

Emerging Issues in Copyright and Intellectual Property for Public Libraries

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Background

Traditional library activities such as lending physical materials to library patrons, providing photocopiers for public use, and supporting interlibrary loans are specifically addressed in the Copyright Law of the United States of America (Title 17).



Section 109

establishes the right of libraries to lend copies of lawfully acquired copyrighted works without permission of the copyright owner.



Section 108

protects libraries from liability for copyright infringement as long as they post a copyright notice and library staff do not directly assist members of the public with making photocopies.



Section 108

also defines specific instances, such as interlibrary loan, in which libraries may make and share copies of copyrighted works for the purposes of preservation and access.



Section 121

allows agencies with “a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities” to create and distribute copies of copyrighted works in accordance with its guidelines.



Section 201

allows an “authorized entity” - as defined in Section 121 - to circumvent DRM or other technical barriers to using assistive technologies such as read aloud technology or screen-readers with e-books when those works have been lawfully acquired in their regular format.



Limitations on Liability

In exchange for following the guidelines set forth in Sections 108, 109, 121, and 201, libraries are generally exempted from liability for copyright violations that may be committed by library patrons.



Patron Liability

Library patrons, in contrast, must usually rely upon fair use justifications, as defined in Section 107, to avoid liability for copyright violations.



Changes to Library Services

Technological changes and innovations have broadened the scope of resources and services that public libraries provide. These new resources and services push the limits of the traditional exemptions for libraries within copyright law.



New Resources and Services

- Digitized collections made accessible to the public over the internet;
- Widespread availability of assistive technology to create accessible copies;
- New “copying” technologies such as 3D scanners and 3D printers in makerspaces.



Beyond the Scope

Section 108 states that libraries may only provide access to digital copies of library materials within the library itself, not online.



Beyond the Scope

Section 121 does not necessarily include all public libraries within the scope of its definition of an “authorized entity” that can make accessible copies of library materials.



Beyond the Scope

Section 108 limits the amount and type of “copying” assistance that library staff can provide to patrons in order to protect the library from liability.



Relying upon Fair Use

Since these limitations to copyright may not work, public libraries may need to rely upon the limitations described in Section 107 regarding fair use.



Fair Use (Section 107)

Fair use protects the use of copyrighted works for “purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.”



Evaluation of Four Factors

1. the purpose and character of the use;
2. the type of work used;
3. the amount and substantiality of the portion used;
4. the market effect of the use.



Fair Use Decisions

Recent court decisions indicate that fair use should not be interpreted according to purely quantitative rules such as the 10% rule or single-chapter rule.
(Cambridge University Press et al. v. Patton et al.)



Best Practices

Library-affiliated organizations have put together best practices and other guidelines to assist libraries with fair use judgments. One example is the *Code of Best Practices in Fair Use for Academic and Research Libraries*.



Relevant Principles

It is fair use for a library to use appropriate selections from collection materials to increase public awareness and engagement with these collections.



Relevant Principles

It is fair use to make digital copies of collection items that are likely to deteriorate, or that exist only in difficult-to-access formats, for purposes of preservation, and to make those copies available as surrogates for fragile or otherwise inaccessible materials.



Relevant Principles

It is fair use to create digital versions of a library's special collections and archives and to make these versions electronically accessible in appropriate contexts.



Relevant Principles

When fully accessible copies are not readily available from commercial sources, it is fair use for a library to (1) reproduce materials in its collection in accessible formats for the disabled upon request, and (2) retain those reproductions for use in meeting subsequent requests from qualified patrons.



Assistive Technology

functions by creating of copy of a work available in one format and transforming it into a new format that is compatible with technologies to magnify text, manipulate color schemes, or convert text to speech.



Digital Reproductions

Libraries that provide patrons with access to book scanners and document cameras expand the scope of their services for reproduction to the general patron population.



Copyright Awareness

As these assistive and reproducing technologies are introduced to the public, library employees are likely to receive requests for hands-on assistance with their use.



Copyright Awareness

To maintain consistency with established levels of service, library staff should do their best to teach patrons how to use the new equipment without performing the task themselves.



Copyright Awareness

Most patron uses of assistive technology and other reproducing equipment will fall within the scope of fair use because those copies are for personal, non-commercial uses (to the best of our knowledge).



Makerspace Issues

Public libraries are diving into the world of makerspaces by offering access to technologies such as 3D printing and 3D scanning.



3D Printers

process either designs created by the user or designs downloaded from a third party site to produce three-dimensional objects. These designs may be subject to copyright protections, in addition to patent and trademark law.



3D Scanners

allow a user to create a copy of almost any object and translate the information into a file that a 3D printer can use to re-create the object.



Scenario for Violation

A user scans a sculpture or the licensed replica of a sculpture and reproduces it on a 3-D printer. If this user only makes a personal copy, her use is most likely a fair use. If this user uploads the scan file to a publicly accessible website or decides to produce multiple physical copies of the sculpture for others, then she may be liable for a copyright violation.



Library Responses

- modifying acceptable computer and internet use policies to include makerspace equipment;
- posting copyright notices on or near all reproducing equipment (including other scanners);
- giving patrons the responsibility for “pushing the button.”



Copyright vs. Patent

Because patent law specifically addresses the creation of “useful objects”, it is often more applicable to situations that may arise in makerspaces than copyright.



Patent Review

- Patents must be filed with the USPTO, unlike copyright which requires no registration;
- Patent protection lasts 20 years, unlike copyright which can last 70 years after the death of the creator;
- Damages in patent lawsuits are limited to the proceeds generated by use of the patent;



Copyright vs. Patent

Because copyright is more restrictive in some ways, patent owners may seek protection for their designs under copyright law instead of patent protection.



User Generated Content

If library patrons use content hosting sites such as Thingiverse or YouTube, the terms of use for those sites will govern any take-down procedures initiated by copyright owners.



Handling Infringements

If libraries provide online space for users to store and share content they create, then they will need to follow the guidelines set forth in Section 512, the “Online Copyright Infringement Liability Limitation Act.”

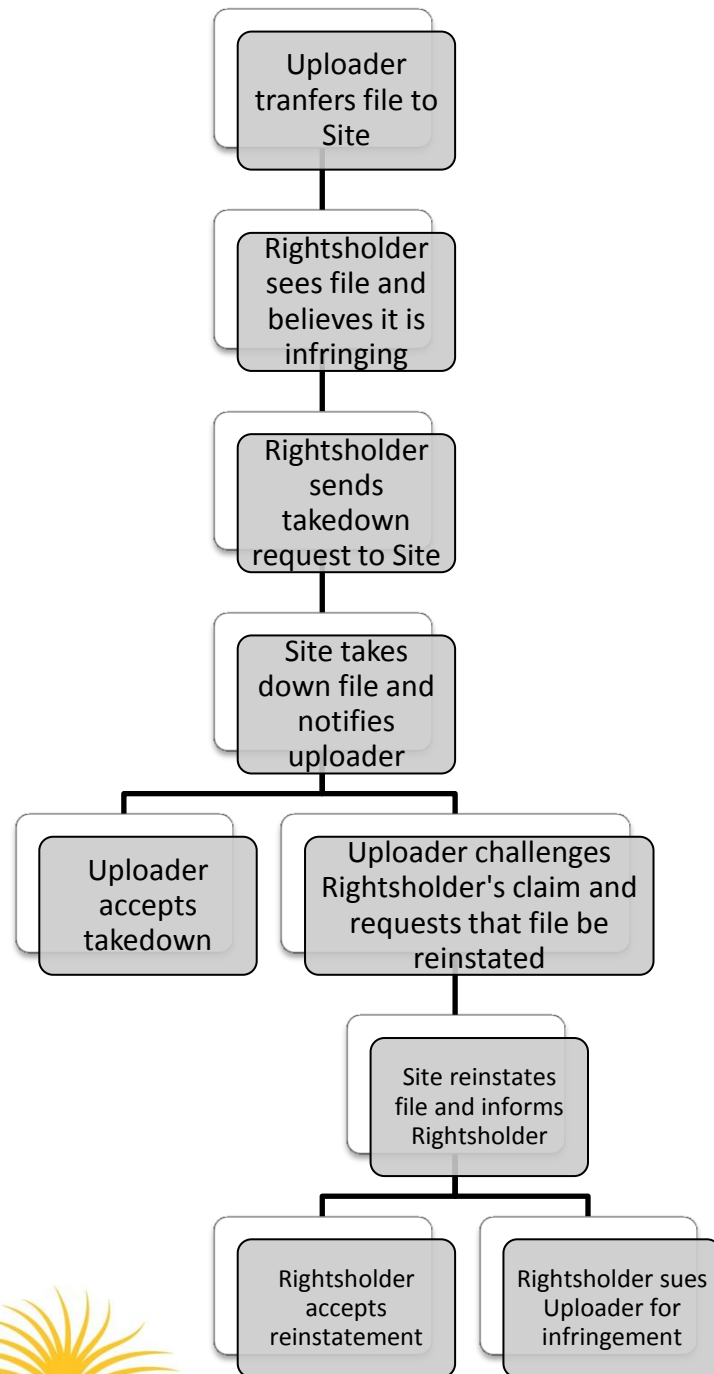


Handling Infringements

- Designate an Agent to receive claims of copyright infringement;
- Provide contact information for Agent on the service provider's website;
- Register the Agent with the Copyright Office;
- Act “expeditiously” to respond to copyright owner requests.



DMCA Takedown Process



Reference Questions

By engaging with patrons who may be interested in creating their own intellectual property, library staff may find themselves called upon to provide reference services regarding copyrights, patents, trademarks, and trade secrets.



Reference Questions

Handle these inquiries similarly to other legal reference questions: **show patrons appropriate resources rather than providing a direct answer.**



Appropriate Resources

- United States Copyright Office - <http://copyright.gov/>
- United States Patent and Trademark Office - <http://www.uspto.gov/>
- Nolo Legal Encyclopedia – Patent, Copyright & Trademark – <http://www.nolo.com/legal-encyclopedia/patent-copyright-trademark>
- Fair Use Evaluator - <http://librarycopyright.net/resources/fairuse/>



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Association of Research Libraries: Copyright and IP - <http://www.arl.org/focus-areas/copyright-ip>

Code of Best Practices for Fair Use in Academic and Research Libraries -

<http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>

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Questions?





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Thank you.

