries affirms the following intellectual property principles as they apply to librarians, teachers, researchers, and other information mediators and consumers. We join our national leaders in the determination to develop a policy framework for the emerging information infrastructure that strengthens the Constitutional purpose of copyright law to advance science and the useful arts.

## **Statement of Principles**

### ***Principle 1***

Copyright exists for the public good.

The United States copyright law is founded on a Constitutional provision intended to "promote the progress of Science and Useful Arts." The fundamental purpose of copyright is to serve the public interest by encouraging the advancement of knowledge through a system of exclusive but limited rights for authors and copyright owners. Fair use and other public rights to utilize copyrighted works, specifically and intentionally included in the 1976 revision of the law, provide the essential balance between the rights of authors, publishers and copyright owners, and society's interest in the free exchange of ideas.

### ***Principle 2***

Fair use, the library, and other relevant provisions of the Copyright Act of 1976 must be preserved in the development of the emerging information infrastructure.

Fair use and other relevant provisions are the essential means by which teachers teach, students learn, and researchers advance knowledge. The Copyright Act of 1976 defines intellectual property principles in a way that is independent of the form of publication or distribution. These provisions apply to all formats and are essential to modern library and information services.

**Principle 3**

As trustees of the rapidly growing record of human knowledge, libraries and archives must have full use of technology in order to preserve our heritage of scholarship and research.

Digital works of enduring value need to be preserved just as printed works have long been preserved by research libraries. Archival responsibilities have traditionally been undertaken by libraries because publishers and database producers have generally preserved particular knowledge only as long as it has economic value in the marketplace. As with other formats, the preservation of electronic information will be the responsibility of libraries and they will continue to perform this important societal role.

The policy framework of the emerging information infrastructure must provide for the archiving of electronic materials by research libraries to maintain permanent collections and environments for public access. Accomplishing this goal will require strengthening the library provisions of the copyright law to allow preservation activities which use electronic or other appropriate technologies as they emerge.

**Principle 4**

Licensing agreements should not be allowed to abrogate the fair use and library provisions authorized in the copyright statute.

Licenses may define the rights and privileges of the contracting parties differently than those defined by the Copyright Act of 1976. But licenses and contracts should not negate fair use and the public right to utilize copyrighted works. The research library community recognizes that there will be a variety of payment methods for the purchase of copyrighted materials in electronic formats, just as there are differing contractual agreements for acquiring printed information. The research library community is committed to working with publishers and database producers to develop model agreements that deploy licenses that do not contract around fair use or other copyright provisions.

**Principle 5**

Librarians and educators have an obligation to educate information users about their rights and responsibilities under intellectual property law.

Institutions of learning must continue to employ policies and procedures that encourage copyright compliance. For example, the Copyright Act of 1976 required the posting of copyright notices on photocopy equipment. This practice should be updated to other technologies which permit the duplication of copyrighted works.

**Principle 6**

Copyright should not be applied to U.S. government information.

The Copyright Act of 1976 prohibits copyright of U.S. government works. Only under selected circumstances has Congress granted limited exceptions to this policy. The Copyright Act of 1976 is one of several laws that support a fundamental principle of democratic government—that the open exchange of public information is essential to the functioning of a free and open society. U.S. government information should remain in the public domain free of copyright or copyright-like restrictions.

**Principle 7**

The information infrastructure must permit authors to be compensated for the success of their creative works, and copyright owners must have an opportunity for a fair return on their investment.

The research library community affirms that the distribution of copyrighted information which exceeds fair use and the enumerated limitations of the law require the permission of and/or compensation to authors, publishers and copyright owners. The continuation of library provisions and fair use in an electronic environment has far greater potential to promote the sale of copyrighted materials than to substitute for purchase. There is every reason to believe that the increasing demand for and use of copyrighted works fostered by new information technologies will result in the equivalent or even greater compensation for authors, publishers and copyright owners. The information infrastructure however, must be based on an underlying ethos of abundance rather than scarcity. With such an approach, authors, copyright owners, and publishers will have a full range of new opportunities in an electronic information environment and libraries will be able to perform their roles as partners in promoting science and the useful arts.

—Adopted by the ARL Membership, May 1994