

Copyright Tips for Libraries



North Dakota
STATE LIBRARY

2009

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The information contained herein is for informational purposes only as a service to the public, and is not legal advice or a substitute for legal counsel.

UNITED STATES COPYRIGHT LAW

The United States Copyright Law, Title 17, United States Code, covers all forms of tangible expression (written on paper, recorded on tape, coded into a computer). Works do not have to have a notice of copyright to be considered protected by law. One should assume that all works created January 1, 1978, or later are copyrighted unless otherwise indicated. Because the law is subject to interpretation, many guidelines have been established to assist with interpretation.

RIGHTS OF THE COPYRIGHT OWNER (Title 17, Section 106)

The Copyright Law gives the creator of an original work or copyright owner exclusive rights of a copyrighted work, usually for a limited amount of time defined by law. After the designated time has elapsed the work passes into the public domain where it is free for anyone to use. Until then, the copyright holder has these six rights:

1. Reproduction.
2. Adaptation or creation of derivative works.
3. Distribution of copies or phonorecords by sale, gift, rental, lease, or lending.
4. Public performance of the work (includes dramatic works, dance, and motion pictures and other audiovisual works).
5. Public display (includes pictorial, graphic, sculptural works, and images from motion pictures and other audiovisual works).
6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

The copyright owner may sell or license any or all of these rights. Copyright is violated if any one of the six exclusive rights is violated.

FAIR USE EXEMPTION (Title 17, Section 107)

The “fair use exemption” provides several instances in which reproduction of copyrighted items is permissible. The law states that “reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”

In determining whether the use of a copyrighted use is a “fair” use, ALL FOUR of the following factors are considered:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work.
3. The amount of substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for or value of the copyrighted work.

REPRODUCTION BY LIBRARIES AND ARCHIVES (Title 17, Section 108)

This section provides special copying rights for libraries that are open to the public or whose collections are available to outside researchers. In addition, copying must not be done for commercial advantage, and copies must bear notice of copyright.

This section allows these libraries to, among other things:

- * Copy a published work solely for the purpose of replacing a copy that is damaged; deteriorating; lost; stolen; if the library has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; or if the existing format in which the work is stored has become obsolete.
- * Provide a library user with a photocopy on condition the copy becomes the property of the library user and the library has no reason to suspect that the copy will be used for purposes other than individual research, scholarship, or private study. Additionally, the library must prominently display, where requests are accepted, and include on order forms a warning of copyright in accordance with the requirements of the Register of Copyrights. (see “Copyright Warning Notices” p. 5)
- * Provide unsupervised reproducing equipment without subjecting the library or its employees to copyright infringement provided that a notice is displayed prominently informing users that making copies is subject to Copyright Law. (see “Copyright Warning Notices” p. 5)
- * Participate in interlibrary loan arrangements as long as “aggregate quantities” of articles or items received do not substitute for a periodical subscription or purchase of a work.

This section does not apply to a musical work, a pictorial, graphic, or sculptural work, or a motion picture or other audiovisual work other than audiovisual work dealing with news.

CONTU Copyright Guidelines

Libraries are allowed to participate in interlibrary loan arrangements as long as “aggregate quantities” of articles or items received do not substitute for a periodical subscription. Because of the law’s lack of specificity, the National Commission on New Technological Uses of Copyright Works (CONTU) developed a set of guidelines to provide specific quantitative guidelines for interlibrary loan periodical photocopying.

The two copyright compliances are CCG or CCL.

CCG—CONTU Copyright Guidelines

- * During a calendar year, a borrowing library may receive five articles from any one periodical title. Those articles must be less than five years old at the time of request. Requests for articles meeting these criteria must indicate CCG compliance on request forms.
- * Requesting libraries must keep records to ensure no more than five articles are ordered from the previous five years of any one title during a calendar year.
- * Requesting libraries must keep records for the current calendar year plus three full previous years.
- * Libraries may request articles from periodical titles which are on order, are missing, or at the bindery at the time of request. Libraries should indicate CCG compliance on request forms, but do not need to count these as one of the five requests for the title.
- * Lending libraries should stamp the photocopy: “Notice: This material may be protected by Copyright Law (Title 17, U.S. Code)” or make a photocopy of copyright notice with the article.

CCL – CONTU Copyright Law

- * Requests for articles over five years old are not covered by the above guidelines and may be considered “fair use.” For articles over five years old, mark CCL on the ILL request form. You are not required to keep records on CCL requests, although you may wish to note the title’s use for collection development purposes.

SAMPLE CONTU PERIODICAL TRACKING CARD

TITLE: Organic Gardening

JANUARY-DECEMBER, 2009

DATE	ISSUE ORDERED	CCG	CCL
2/12/09	Dec. 2007	X	
3/27/09	May 2004	X	
3/31/09	July 2006	X	
4/15/09	Jan. 1990		X
9/27/09	Oct. 2008	X	
9/30/09	Aug. 2003		X
10/3/09	Jan. 2005	X	

Because five requests for articles less than five years old have been made during calendar year 2001, additional requests for articles less than five years old cannot be requested via interlibrary loan under the CONTU guidelines (CCG).

COPYRIGHT WARNING NOTICES

Copyright warning notices must appear on both order forms and be prominently displayed wherever ILL orders are taken.

<p style="text-align: center;">NOTICE</p> <p style="text-align: center;">WARNING CONCERNING COPYRIGHT RESTRICTIONS</p> <p>The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.</p> <p>Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.</p> <p>This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of the copyright law.</p>

The notice on display where ILL requests are taken must be printed on heavy paper in type no less than 18-point in size. These are commercially available.

The notice on the order form cannot be in type any smaller than that used throughout the form and no less than 8-point type.

OPTIONS AVAILABLE WHEN LIMIT OF FIVE IS EXCEEDED

1. Borrow individual issues of volumes from a willing lender.
2. Purchase a copy of the requested article from a document supplier that pays royalties on each journal article supplied.
3. Join the Copyright Clearance Center (CCC). CCC does not supply copies of articles but collects fees from users and distributes them to copyright owners. Order the article via interlibrary loan.
4. Write to the copyright holder for permission.
5. Purchase the issue from the publisher or from a source of back issues.
6. Place a subscription for the journal. The CONTU guidelines allow libraries to request articles if a subscription has been placed for the title at the time of the request.
7. Identify libraries in the area who have the title and refer the patron to that library.
8. Place an interlibrary loan request to the North Dakota State Library indicating that you are willing to pay a \$15.00 fee. The North Dakota State Library will secure the article for you from a vendor.

GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS

Guidelines also exist to assist in defining “fair use” in an educational setting. These guidelines describe what a **teacher** can copy or have copied for purposes of research, teaching, or preparation for teaching, as well as what a **teacher** may copy or have copied for classroom distribution. For additional information on these guidelines, consult [Copyright for School Libraries: A Practical Guide](#) by Carol Mann Simpson (Linworth Publishing, 2005).

INTERNET RESOURCES

Assume that all information on the internet is a “work of authorship” and is copyrighted. Almost everything created privately and originally after April 1, 1989 is copyrighted and protected whether or not it has a notice. Assume the information is copyrighted unless the author has specified otherwise. This protection applies to pictures and music as well. Apply the same rules to information in an online setting as you would if the material were in its traditional print form.

PUBLIC DOMAIN

This term applies to materials that are not owned or controlled by anyone. In essence items in the public domain are property of the public and can be freely used for any purpose by anyone. All copyrighted items are protected for a finite amount of time. When that time is expired the item falls into the public domain. For an excellent chart on public domain see “When US Works Pass into the Public Domain” by Lolly Gasaway at <http://www.unc.edu/~unclng/public-d.htm>. An item might also fall into public domain if an author expressly releases it or if the work is created by the US Government.

GOVERNMENT RESOURCES

However, not all government publications are in the public domain. The copyright rules governing public domain material apply only to federal publications, not state and local documents. In addition, copyrighted contributions contained within federal government works may be protected. Contact the authoring agency for more information on a specific publication.

CREATIVE COMMONS

This is a non-profit organization created to expand the range of creative works available for others to build upon legally and to share. A Creative Commons license allows the copyright holder to express which rights they reserve and which ones they waive for the benefit of others.

TEACH ACT

The Technology, Education and Copyright Harmonization (TEACH) Act aims to be an extension of Fair Use. The TEACH Act is used by educators because of the growth of distance education. Fair Use only covers face to face classroom situations. The TEACH Act clarifies what is allowable and what is required for an educational setting to be compliant with copyright law in regards to an online learning environment.

COPYRIGHT POLICY

The purpose of a copyright policy is to state the institution's intention to abide by the law. Libraries should consider developing a copyright policy. The copyright policy should:

- * State the institution's intention to abide by the letter and spirit of the Copyright Law and the associated congressional guidelines.
- * Cover all types of materials including print, non-print, graphics, and computer software.
- * State that liability for noncompliance with copyright rests with the individual using the work.
- * Require training for all personnel who might have need to make copies.
- * Require people using materials to produce, on request, copyright justification for its use.

STATUTORY DAMAGES (Title 17, Section 504)

The copyright infringer is liable for either the copyright owner's actual damages and any additional profits of the infringer, or statutory damages as follows:

According to Title 17, Section 504 of the U.S. Code, the copyright owner may recover not less than \$750 or more than \$30,000 as the court considers just. If the court finds that infringement was committed willfully, the court may increase the award to a sum of not more than \$150,000. If the court finds the infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court may reduce the award to not less than \$200.

SELECTED RESOURCES

Internet Resources:

Copyright Advisory Network. American Library Assoc. librarycopyright.net.

Copyright & Fair Use. Stanford University Libraries. <http://fairuse.stanford.edu/>.

Electronic Frontier Foundation. www.eff.org.
Nonprofit organization that works to defend digital rights.

The TEACH Toolkit. North Carolina State University. <http://www.lib.ncsu.edu/scc/legislative/teachkit/overview.html>

US Code collection. Title 17 — Copyrights. Cornell University Law School.
www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17.html.
Ability to search and has RSS to keep up on changes. Easy to use.

Books:

Bruwelheide, Janis H. The Copyright Primer for Librarians and Educators. Chicago: American Library Association; Washington, D.C.: National Education Association, 1998. (0810618702)

In question and answer format, this book provides explanations and guidance on the intent of the law. Contains sections on electronic environment, multimedia, and distance education concerns. The media is a little dated as it only offers three pages on the internet.

“Copyright in the Interlibrary Loan Department.” Interlibrary Loan and Document Delivery: Best Practices for Operating and Managing Interlibrary Loan Services in All Libraries. Ed. Lee Andrew Hilyer. Binghamton NY: Haworth Information Press, 2006. (0789031280)

An excellent start for the new librarian or a refresher for others as it covers all aspects of ILL.

Crews, Kenneth. Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions. Chicago: American Library Association; Washington, D.C., 2006. (083890906X)

This easy to read book covers 18 areas of copyright with key points. Crews covers basic copyright definitions and key exceptions as well as Fair Use, the DMCA and other items of interest to libraries and illustrates it all with case law.

Fishman, Stephen. The Copyright Handbook: how to protect and use written works. 9th edition. Berkeley, CA: Nolo, 2006. (9781413305333)

This book shows the steps that writers need to take to protect their work. It includes information and the forms needed to protect all types of written expression.

Gaines, Ann Graham. Don't Steal Copyrighted Stuff! Enslow Publishers; Berkeley Heights, NJ, 2008. (9780766028616)

Good book for teens and teachers that focuses on common mistakes people make when using material that is copyrighted. Discover how to fairly use media, proper citation credit and how to protect your own rights

Russell, Carrie. Complete Copyright: an everyday guide for librarians. Chicago: American Library Association, 2004. (0838935435)

Addresses complex copyright issues using real-life library scenarios to help the reader to develop a copyright approach from a library perspective. Includes DMCA and TEACH act.

Simpson, Carol Mann. Copyright for School Libraries: A Practical Guide. Worthington, Ohio: Linworth Publishing, 2005. (1586831925)

Includes information on print, audiovisual, and computer software. Provides sample permission letters, copyright do's and don'ts, and sample copyright policy.

Vleck, Charles W. Adoptable Copyright Policy: Copyright Policy and Manuals Designed for Adoption by Schools, Colleges, and Universities. Washington, D.C.: Copyright Information Service, 1992. (0892400641)

Written in three parts to help educational institutions to meet the responsibilities of US copyright law. Included are real policies that can be modified for institutional use.

WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN
By Lolly Gasaway University of North Carolina

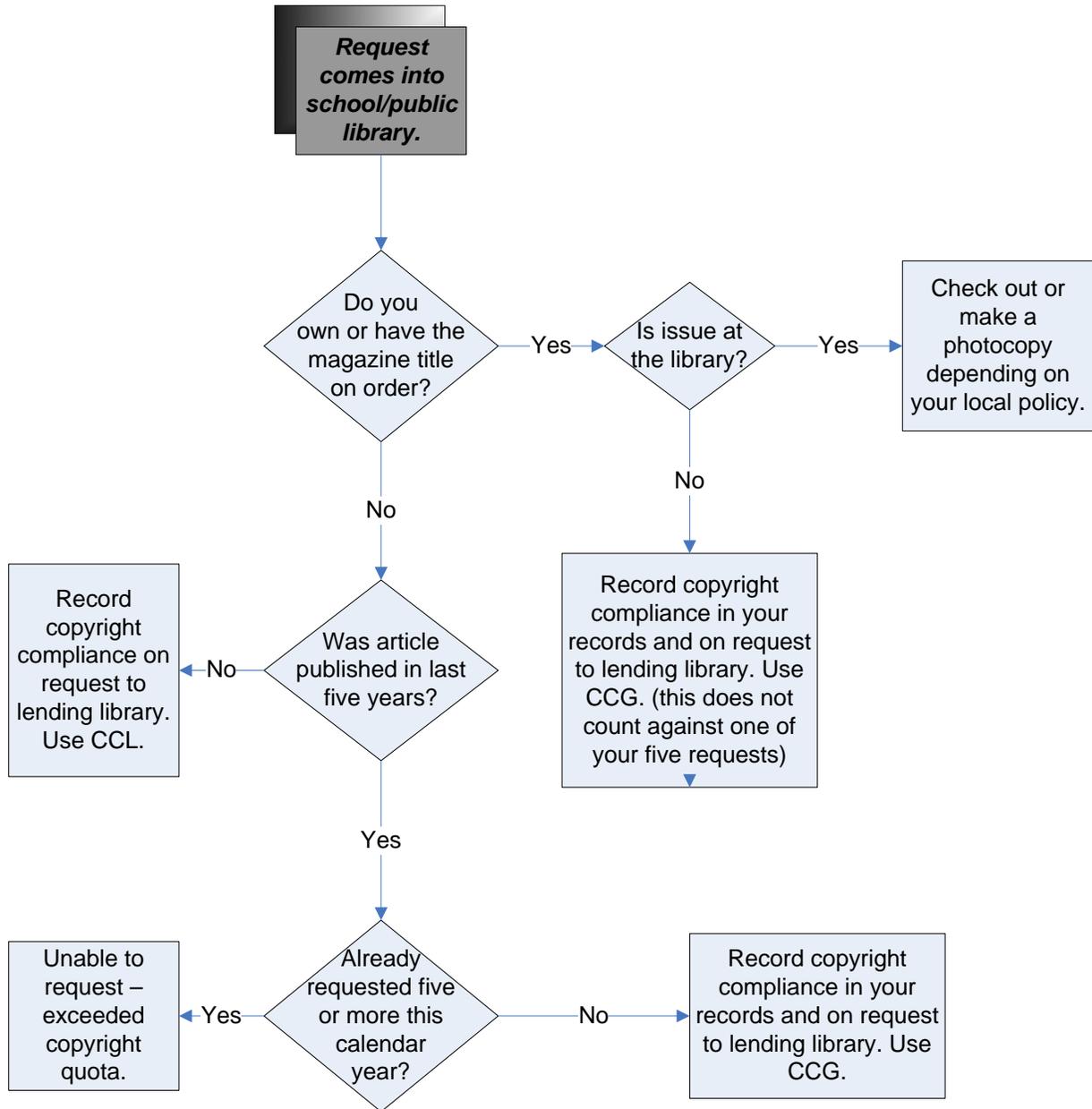
DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

1 Term of joint works is measured by life of the longest-lived author.

2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405.

COPYRIGHT COMPLIANCE FLOWCHART



North Dakota State Library

Administration701-328-2492
Information Requests.....701-328-4622
Toll-Free 800-472-2104
Disability Services..... 701-328-1408
Toll-Free 800-843-9948
TDD.....701-328-4923
Toll-Free 800-892-8622
Website www.library.nd.gov

**Open Monday-Friday
8:00 a.m. - 5:00 p.m.**

**Doris Ott
State Librarian**

North Dakota State Library, a division of the
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Dr. Wayne G. Sanstead, State Superintendent

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