

A Balancing Act: Copyright in the Electronic Age

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The legal framework for intellectual property is based on a provision in the U.S. Constitution that empowers Congress to grant limited rights to authors and creators in their intellectual works for the purpose of promoting science and the useful arts. The Copyright Act of 1976 was intended to be technologically neutral, and to strike the essential balance grounded in the Constitution between rewarding creators and promoting growth of new knowledge built upon the work of others. One of the roles of the federal government is to foster maximum creativity by maintaining this equilibrium.

The library community, which has long provided opportunities for the public to benefit from the lending and use of a wide variety of copyrighted and public domain materials, is especially concerned that this balance among legitimate interests be maintained in the digital environment as well as with respect to traditional formats.

To that end, representatives of several library associations drafted the following statement, "Fair Use in the Electronic Age: serving the Public Interest." The document is still a draft in progress, but the organizations listed at the end of the statement would welcome comments from participants in the intellectual property discussion of NTIA's virtual public conference.

Fair Use in the Electronic Age: Serving the Public Interest

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

Feist Publications, Inc. v. Rural Telephone Service Co. 499US340, 349 (1991)

The genius of United States copyright law is that, in conformance with its constitutional foundation, it balances the intellectual property interests 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 confirmed in the Copyright Act of 1976, constitute indispensable legal doctrines for promoting the dissemination of knowledge, while ensuring authors, publishers and copyright owners appropriate protection of their creative works and economic investments.

The fair use provision of the Copyright Act allows reproduction and other uses of copyrighted works under certain conditions for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research. Additional provisions of the law allow uses specifically permitted by Congress to further educational and library activities. The preservation and continuation of these balanced rights in an electronic environment as well as in traditional formats are essential to free flow of information and to the development of an information infrastructure that serves the public interest.

A long-standing principle is that copyright exists for the public good. The benefits of the new technologies should flow to the public as well as to copyright proprietors. As more information becomes available only in electronic formats, the public's legitimate right to use copyrighted material must be protected. In order for copyright to truly serve its purpose of "promoting progress," the public's right of fair use must continue in the electronic era, and these lawful uses of copyrighted works must be allowed without individual transaction fees.

Without infringing copyright, the public has the right to expect:

- to read, listen to, or view publicly marketed copyrighted material privately, on site or remotely
- to browse through publicly marketed copyrighted material
- to experiment with variations of copyrighted material for fair use purposes, while preserving the integrity of the original
- to make a first generation copy for personal use of an article or other small part of a publicly marketed copyrighted work or a work in a library's collection for such purposes as study, scholarship, or research; and
- to make transitory copies if ephemeral or incidental to a lawful use if retained only temporarily.

Without infringing copyright, nonprofit libraries and other Section 108 libraries, on behalf of their clientele should be able:

- to use electronic technologies to preserve copyrighted materials in their collections;
- to provide copyrighted materials as part of electronic reserve room service;
- to provide copyrighted materials as part of electronic interlibrary loan service; and
- to avoid liability, after posting appropriate copyright notices, for the unsupervised actions of their users

Users, libraries, and educational institutions have the a right to expect:

- that the terms of licenses will not restrict fair use of lawful library or educational uses;

- that U.S. government works and other public domain materials will be readily available without restrictions and at a government price not exceeding the marginal cost of dissemination; and
- that rights of use for nonprofit education apply in face-to-face teaching and in transmittal or broadcast to remote locations where educational institutions of the future must increasingly reach their students

This statement was developed by representatives of the following associations:

American Association of Law Libraries
American Library Association
Association of Academic Health Sciences Library Directors
Association of Research Libraries
Medical Library Association
Special Libraries Association

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