Crafting a Fair Use Policy in Your Library

2018 Utah Library Association Conference
ULA Copyright Education Committee

- Allyson Mower (Chair), University of Utah
- Elizabeth Miles (Vice-Chair), LDS Church History Library
- Rick Anderson, University of Utah
- Jessica Breiman, University of Utah
- Rita Christen, Orem Public Library
- Rebekah Cummings, University of Utah
- Liz Sollis, Salt Lake County Library
- Shawn Steidinger, Primary Children’s Medical Library
- Becky Thoms, Utah State University
- Anna Zanarini, Salt Lake County Library
Core Rights

Utah Library Association
Copyright Education Committee
What is copyright?
“promote the progress of science and the useful arts”

Intellectual property:

• Trademark
• Patent
• Copyright
Copyright protects works that are

- Original
- Creative
- Fixed medium

Literary, musical, dramatic, choreographic, pictorial, sculptural, audiovisual, sound recordings, and architectural works
Not:

- ideas
- processes
- concepts
Is this protectable by copyright?
Abstract

Nowadays Web 2.0 applications allow anyone to create, share and edit on-line content, but accessibility and usability issues still exist. For instance, Wikipedia presents many difficulties for blind users, especially when they want to write or edit articles. In a previous stage of our study we proposed and discussed how to apply the W3C ARIA suite to simplify the Wikipedia editing page when interacting via screen reader. In this paper we present the results of a user test involving totally blind end-users as they interacted with both the original and the modified Wikipedia editing pages. Specifically, the purpose of the test was to compare the editing and formatting process for original and ARIA-implemented Wikipedia user interfaces, and to evaluate the improvements.

Keywords WAI-ARIA - Wikipedia - user testing - accessibility - usability - blind users

Enhancing Wikipedia Editing with WAI-ARIA

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Abstract. Nowadays Web 2.0 applications allow anyone to create, share and edit online content, but accessibility and usability issues still exist. For instance, Wikipedia presents many difficulties for blind users, especially when they want to write or edit articles. In a previous stage of our study we proposed and discussed how to apply the W3C ARIA suite to simplify the Wikipedia editing page when interacting via screen reader. In this paper we present the results of a user test involving totally blind end-users as they interacted with both the original and the modified Wikipedia editing pages. Specifically, the purpose of the test was to compare the editing and formatting process for original and ARIA-implemented Wikipedia user interfaces, and to evaluate the improvements.
Secretary of State,
Salt Lake City, Utah.

Dear Sir: Inclosed please find an impression of my present official seal. The first I made (an impression of which you already have) was designed for use in all the states and territories which do not require a special seal with name of state and territory embossed therein; but I found it inconvenient and troublesome to write the name of state and territory therein—also impracticable for impressions on wax envelopes. Before using impressions inclosed, I send it to you for filing and for reference in your office and for your approval, which indicates your return seal and oblige,

Respectfully yours,

Joseph T. Harrison

Courtesy of Utah Division of Archives and Records Service
e = mc^2
POST CARD

LAS CRUCES, NEW MEXICO

POST OFFICE DEPT. 30
DESERT RADIUM

101—THE ORGAN MOUNTAINS

Seated from the Albuquerque to El Paso Highway these towering pinnacles of rock resemble a daily color symphony, from gray in the early morning thru blue, beautiful shades of rose to deep purples of sunset.

POST OFFICE DEPT. 30

Las Cruces, N. Mex.

Buenas Noches,

Darwin.

Dear Darwin,

Yours sincerely,

Mrs. J. P. Docherty

Carlbad Caverns

Las Cruces, N. Mex.

Postcard

Thanks for the postcard. I'm looking forward to seeing your photos from the trip.

Bob

Las Cruces, N. Mex.

Buenas Noches,

Darwin.

Postcard

Have a safe trip home.

Bob

Las Cruces, N. Mex.

Buenas Noches,

Darwin.

Mrs. J. P. Docherty

Carlbad Caverns

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Las Cruces, N. Mex.
Compilations?

Yes, for the parts created by or licensed to the author.
Copyright = bundle of rights

- **Reproduce** the work
- **Make derivative** works
- **Distribute copies** by sale, rental, lease, or lending
- **Perform** the work
- **Display** the work
- **Digitally transmit** audio
Reproductions or copies of a work
Make derivative works
Public Display

Harry Potter and the Cursed Child
Parts One and Two
Well, what can I do???
When are works NOT protectable by copyright?
Public Domain

1. The copyright has expired.

2. The copyright owner published the work 1923-1977 without a copyright notice.

3. The copyright owner failed to renew copyright status on works published between 1923-1963.

4. The copyright owner dedicates his/her work to the public domain.

5. The work was born in the public domain.
1. The copyright has expired

- Published works before 1923
- Unpublished works – Life of the author + 70 years.
- Unpublished work, no author/death date unknown, 120 years from date of creation.

Diary of Bathsheba W. Bigler Smith (1822-1910), 1849
Anonymous letter, 1770’s

Dracula – published 1897
2. The copyright owner published the work 1923-1977 without a copyright notice

3. The copyright owner failed to renew copyright status

- Between 1923-1963, rights holders had to renew their copyright status after a certain amount of years.

- Check online with the Copyright office.
4. Copyright owner dedicates their work to the public domain
5. The work was born in the public domain

Documents created by the federal government and its employees as part of their jobs are not protected by copyright.
Resources
• Cornell Copyright Chart
  https://copyright.cornell.edu/publicdomain

• ALA Copyright Digital Slider
  http://librarycopyright.net/resources/digitalslider/

• Copyright Genie
  http://librarycopyright.net/resources/genie/
Is this in copyright?
Pride
AND
Prejudice:
A NOVEL.
IN TWO VOLUMES.

BY THE
AUTHOR OF "SENSE AND SENSIBILITY," &c.

VOL. I.
THIRD EDITION.

London:
PRINTED FOR T. EGERTON,
MILITARY LIBRARY, WHITEFRIARS.
1817.
NOVELTIES AND SPECIALTIES IN Flower Seeds for 1925

ANANTHRHINUM (Snapdragon)

While the last few years A. M. spinosum have become somewhat popular, this is not to be taken to mean that either need be for cutting or show in the garden. There are one or two distinct types, the large flowering, tall varieties of Smith, and the smaller types found in small dwarf varieties. Recently, the need for cut flowers has been outstanding, and the following list has been greatly expanded for 1925.

Large-flowering Giant Varieties

- 1371 Captain King, $1.00 each, 100 each
- 1372 Golden King, 35c each, 100 each
- 1373 Pink King, 35c each, 100 each
- 1374 Queen Victoria, 5c each
- 1375 Queen Victoria, 5c each
- 1376 Queen Victoria, 5c each

Large-flowering Half-dwarf Varieties

- 1377 White Queen, 10c each
- 1378 White Queen, 10c each
- 1379 White Queen, 10c each
- 1380 White Queen, 10c each
- 1381 White Queen, 10c each

Small-flowering Half-dwarf Varieties

- 1382 Mauve Queen, 3c each
- 1383 Mauve Queen, 3c each
- 1384 Mauve Queen, 3c each
- 1385 Mauve Queen, 3c each
- 1386 Mauve Queen, 3c each

Dresser’s Long-Spurred Hybrid

Aquilegia, or Columbines

10c Mixed Long-spurred Hybrid. This is the best of all types of Aquilegias and one which has a natural mutation to perpetual. They have been produced from the natural hybrid A. M. spinosum, and are much superior to the wild species. The flowers are of bright, lively colors, and perfectly shaped. The variety is of similar type, but smaller, and it is not so showy in growth. The flowers are of various shades, from white to deep purple, blue, green, and pink. The leaves are large and fern-like. The seeds are fine and ready to sow immediately. One pound, 25c; one ounce, 10c. One ounce, 10c. One ounce, 10c. One ounce, 10c. One ounce, 10c. One ounce, 10c.
Letter from
Edward Warren (1786-1818)
Hey, you in the back row. I can see you. Wake up.
Fair Use Basics

- Yes, it really is enshrined in the law
  - 17 U.S. Code § 107 - Limitations on exclusive rights: Fair use

- Approved purposes include:
  - Criticism
  - Comment
  - News reporting
  - Teaching (including multiple copies for classroom use)
  - Scholarship
  - Research
Fair Use Basics

- The (Infamous) Fourfold Test:
  - Purpose and character of use
  - Nature of the work
  - Amount/substantiality
  - Effect on the market

- (Transformativity)
Essential things to remember

- The law (not the copyright holder) defines your rights, including fair use
- No single test is a trump card
- Fair use is a risk assessment
Right, But How Do I Do It?

Handy online tools:

https://www.lib.umn.edu/copyright/fairthoughts

http://librarycopyright.net/resources/fairuse/index.php

https://bit.ly/2puy1hm
Helping Patrons

- Don’t take responsibility for their use of copyrighted material. At the same time…
- … don’t take a neutral stance on obeying the law. At the same time…
- … do recognize that their choices are ultimately their own.
Thanks!

rick.anderson@utah.edu
SECTION 108

Limitations on Exclusive Rights: Reproductions by Libraries and Archives
Section 108 Spinner

http://librarycopyright.net/resources/spinner/index.html
Libraries or archives may make a reproduction from a periodical, collection or other work in their collections when a person or library requests, if: Only one articles or other contribution to a work is copied.
The copy will become the property of the user.
The copy is not a portion of a musical, pictorial, graphic or audiovisual work/motion picture.
The library has no reason to believe that it will be used for anything other than research, scholarship and private study purposes.
A warning of copyright is posted where orders are accepted.
A copyright notice will be included on the copy.
The copy is not being made for direct or indirect commercial advantage.
The library or archives is open to the public or to unaffiliated specialized researchers.
The library or archives will ensure that any requests filled for this same content, or for content from the same title, are isolated and unrelated.
Entire Works for Users

- Libraries or archives may make one copy of an entire work when a person or library requests, if: A copy of the work is not available for purchase at a fair price.
Entire Works for Users

- The titles is unavailable for purchase in an unused format at a fair price.
- The copy will become the property of the user.
- The work to be copied is not a musical, pictorial, graphic or audiovisual work/motion picture.
- The library has no reason to believe that it will be used for anything other than research, scholarship and private study purposes.
- A warning of copyright is posted where orders are accepted.
- A copyright notice will be included on the copy.
- The copy is not being made for direct or indirect commercial advantage.
- The library or archives is open to the public or to unaffiliated specialized researchers.
- The library or archives will ensure that any requests filled for the same work are isolated and unrelated.
Preservation

- Libraries or archives may make up to 3 copies of unpublished works for preservation or security purposes, if: The library or archive already has a copy of the work to be preserved in their collection.
The work to be reproduced is an unpublished work that is part of the library or archive’s collection.

The work is being reproduced for preservation and security purposes.

No more than 3 copies are being produced.

Any copies created in digital format may not be made available to the public outside the library/archives under the conditions set out in Section 108.

Nothing in Section 108 in any way affects the right of fair use as provided by Section 107.

The copies are not being made for direct or indirect commercial advantage.

A copyright notice will be included on the copies.

The library or archives is open to the public or to unaffiliated specialized researchers.
Libraries or archives may make up to 3 copies of damaged, deteriorating, lost, or stolen works or works in obsolete formats, if: An unused replacement copy cannot be obtained at a fair price.
Replacement

- The title to be reproduced is a published work that is, or was previously, held by the library or archives.
- The title is damaged, deteriorating, lost, stolen, or in an obsolete format.
- The title is unavailable for purchase in an unused format at a fair price.
- Any copies created in digital format may not be made available to the public outside the library/archives under the conditions set out in Section 108.
- Nothing in Section 108 in any way affects the right of fair use as provided by Section 107.
- No more than 3 copies are being produced.
- A copyright notice will be included on the copies.
- The copies are not being made for direct or indirect commercial advantage.
- The library or archives is open to the public or to unaffiliated specialized researchers.
Last 20 Years

- For preservation, scholarship or research, libraries or archives may reproduce, distribute, display or perform published works in their last 20 years of copyright, if: The work is not subject to commercial exploitation and cannot be obtained at a fair price.
Last 20 Years

- The work is in its last 2 years of copyright protection in the United States.
- The work is not currently subject to commercial exploitation or available at a fair price.
- Nothing in Section 108 in any way affects the right of the fair use as provided by Section 107.
- A copyright notice will be included on the copies.
- The copies are not being made for direct or indirect commercial advantage.
- The library or archives is open to the public or to unaffiliated specialized researchers.
FIRST SALE DOCTRINE
How Libraries “get away with it”

Shawn Steidinger, ULA Copyright Education Committee, May 2018
What is the First Sale Doctrine?

- The first sale doctrine (codified at § 109(a) of the U.S. Copyright Act) creates a secondary market for copyrighted materials without a copyright owner’s permission to dispose of the article. The doctrine allows the owner of a copy “lawfully under this title” to sell or otherwise dispose of the copy without the copyright owner’s permission.”

- In the simplest terms, this limitation is what allows libraries to do what we do – lend stuff to our patrons!

(Source: https://www.aallnet.org/advocacy/government-relations/860-2/first-sale-doctrine/)
109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) Notwithstanding the provisions of section 106(2) through (5), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the owner of a copyright, to sell or otherwise dispose of the possession of that copy or phonorecord, notwithstanding the preceding sentence, copies or phonorecords lawfully made under this title may be sold or otherwise disposed of without the authorization of the owner of the restored copyright for purposes of direct or indirect commercial advantage only during the 12-month period beginning on—

(i) the date of the publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A or

(ii) the date of the decision by the Register of Copyrights, after consultation with representatives of copyright owners and librarians, that the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the owner of a copyright, to sell or otherwise dispose of the possession of that copy or phonorecord, if such decision is made before the date of publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A.

(b) Notwithstanding the provisions of subsection (a), unless authorized by the copyright owner, by rental, lease, or otherwise, without acquiring ownership of it,

(1) the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the owner of a copyright, to sell or otherwise dispose of the possession of that copy or phonorecord, if the copy or phonorecord is a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

(2) the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the owner of a copyright, to sell or otherwise dispose of the possession of that copy or phonorecord, if the copy or phonorecord is an audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the owner of a copyright, to sell or otherwise dispose of the possession of that copy or phonorecord, if such decision is made before the date of publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A.

(c) Nothing in this subsection affects any provision of chapter 9 of this title.

(d) The privileges prescribed by subsections (a) and (b) do not, unless authorized by the copyright owner, extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, or other act or practice in the nature of rental, lease, or lending, without the authority of the copyright owner, by rental, lease, or otherwise, without acquiring ownership of it.

(e) Notwithstanding the provisions of section 106(3), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship.
Physical books vs. e-books and First Sale Doctrine

- Selling to libraries vs. licensing to libraries
- TIP: You need to read the fine print on your e-resources licenses to determine whether or not you can lend via ILL, for instance
- In the digital era, the transfer occurs electronically, and thus a copy is made.

Ready for review of these exemptions and limitations?

- Fair Use
- Library & Archives
- First Sale Doctrine
FAIR USE
SAFETY VALVE

PROTECTS

Inlet

Disc

Adjustment screw

Spring

Outlet
FAIR USE

SAFETY VALVE

PROTECTS

4 Factors

Copyright

Community

Access

Scholarly & Creative Works
Copyright Law of the United States (Title 17)  
Section 107  
Limitations on Exclusive Rights: Fair Use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by 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 made of a work in any particular case is a fair use the factors to be considered shall include—

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 and 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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.
### Section 107 (Fair Use)

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Courtesy Mary Minow via Peter Hirtle
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Courtesy Mary Minow via Peter Hirtle
Harry Potter

- Lexicon case
- J.K. Rowling – Terms of Use

  - [https://www.jkrowling.com/tcs/](https://www.jkrowling.com/tcs/)

  - “Harry Potter and Fantastic Beasts characters, names and related indicia are trademarks of and © Warner Bros. Entertainment Inc.”

  - “No permission is given in respect to the use of any of these brands or marks, and any such use may constitute an infringement of the holder’s rights.”

Best Practice

- Read the fine print
- Avoid titles and trademarked names in your titles
Star Wars

- Lucasfilm v. Lightsaber Academy
- Lucasfilm v. Newmindspace

Best Practice

- Read the fine print
- Avoid titles and trademarked names in your titles
  - Example: Light Sword Battles v. Lightsaber Battles
- Find images, products and tools with permissions provided
But we’re a public library…

- Protection of creator’s rights
- Dissemination of information
- Public domain—proceed with caution
  - 1923 is the “lucky” number

- Tools (ALA: http://www.ala.org/advocacy/copyright-tools)
  - Public Domain Slider
  - Section 108 Spinner
  - Exceptions for Instructors eTool
Public Domain

- Public domain—proceed with caution
  - 1923 is the “lucky” number

Best Practice

- Think twice before using images found online
- Read the fine print
- Find images, products and tools with permissions provided
  - Pay, in advance, for royalty-free images with packages that include standard licensing and legal protections
  - Follow the licensing terms of the images/files
Summer Reading

- CSLP
  - “No alteration other than changing the size of the approved name and logo is permitted.”
  - “Slogans are CSLP's trademarks, and may only be used as permitted.”
  - “Use of the Slogan must include the TM symbol.”
  - “CSLP is pleased to offer its members use of this artwork, but restrictions apply.”

Best Practice

- Read the fine print/rules of use
- Use images, products and tools as outlined in the rules
“Simple” Facebook Post

- Community engagement
- Copyright infringement
- Cease and desist order
  - Remove photo/stop using
  - Pay licensing fee
  - Pay legal fees
Elephants Never Forget

When in doubt, check it out, leave it out, cut it out.
Copyright Policy and Its Implementation at the U of U
What Do Libraries Do?

1. Model respect for copyright
2. Encourage respect for copyright
3. Model firm assertion of fair use rights
4. Encourage firm assertion of fair use rights
5. Help answer copyright questions and resolve issues
6. Work with campus legal office as needed
Your OGC Is Your Friend

- Expertise
- Alignment
- Backup
- Confidence (on the campus’ part)
University of Utah Copyright Policy

UU Policy 7-013

https://regulations.utah.edu/research/7-013.php
D. Fair use -- is a reasonable noninfringing use, including reproduction, of copyrighted material for such Purposes as criticism, comment, news reporting, teaching, scholarship or research, as determined from consideration of all relevant circumstances, including (1) the Purpose or character of the use, e.g., for commercial Purposes or for nonprofit educational Purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.
C. Copying for Academic Use

The reproduction or phonorecording of copyrighted works for academic purposes, such as criticism, comment, teaching, scholarship, or research, is permitted, if fair use standards for permissible copying are observed: The factors to determine and document whether a use is fair include:

1. Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

2. Nature of the copyrighted work; Amount and substantiality of the portion used in relation to the copyrighted work as a whole; Effect of the use upon the potential market for or value of the copyrighted work.

D. Digital Content and Transmission for Teaching

1. Digital content which includes any copyrighted work may be digitally transmitted (shared) among course instructors and students enrolled in a particular course offered by the University, under the following conditions:

   a. The use of the copyright work constitutes a fair use,

   b. Access to the digital content is limited only to those students enrolled in the course for which the content has been obtained and only during the semester or other pertinent time period the course is offered; and

   c. Access to the digital content is controlled by password protection or an equivalent security measure.
E. Copying by University Libraries

1. General reserve desks may circulate single reproduction copies of library-owned copyrighted materials, provided that in the preparation of such circulating copies, library personnel do not exceed the standards for permissible copying under the law of fair use.

2. With respect to interlibrary loans, university libraries as borrowing libraries shall keep and retain records of filled loan requests for three full years following the end of the calendar year in which the requests were made in order to insure that during said period of three years:
   a. The library did not request and receive more than five articles from any copyrighted periodical title published within the five years immediately prior to the date of a request; and
   b. the library did not request and receive more than five copies of or from any given copyrighted work, including a collection of copyrighted works, during the entire period such material was protected by copyright.

3. University libraries as lending libraries may make isolated and unrelated reproductions of a single copy of the same copyrighted materials on separate occasions as long as the libraries and their personnel are not aware of and have no reason to believe they are engaging in related or concerted reproduction of multiple copies.

4. University libraries shall refuse:
   a. to fill an interlibrary loan request where prior contractual obligations prohibit copying of such copyrighted material;
   b. to honor a request from a borrowing library which has not verified on its order form that the request conforms to the copyright law and guidelines.

5. For the purpose of preserving and maintaining library collections, university libraries are permitted to make: