

## Guide to Copyright

### When does copyright apply?

Copyright applies on **any original work** (including dissertations and other unpublished work) as soon as it is affixed to a tangible medium (e.g., paper) (Title 17 of the United States Code, Section 101, 301). This protection is automatic, whether or not it is registered by the US Copyright Office (Section 301). The initial rights holder is the creator of a work, unless it was a work made for hire and governed by a contract. (Title 17 of the United States Code, Section 201).

### Length of copyright protections?

Copyright of unpublished works and dissertations lasts for the lifetime of the author plus seventy years. At that point, the work becomes part of the public domain. (Title 17 of the United States Code, Section 302).

### ALA Code of Ethics

Principle IV of the Code of Ethics of the American Library Association states that librarians “respect intellectual property rights and advocate balance between the interests of information users and rights holders.” (Last update: 2008).

### Fair Use

Any reproduction or use in a paper beyond brief excerpts requires permission of the rights holder (Title 17, Section 106). There are limited exceptions carved out for fair use (Section 107) and for libraries to make a reproduction for preservation and security purposes **only** (Section 108).

The fair use provision (Section 107) is based on five factors, listed below. The first four are explicitly outlined in Section 107 of Title 17 of the United States Code, the fifth introduced by the Supreme Court. Currently pending in United States Federal Court is known as colloquially as the *Georgia State Copyright Case*. It was instructed that each below factor be measured “holistically” and not be based on a mathematical formula.

1. **the purpose of your research.** Is it for nonprofit educational purposes? If you stand to benefit from the reproduction commercially, it may violate the fair use provision.
2. **the nature of the copyright work.** If it is unpublished, that will weigh against fair use.
3. **the amount in comparison of the work as a whole.** Reproducing an original work in its entirety in most cases would violate the fair use provision. **Formerly, 10% of a work was a guide, but should be taken into consideration with other factors.**
4. **the effect upon the market or value by use of the original work.** If the use of the work would make it harder for an item to be published by decreasing demand, for example, may violate the fair use provision (University of Michigan Research Guide for last four examples: <https://guides.lib.umich.edu/dissertationcopyright/otherscontent>).
5. **“Transformative Use.”** Is the use “transformative?” In other words, does it use a work in new ways (like parody) that add new expression, meaning, or message to the work? The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use. This principle is relatively new, from US Supreme Court case *Campbell v. Acuff-Rose Music* (involving rap group 2 Live Crew and Roy Orbison).

Section 108 of Title 17 is extremely limited: a library has a right to reproduce three copies of an **unpublished work for preservation purposes only with no commercial advantage with no off-premises access (Section 108b)**. For published works, libraries and archives are allowed 3 reproductions for preservation purposes only (Section 108c).