

# **Library Rights under the US Copyright Act**

May 2022





## Library Rights under the US Copyright Act

Since the inception of copyright law in the US, libraries have enjoyed special rights to promote the progress of science and the useful arts. This page is meant to support libraries in proactively asserting these rights, particularly when signing contracts for digital works under copyright.

Below is an illustration of the rights that libraries rely on to fulfill their core missions. In addition to the fair use right codified in Section 107 and the first sale doctrine in Section 109, the US Congress has adopted specific statutory rights affirming the lawfulness of certain activities, particularly those related to accessibility, teaching, learning, and research.

***Fair use is a critical mechanism by which to ensure that these rights persist in the digital environment.***

For instance, in *Authors Guild v. HathiTrust*, the US Court of Appeals for the Second Circuit found that making digital copies of works to create a full-search database and provide access for the print disabled is a fair use. In the [decision](#), the court held that the use of digital copies to facilitate access for print-disabled persons is transformative.

The court continued, “Even if it were not, ‘[m]aking a copy of a copyrighted work for the convenience of a blind person is expressly identified by the House Committee Report as an example of a fair use, with no suggestion that anything more than a purpose to entertain or to inform need motivate the copying.’ ” Clarifying the relationship between fair use and other library rights, the court stated, “Here, fair use does not undermine Section 108, but rather supplements it.” In another example of fair use allowing rights to persist in the digital environment, the US Court of Appeals for the Eleventh Circuit [affirmed](#) that making electronic copies of course reserves available for education is a fair use. Going forward, libraries may argue that it is a fair use to stream a film in an educational context based on an analysis of the [four factors of fair use](#) that takes into account the educational purpose of streaming the film, as well as whether the content is available commercially.

**“In the United States...the fair use doctrine is regularly deployed to justify a wide range of conduct enabled by new technologies.”**

—Ruth Okediji, Harvard Law School



## §107

### **Fair use**

Fair use is a user's right that balances the exclusive monopoly of rights granted to copyright holders for a limited time. Determining whether a use is fair is particular to the context; fair use may apply to classroom teaching, scholarship, research, preservation, accessibility, and other library functions.

[www.law.cornell.edu/uscode/text/17/107](http://www.law.cornell.edu/uscode/text/17/107)



## §108

### **Preservation, replacement, interlibrary loan, copies for users** **Reproduction by libraries and archives**

Libraries and archives and their employees may make copies of works for preservation purposes, and may copy and distribute materials to support scholarship, including sharing works via interlibrary loan.

[www.law.cornell.edu/uscode/text/17/108](http://www.law.cornell.edu/uscode/text/17/108)



## §109

### **First sale doctrine**

**Effect of transfer of particular copy or phonorecord**

Owners of copies may sell or otherwise dispose of the possession of that copy or phonorecord. Libraries rely on this "first sale" doctrine to lend books and other materials. Fair use may be a mechanism for libraries to engage in 109-type activities in the digital era.

<https://www.law.cornell.edu/uscode/text/17/109>



## §110(1)

### **Classroom performances and displays**

**Exemption of certain performances and displays**

Performance or display of a work by instructor or pupils in the course of face-to-face teaching is not infringement.

[www.law.cornell.edu/uscode/text/17/110](http://www.law.cornell.edu/uscode/text/17/110)



## §110(2) **TEACH Act**

Exemption of certain performances and displays

Digital transmissions of works for educational purposes is not infringement in some circumstances.

[www.law.cornell.edu/uscode/text/17/110](http://www.law.cornell.edu/uscode/text/17/110)



## §121 **Reproduction for people with print disabilities**

Libraries, nonprofit educational institutions, and users may copy and distribute accessible works to blind people and people with print disabilities without asking publishers for permission.

[www.law.cornell.edu/uscode/text/17/121](http://www.law.cornell.edu/uscode/text/17/121)



## §121A **Import/export works in accessible formats**

Reproduction for blind or other people with disabilities in Marrakesh Treaty countries

Libraries and other authorized entities or users may import and export works in accessible formats from and to another country that is a party to the Marrakesh Treaty.

[www.law.cornell.edu/uscode/text/17/121A](http://www.law.cornell.edu/uscode/text/17/121A)



## §407 **Deposit of copies or phonorecords for Library of Congress**

Copyright owners must deposit two complete copies of the best edition of a work in the US Copyright Office for the use of the Library of Congress.

[www.law.cornell.edu/uscode/text/17/407](http://www.law.cornell.edu/uscode/text/17/407)

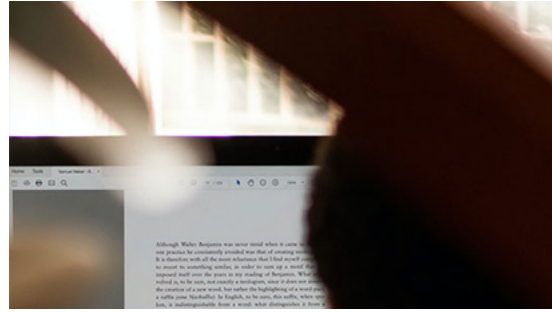




## §408 **Copyright registration**

Copyright owners may obtain registration of the copyright claim by depositing the material with the Copyright Office.

[www.law.cornell.edu/uscode/text/17/408](http://www.law.cornell.edu/uscode/text/17/408)



## §504 **Remedies for infringement for employees of libraries and archives**

Courts may not assess statutory damages if an alleged infringer is an employee or agent of a library or archive who believed that their use of the copyrighted work was a fair use under Section 107

[www.law.cornell.edu/uscode/text/17/504](http://www.law.cornell.edu/uscode/text/17/504)



## §1201(d) **Preview content before purchase**

A nonprofit library, archives, or educational institution may circumvent digital locks to determine whether to acquire a copy of that work.

[www.law.cornell.edu/uscode/text/17/1201](http://www.law.cornell.edu/uscode/text/17/1201)



## 1203(c)(5)(b) **Civil remedies for libraries, archives, or educational institutions**

A court may not issue damages if it finds that a nonprofit library, archives, or educational institution was not aware and had no reason to believe that its acts constituted a violation.

[www.law.cornell.edu/uscode/text/17/1203](http://www.law.cornell.edu/uscode/text/17/1203)

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