Technology and Copyright Law: A Guidebook for the Library, Research, and Teaching Professions
Second Edition

Arlene Bielefield and Lawrence Cheeseman

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Preface

Few things are more important in today’s libraries and schools than compliance with the countless provisions and regulations of copyright law. As is often the case, the emergence of new technologies and media has served to amplify these difficulties. In this age of shrinking budgets and increasingly litigious copyright holders, libraries quite literally cannot afford to be in the wrong. Yet the development of this field, changing as it does with each new legislative season and court case, makes it difficult to keep up to date. This second edition of Technology and Copyright Law: A Guidebook for the Library, Research, and Teaching Professions arose from our desire to provide practical, current guidance on such issues.

While this edition remains grounded in our commitment to what we call defensive law—the anticipation of potential problems and the proactive effort to avoid them—it also works to bring the content into the twenty-first century. From elaborating the details of the Digital Millennium Copyright Act, and its repercussions, to explicating legal questions of growing relevance, this book will keep you on the cutting edge of compliance practices. To guarantee that this book will be useful even for those who have made use of the previous edition, we have opened each chapter with a note explaining which content is new to this edition. We have also reinforced our commitment to practicality by appending real-world questions and scenarios to the end of each chapter.

Further, additional content has been added that is original to this edition. A new chapter provides information on the law’s enablement for those who work with the blind and physically disabled to translate standard print formats into formats that better serve those with disabilities. New technologies present exciting means of helping this historically underserved demographic, but understanding the legal constraints on these systems is crucial.
Additional new material addresses the hugely important field of distance education and attempts to correct some of the most common misunderstandings about copyright.

The foundations on which Technology and Copyright Law is grounded remain firm. As in the first edition, we thoroughly discuss the history, intended purpose, and basic structure of copyright law to help acculturate greater clarity about the uncertainties and complexities new technologies create within the existing copyright law. Librarians, scholars, and teachers can make informed decisions about using copyrighted materials in their work—and are better able to judge when to seek legal advice on specific situations—when they have this understanding. Too often actions are taken and professional advice is sought after a problem exists, rather than before. Thinking through these issues when there is no danger of a lawsuit ensures that schools and educators who cannot afford the tremendous expense even threatened litigation brings will be spared considerable grief.

Copyright law is characterized by tremendous complexity and variety. Consequently, proper care and due diligence can seem onerous for busy librarians, researchers, and scholars in search of quick, easy solutions. Without the aid of legal council, copyright law seems at times to be almost incomprehensible. Even when one knows where to look, the complexity of legal language can be daunting, a problem exacerbated by the difficulty of determining how decades-old dictates apply to recently developed media.

In many cases, the application of copyright law to technological formats is simply ambiguous and no one, even a copyright attorney, can predict with absolute certainty how a particular section of the law will be applied to a new technology until it is tested in the courts. For example, consider the first-sale doctrine, which holds that a copyright owner’s exclusive right to distribute a work extends only to the first sale of a particular copy. This is the doctrine that allows American libraries to lend and circulate books, videotapes, and software without paying a fee to the copyright owner. Whether or not this doctrine will apply to new formats, those existing now and those still being developed, is an open question. Nevertheless, forewarned is forearmed—an understanding of generalities does wonders to defer the likelihood of being ambushed by particulars.

Of equal importance is constant, gradual accumulation of common law, that is, legal precedent set in place by prior cases. Given the aforementioned ambiguity of interpretation inherent in copyright law, the only way to understand how future lawsuits and prosecutions will proceed is to look to the past. To this end, we have
explained the existing law and its development in detail using language as plain and uncomplicated as possible. We have also included a glossary to define words and phrases that might be unclear or whose understanding is crucial to making good decisions.

*Technology and Copyright Law* is divided into four parts, with each new section building on those that come before it. This arrangement should make it easy either to read sequentially, and thereby develop an overall knowledge of the current state of things, or to flip quickly to the material you need when you need it.

Part I, “Copyright Law: Past, Present, and Future,” discusses what the existing law was intended to accomplish, how it developed, and where we think it is headed.

- Chapter 1, “Technology and the History of Copyright Law,” presents the developments and political trajectories that led to the institution of legal measures to protect the economic and intellectual rights of creators.
- Chapter 2, “Technology and Copyright Legislation,” examines some of the more recent domestic and international developments, including many of those that are still on the horizon.
- Chapter 3, “Technology and the Future of Copyright,” takes a deeper look into how new methods of accessing and using intellectual properties are transforming the way rights are acquired, negotiated, and defended.

Part II, “Copyright in Libraries and Classrooms,” provides guidance for making those copyright decisions—including fair use, library and archival exemptions, and licensing agreements—that librarians, researchers, and teachers most commonly face in their day-to-day work.

- Chapter 4, “Fair Use: The Basics,” explores the fundamentals of how, when, and to what extent copyrighted materials may be reproduced and distributed. This chapter includes a “Fair-Use Checklist” to help you determine whether a given activity falls within the constraints of the law.
- Chapter 5, “Fair Use: In Education,” goes a step further, exploring the restrictions and freedoms specific to schools and universities.
- Chapter 6, “Fair Use: Technology in the Library,” studies issues such as reserve guidelines and electronic reserves, with an eye toward determining how institutions can avoid inadvertent infringement.
- Chapter 7, “Special Exemptions for the Blind and Other People with Disabilities,” new to this edition, works through recent amendments that make it easy to teach and serve those who would otherwise find copyrighted materials fixed in media inaccessible to them.
- Chapter 8, “Special Privileges for Libraries and Archives,” further
explicates some of the special advantages of libraries in the copyright compliance game.

- Chapter 9, “Contracts and Copyright: Paths That Cross,” explicates the way permissions are acquired to distribute and reproduce, and sometimes simply use, protected materials.

Part III, “Beyond Four Walls,” deals with the electronic classroom and international copyright agreements.

- Chapter 10, “Copyright and Distance Education,” delves into the challenging but increasingly critical role of transmitting materials to remote students.
- Chapter 11, “The Worldwide View,” expands the dialogue by looking at global copyright concerns.
- Chapter 12, “Twelve Common Misconceptions about Copyright,” another new element of this edition, tries to correct some of the common myths about copyright that tend to get libraries and schools into trouble. From the idea that a protected work must be marked as such to the belief that falling out of print removes the copyright privileges of a work, this chapter’s misconceptions will disabuse you of any dangerous assumptions.

Part IV, “Additional Resources and Tools,” contains a variety of practical, reliable, and tested means toward ensuring compliance and guaranteeing the best possible service. Of particular value is a glossary defining important copyright terms and phrases we have gleaned from relevant federal statutes and reports. For those who feel daunted by the seeming complexity of legal discourse, think of this dictionary as a road map toward gaining understanding without sacrificing the subtleties. Also included are the mandated wording and specifications for all copyright warning notices required in libraries; a list of the exclusive rights of copyright holders; a list of the limitations on those rights that are most important to educators, researchers, and librarians; legislative materials on Sections 107 and 108 of copyright law; and the text of the innocent infringement exception for library or nonprofit educational employees (including teachers, principals, and superintendents). Finally, this section contains a model policy regarding photocopying for various uses at the college and university level.

In preparing this new edition of Technology and Copyright Law, we have endeavored to offer the best, most up-to-the-minute, information available. Few things are more important to us than guaranteeing that libraries and schools can continue to do the work they do so well. Only by remaining attentive to the vicissitudes of our complex system of legal provisions and strictures can these
institutions guarantee that they are in the right. We hope that this book will prove to be an invaluable resource to those setting out on this difficult, yet rewarding journey.

Arlene Bielefield, J.D., M.L.S.
Lawrence Cheeseman, M.L.S.