

*San Francisco Daily Journal, 4/28/2008*  
*Posted with permission of the Daily Journal.*  
*This file cannot be downloaded from this page.*

## Copyright for the Law Librarian

by Lori A. Ruth, Winston & Strawn

How does U.S. copyright law affect the law librarian? Some questions that may come to mind are: Does section 108 apply to my firm library? Does my library or law firm have a copyright policy? Is this state statute I found on the web really protected by copyright? I thought all government works were in the public domain! What exactly does *fair use* mean? These are all questions that law librarians may ask themselves. Below are highlights of U.S. copyright law with which law librarians should be familiar and some resources for further exploration.

### What Is Copyright?

Section 102(b) of title 17 of the U.S. Code sets forth what copyright protects: "original works of authorship fixed in any tangible medium of expression."<sup>1</sup> Here, "original" means with a "minimum of creativity." "Tangible medium" means in a format that can be "perceived or communicated."<sup>2</sup> Such works can include scribbles on a piece of paper, an eight-volume treatise, or the content of a website. For works published after 1978, copyright protection lasts for the duration of the author's life plus seventy years.<sup>3</sup> However, the situation is a bit more complicated for works created between 1923 and 1978. For help determining the copyright of a work during this period, consult Stanford's "Copyright Renewal Search."<sup>4</sup>

### Public Domain

All works published before 1923 have fallen into the public domain and are without copyright protection. According to section 105 of the title 17, works of the federal government are in the public domain.<sup>5</sup> However, if a work was produced by a nongovernmental author for the U.S. government, that author's work could be protected by copyright.<sup>6</sup> Always check with the agency or author if unsure. In addition, section 105 only applies to the works of the U.S. government, and not to state and local governments. This holds true for the states of California<sup>7</sup>, Oregon<sup>8</sup>, Wyoming<sup>9</sup>, and most others. Always read copyright notices or disclaimers carefully. Most emphatically prohibit commercial use.<sup>10</sup> The California State Legislature "Conditions of Use" policy states: "Some of the information presented on this web site may be protected by copyright. Permission to use that material must be obtained in advance from the California State Assembly, the California State Senate, or the Legislative Counsel Bureau, as applicable."<sup>11</sup> The state of California did come

---

<sup>1</sup> 17 U.S.C. § 102(b).

<sup>2</sup> Crews, K. D. *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions* at 3 (2<sup>d</sup> ed. 2006).

<sup>3</sup> 17 U.S.C. § 302.

<sup>4</sup> <http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>.

<sup>5</sup> *Id.* § 105.

<sup>6</sup> Crews, *supra* n.2.

<sup>7</sup> <http://www.leginfo.ca.gov>.

<sup>8</sup> <http://www.leg.state.or.us/ors>.

<sup>9</sup> <http://legisweb.state.wy.us/titles/statutes.htm>.

<sup>10</sup> *Se, e.g.*, Washington's disclaimer at <http://www.leg.wa.gov/Legislature/disclaimer>.

<sup>11</sup> [http://www.legislature.ca.gov/footer/use\\_privacy\\_policy.html#f](http://www.legislature.ca.gov/footer/use_privacy_policy.html#f).

close to waiving its intellectual property rights; California Assembly Bill 1616 (2003-2004) would have prohibited the state from asserting its intellectual property rights.<sup>12</sup> Unfortunately, this bill failed to pass.

#### Fair Use

Section 107 of title 17 ("Fair Use statute") outlines fair use as a limitation on exclusive rights of copyright holders and the factors to be considered when making a fair use assessment. Fair use of a copyrighted work, as defined in the statute, usually applies to educational, research, news reporting, and literary criticism -- activities that have some kind of social benefit.<sup>13</sup> The five factors for making a fair use assessment, as outlined in the statute, include: the purpose of the use of the copyrighted work, the nature of the work, the amount used, and the effect on the market. There are many fair use assessment checklists available. Kenneth Crews's *Copyright Law for Librarians and Educators* (2006) contains a very good fair use checklist. Cornell University's "Checklist for Conducting a Fair Use Analysis Before Using Copyrighted Materials" is also very good.<sup>14</sup> For more general information about fair use and copyright in general, consult Stanford University's Copyright and Fair Use Center website.<sup>15</sup>

#### Section 108

Section 108 of title 17 contains exceptions applicable only to libraries and archives. This provision of the federal copyright statute, along with the Fair Use statute, limits the rights of the copyright holder. However, is your law library eligible under section 108? According to the statute, any library that is open to the public or to others "doing research in a specialized field,"<sup>16</sup> is eligible. This requirement would apply to most public and academic law libraries, but not necessarily to private law firm libraries. In addition to this requirement, libraries must make copies "without any purpose of direct or indirect commercial advantage,"<sup>17</sup> and the reproduced works must include a copyright notice.<sup>18</sup> Section 108 allows eligible libraries to make copies for private study, preservation, and interlibrary loan, under conditions set forth in the statute. Most importantly, section 108 protects eligible libraries from infringement when unsupervised patrons make copies at the library, as long as a copyright notice is present.<sup>19</sup> However, developments in digital technologies have called the applicability of section 108 to such technologies into question. Section 108 was largely intended to deal with photocopying of copyrighted works. The Section 108 Study Group, which was formed by the Library of Congress National Digital Information Infrastructure and Preservation Program (NDIIPP) in cooperation with the U.S. Copyright Office to look into this issue, recently issued a report on their recommendations.<sup>20</sup>

#### Additional Copyright Resources for the Law Librarian

U.S. Copyright Office - [www.copyright.gov](http://www.copyright.gov). The U.S. Copyright Office produces publications called *Circulars* that contain information on copyright topics, <http://www.copyright.gov/circs/>. Circular 21, "Reproductions of Copyrighted Works by Educators and Librarians," is particularly useful.

---

<sup>12</sup> *Id.*

<sup>13</sup> 17 U.S.C. § 107; Crews, *supra* n.2, at 39.

<sup>14</sup> [http://www.copyright.cornell.edu/policy/Fair\\_Use\\_Checklist.pdf](http://www.copyright.cornell.edu/policy/Fair_Use_Checklist.pdf).

<sup>15</sup> <http://fairuse.stanford.edu/index.html>.

<sup>16</sup> 17 U.S.C. § 108(a)(2).

<sup>17</sup> *Id.* § 108(a)(1).

<sup>18</sup> *Id.* § 108(a)(3).

<sup>19</sup> *Id.* § 108(f)(1).

<sup>20</sup> <http://www.section108.gov>.

BeSpecific's Copyright News Archive -

[http://www.bespacific.com/mt/archives/cat\\_copyright.html](http://www.bespacific.com/mt/archives/cat_copyright.html).

The American Association of Law Libraries (AALL) offers a model copyright policy for law firms available on their website, [http://www.aallnet.org/about/model\\_law.asp](http://www.aallnet.org/about/model_law.asp), as well as their own association policy, "AALL Guidelines on the Fair Use of Copyrighted Works by Law Libraries," [http://www.aallnet.org/about/policy\\_fair.asp](http://www.aallnet.org/about/policy_fair.asp).

Copyright Legislative Watch, AALL Washington Affairs page -

[http://www.aallnet.org/about/policy\\_fair.asp](http://www.aallnet.org/about/policy_fair.asp).

Special Library Association Legislative Action Center - [www.sla.org/act](http://www.sla.org/act).

Library Copyright Alliance - <http://www.librarycopyrightalliance.org>.