

# Complete Copyright

For K-12 Librarians and Educators

SECOND EDITION

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Carrie Russell

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Editions  
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## Preface

**D**IGITAL TECHNOLOGY AND NETWORKS HAVE CHANGED OUR society—how we communicate with one another, how we purchase goods and rent content, how we work together to create reference resources, how we more willingly give up anonymity and allow invasions of privacy, how we read, how we teach. Particularly in places of learning, technology is all-pervasive, and because everyone is always making copies, copyright is center stage. History shows us that during times of technological change, copyright goes through a period of adjustment as it tries to keep pace, but it never does. There are no clear answers. Consistency can be found only in our dedication to professional values and commitment to our schools.

Prior to the dominance of digital technologies and networks, librarians were one of the few groups even interested in copyright law. We had to be interested in protecting access to information and other public policies that are central to librarianship. Today, educators should be interested in copyright to protect learning because copyright law when misapplied or misinterpreted affects the way that you teach and even *what* you teach. This book seeks to address the concerns of librarians, teachers, and teaching librarians who work in the K-12 environment.

This second edition of *Complete Copyright* picks up where the first left off, taking note of recent legislative and policy developments that impact schools and libraries and placing more emphasis on licensed content. I also focus on digital educational scenarios to illustrate copyright situations, some of which are frustratingly ambiguous. Many of these scenarios involve actual questions that librarians have asked me over the years. My *Carrie on Copyright*

column in *School Library Journal* has produced a lot of fodder, and lurking on discussion lists to collect copyright stories has also been helpful in gaining an understanding of what school librarians and teachers are doing in the classroom or what they want to do. While copyright education materials have improved, there is still some unlearning to do. Older copyright materials that librarians still rely on are incomplete because they sidestep any mention of public policy and how librarians and educators should think about copyright.

My hope is that this book will make copyright understandable and that, with newfound confidence, you will be able to make copyright decisions that are both lawful and in the best interests of your learning communities. But because you are professionals with a commitment to the information rights of the public, you must be able to do more than just answer the copyright questions that come to you.

This new edition will encourage you to embrace the purpose of copyright law and be committed to fulfilling that purpose. As you develop copyright policies and educational materials, this book is going to push you to make more long-term strategic decisions that will see you through changes in the law, rather than taking the easy way out. This book will encourage you to stop running away from copyright out of some tenuous fear of litigation and instead be more involved in shaping copyright law to better serve your learning community. Your attention to copyright should be as profound as your interest in censorship—both are central to the freedom of speech.

## Cast of Characters

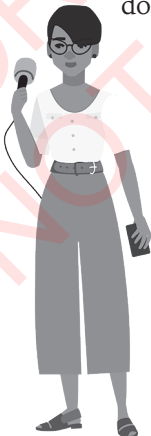


### **Gary LeDuc**

Gary LeDuc is a representative of the Copyright Compliance and Anti-Piracy Division of the U.S. Department of Homeland Security. He presents a program on copyright for the teachers, librarians, and administrators for the Miles Union School District. Unfortunately, Gary is a copyright maximalist and has a limited view of fair use. He tends to talk too loudly. On the plus side, Gary does like animals.

### **Lindsey Eagen Hancock**

Lindsey Eagen Hancock is a newly graduated “information science specialist.” She has a tendency to see the world from her perspective only—either you’re wrong or Lindsey’s right. Lindsey loves rules and loves to enforce rules even more. With time, Lindsey will become a first-rate librarian. She just needs to stop talking about herself and her lesson plans all the time. On weekends, Lindsey does volunteer work. She is a great baker of fruit pies.



### **Kim Pickel**

As the Glen Valley High School principal, Kim Pickel provides leadership by focusing on the needs of the students. She is a straight talker and makes decisions based on practicality. Kim has only a few close friends who have managed to penetrate her somewhat detached facade. Most people don’t know that Kim is a regular at the neighborhood karaoke bar, belting out show tunes like nobody’s business.

## Lola Lola

Lola Lola, head librarian at Wessex University, is a real library leader. She mentors her staff, works collegially with faculty, and is inspired by change and new ideas. When not fighting for fair use, Lola is busy writing her sixth mystery novel, *Murder in the Closed Stacks*.



## Cliff Chmielewski

Cliff Chmielewski is one of Miles Union School District's IT employees. He is smart and committed to helping teachers, librarians, and students understand and use technology. A longtime fan of Marshall McLuhan, Cliff believes that technology can solve just about any problem. Cliff has many gamer friends and maybe too many RSS feeds. His favorite show is *Battlestar Galactica*. He owns a book autographed by Larry Lessig.

## Patrick Monahan

Patrick Monahan is a creative guy with a wicked sense of humor. He is a reader of graphic novels and wants to be an illustrator. He DJs at dance parties and loves music and mash-ups. Patrick has already written three different endings to Cory Doctorow's *For the Win*. Socially mature for his age and a leader by nature, Patrick manages to be cool without ever acting superior.



## Lena Valez

Thanks to budget cuts, Lena Valez is the school librarian at both Miles Elementary and Glen Valley High School. It's only in the last year that Lena has begun to contemplate retirement. Perhaps being a busy and productive librarian and president of the state library association is becoming just too much of a grind. She still enjoys her job, but she needs to learn how to say no sometimes. A fourteen-day Mediterranean cruise sounds pretty good right now.





## **Veronda Taylor**

Veronda Taylor transferred to Glen Valley High School after a five-year stint as a fifth-grade teacher at Miles Elementary. She's well-liked and hip, and her colleagues appreciate her energy, fresh ideas, and willingness to lend a helping hand. Her six-month sabbatical as a field consultant for the "Building Digital Inclusive Communities" initiative at the Institute of Museums and Library Services begins this spring.



## **Glen Valley High School**

### **Home of the Grizzlies!**

Glen Valley High School is the Miles Union School District's largest high school, serving 1,423 students in grades 8–12. As the fall semester gets under way, teachers are refining their curricula in partnership with the school librarians, students have high expectations that the Glen Valley Grizzly football team will win the division title, a December talent show is in the planning stages, and the renovated library media center will have a grand-opening celebration.



Our story begins at a districtwide professional development day, where a copyright workshop is being conducted by a representative of the Copyright Permissions Corporation.







# Staff Attend a Copyright Workshop

**T** HIS YEAR, THE COPYRIGHT PERMISSIONS CORPORATION has sent Gary LeDuc, a copyright expert, to meet with teachers and librarians of the Miles Union School District over the next few days to provide copyright advice. This is a rare opportunity for the school district to get some accurate information about copyright law.

## Copyright Myths and Misconceptions

Why do librarians and teachers—the very professionals who specialize in information literacy, equitable access to information, and the advancement of learning—have so many misconceptions about copyright? I have several theories that will be explored throughout this book, but one thing is certain—school librarians have many misconceptions about copyright, and many who have a guarded approach to copyright harbor an unfounded fear of copyright litigation. Rather safe than sorry is a frequent assertion. Research indicates that this “mixture of confusion, stress, and indecision based on questions surrounding copyright prevents users and creators of copyright-protected content from engaging in personal and educational activities that are unlikely to infringe copyright law” and are contrary to the values of librarianship, teaching, and the goals of copyright.<sup>1</sup>

Instead, when faced with uncertainty and ill-conceived fears, most K-12 librarians resort to the pursuit of definitive answers to copyright questions even when no definitive answers exist. A copyright cheat sheet with yes-and-no answers is preferred—even if the answers are wrong.

School librarians and teachers are not to blame. Copyright is a subject barely mentioned in library school or education programs. Most of the copyright education materials targeted to the K–12 environment are wrong or woefully incomplete.<sup>2</sup> And copyright law is complicated. Part of the hesitancy on the part of librarians to assert users’ rights to information comes from the school environment itself. Staff are dedicated but spread thin, already overburdened with work, assignments, lesson plans, grading, and staff meetings. People lack the time to deal with copyright. Moreover, school librarians are usually on their own as the sole librarian for the school—without other professional librarians around on a day-to-day basis to talk to about copyright. Yet there is the expectation that librarians in particular should have a deeper understanding of copyright and that librarians and teachers should model lawful uses of protected works as an example to the students they teach.

Content in digital formats adds an additional layer of complexity. Copying and distributing digital content without authorization is easy and *occurs all of the time*. It’s hard to understand when this is lawful and when it is not. Digital resources are generally governed by contract, private agreements between parties that sidestep public policy considerations that Congress included in the copyright law. One can argue that copyright no longer matters because rights holders now set the terms of use. One can wonder why we even talk about copyright anymore, but that would be ill-advised and an incredible disservice to the school community and the public at large. When licenses subvert key aspects of the law that support learning, education, and new creativity and scholarship, it’s up to us to do something about it. And we actually are.

How can we learn about copyright and the terms that govern digital formats and be more confident when providing copyright advice to teachers and students? Hopefully this book will provide some answers. The annual copyright training session, such as the copyright presentation that Gary DeLuc provides, is not going to do the trick. Understanding copyright is a process, not a one-time event. As you review the e-mail exchange between Gary and Lindsey, you may notice that Lindsey is likely following the rules she heard in Gary’s presentation too closely and is not taking fair use into consideration. Applying copyright has much to do with the “copyright attitude” of your institution. Is your institution focused on limiting risk of liability? Sometimes history, state law, school board decisions, and administrator whims influence

From: Lindsey Eagen Hancock <lindsey@glenvalley.miles.k-12.wi.us>  
Sent: Fri 1:00 PM CST  
Subject: Today's presentation on copyright  
To: Gary LeDuc <leduc@crpc.org>

Dear Gary:

Your presentation was great! I've been mentioning to colleagues that we really have to be more mindful here at Glen Valley. I can think of several examples where teachers are likely infringing copyright. It's our duty as educators to ensure we're in compliance and it really is everyone's responsibility. I'm going to be proactive and check the hallway bulletin boards and take down materials that are infringing.

It would be great if I could ask you a few questions when you're back tomorrow. I'll bring you a slice of cherry pie!

Regards,  
Lindsey

-----  
Lindsey Eagen Hancock  
Information Science Specialist and School Librarian, Glen Valley High School

From: Gary LeDuc <leduc@crpc.org>  
Sent: Fri 3:47 PM CST  
Subject: Re: Today's presentation on copyright  
To: Lindsey Eagen Hancock <lindsey@glenvalley.miles.k-12.wi.us>

Dear Lindsey:

I am so glad to hear that you enjoyed the copyright presentation! I share your concerns about potential infringing activities taking place here at Glen Valley. You are correct—copyright compliance is everyone's responsibility. I look forward to providing any assistance that I can while I visit the school over the next two days.

Regards,  
GL

-----  
Gary LeDuc, Director of Outreach Education  
Copyright Permissions Corporation  
US Department of Homeland Security  
Washington, DC

the crafting of library copyright policy and how things are done. Entering into a continuing dialogue about copyright with teachers, staff, and administrators in your school is necessary to develop sound copyright policy. The copyright handout with “yes, you can” and usually more “no, you can’t” guidelines also will not work. The quick-and-dirty approach to copyright is shortsighted, with long-term, negative implications. It can conflict with the school’s educational mission and therefore be a disservice not only to students but also to librarians, who risk abandoning their professional values.

To manage copyright effectively in your school, begin by understanding the purpose of the copyright law. Learn basic concepts—exclusive rights, public domain, requirements for protection—and apply all available exceptions under the law to the advantage of your school community. Make informed decisions but accept ambiguity. Consider yoga classes, breathe deeply, and clear your mind of copyright misinformation.

## Top Five Copyright Misconceptions

### **Misconception 1: Copyright law exists to ensure that authors and other creators are compensated monetarily for the works they create.**

The U.S. Constitution says that copyright law is created “to promote the Progress of Science and useful Arts.”<sup>3</sup> Thus the intent of the copyright law is, first and foremost, to encourage the creation and dissemination of original, creative works that benefit the public. Copyright policy seeks to advance the public’s welfare by making works available that promote learning, inspire the creation of new works, produce well-informed citizens, and foster the pursuit of happiness. Of particular importance to the Founders was the goal of a well-informed citizenry. To effectively participate in a democratic system, all citizens must have the necessary access to knowledge, information, and creative works.

Creative and original works, of course, do not rise from the ether. Creative and talented people use their labor to create these works and are provided an incentive to disseminate them to the public. To encourage the creation of new works, Congress allows authors, creators, and other rights holders the legal right to a monopoly over the use of their works, with some limitations. This monopoly, defined by Congress, is realized by awarding to the author a set of economic rights, exclusive to the author or other rights holder. In the

simplest of terms, rights holders have sole authority to market their works. This is the bargain struck between the public—who require and enjoy access to information—and the author or rights holder—who seeks compensation for creating and disseminating their protected creative works.

U.S. copyright law is unlike the copyright laws of civil law countries (in Europe and elsewhere) because its central focus is a *utilitarian* one. Rather than focusing on the “natural” right of authors to control works that are a result of their intellectual creativity and achievement, we focus on economic incentives to serve a specific public purpose. It is therefore incorrect to say that an author’s work innately “belongs” to her, at least in a U.S. context. Instead, copyright is granted to an author by Congress as an incentive to create and disseminate.<sup>4</sup>

The notion that copyright law serves the public interest may sound quaint when much of the public discussion and certainly much of political debate are about the monetary value of copyright. Copyright does have an important economic value in the global information economy. But the fundamental purpose of U.S. copyright law continues to be the public’s welfare. In *Sony Corp. of America v. Universal City Studios, Inc.*, sometimes known as “the Betamax case,” the Supreme Court said that

[t]he monopoly privileges that Congress may authorize are neither unlimited nor primarily designed to provide a special private benefit. Rather, the limited grant is a means by which an important public purpose may be achieved. It is intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired.<sup>5</sup>

Thus the values that underlie the copyright law are completely consistent with the professional values of teachers and librarians. Asserting those values for the benefit of your library and school communities as you interpret and apply the copyright law is appropriate because it furthers the law’s objectives.

### **Misconception 2: Rights holders sue libraries, teachers, and schools all the time.**

Rest easy. Actual court cases involving libraries and schools are rare. We tend to believe that libraries or schools are frequently in trouble with the

law because we hear about schools that have been threatened with a lawsuit. Most of the time, the threat of a lawsuit is enough to make a school terminate a behavior that is an alleged infringement. A cease-and-desist letter and payment of a license fee are not copyright infringements. Infringement is only determined by a court hearing a real infringement claim.

Still, you may be worried about breaking the law and being held responsible for your actions or the actions of teachers or students. There are several reasons why these fears are unwarranted.

First, because copyright law ultimately seeks to benefit the public, uses of protected works for teaching, research and scholarship, and learning are favored under the law. These socially beneficial uses are often reflected in the law as exceptions—limitations on the rights of the copyright holder that allow the public (or certain entities) the right to use a work in ways that would otherwise be infringing. These limitations are necessary because they aid in containing the copyright monopoly. If the monopoly created by Congress were all-encompassing, the purpose of the law—to advance learning and culture for the public’s welfare—could not be achieved.

Socially beneficial uses tend to occur more frequently in libraries, schools, and institutions of higher education because these are places where learners gather and knowledge is shared. In particular these institutions (occasionally along with archives, museums, historical societies, and other cultural institutions) hold special status under the law in that more limitations are created by Congress to address their unique need to serve the public, provide equitable access to information, and preserve the cultural record.

Second, in the unlikely event that a school or library is taken to court for alleged infringement, the rights holder cannot expect to win a large monetary award. Congress has set up special limits on penalties that are set at trial if a school or library is found to have infringed copyright.

The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was:

- (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords.<sup>6</sup>

These two major allowances—exceptions to exclusive rights and limits on remedies *when infringement is not willful*—granted by Congress to nonprofit educational institutions and libraries point to their privileged status under copyright law.

Finally, public educational institutions and libraries are protected by the Eleventh Amendment to the U.S. Constitution.<sup>7</sup> The Eleventh Amendment says that state entities cannot be sued in a federal court without their consent. Again, this places a limit on the amount that rights holders could expect to collect if they sue schools or libraries. For years, rights holders have sought to weaken the Eleventh Amendment as it applies to copyright, and they successfully lobbied for the enactment of the Copyright Remedy Clarification Act of 1990 (CRCA) aimed at repealing state sovereign immunity for copyright infringement. But in *Allen v. Cooper*, the Supreme Court ruled that Congress did not have the authority to repeal state sovereign immunity in this context, ruling that the CRCA was unconstitutional.<sup>8</sup> Rights holders continued to express their concern to Congress. In 2021, the U.S. Copyright Office completed a study to identify how Congress could craft a law to limit state sovereign immunity that would pass constitutional muster.<sup>9</sup>

### **Misconception 3: Original, creative expressions protected by copyright law are the property of their creators or rights holders.**

People are often confused or are led to believe that copyright law is the same as a property law. This confusion is compounded by terms such as *intellectual property*, which is a misnomer.<sup>10</sup> Instead, copyright law resembles government regulation in that Congress creates the law to intervene in the free market by granting rights holders a monopoly—via exclusive rights of copyright—to achieve a public purpose. If one assumes that copyright is a property law, this can lead to the assumption that creative works are “owned” by rights holders and therefore any unauthorized use of “their property” is forbidden.<sup>11</sup> This in turn leads to the use of words like *stealing* and *piracy* when the correct term for violating the copyright law is *infringement*. Why is this distinction so important? Because we immediately understand that stealing is immoral and wrong, while some kinds of uses of works without the authority of the rights holder are lawful and indeed necessary to promote the progress of science and useful arts.



Creative works also are unique in their nature in that they cannot be used up—if one person uses them, others can continue to use them. The term for this characteristic in economic parlance is *nonrivalrous* because there is no economic rivalry between would-be users. Moreover, it is difficult to exclude others from the use of a work after its first use. Economists say that these traits—nonrivalry and nonexclusivity—are characteristics of “public goods.” When I listen to music, I do not consume music in the same way that I consume an apple. The music is still available to anyone else to listen to, while the apple has been eaten up. Another unique trait of creative works is that they gain value the more they are used. You cannot wear them out like a pair of shoes. The more information is shared and used, the more knowledgeable people become and the more new knowledge is created. These distinctions are not just mere curiosities. They help us better understand the benefit of creative works to the public.<sup>12</sup>

**Misconception 4: There is a set of legal rules that gives definitive answers to copyright questions.**

Not true, and this is what many librarians and teachers find vexing. Often the answer to a specific copyright query requires that one analyze the situation at hand to make a determination—in other words, to determine if the use is fair. (Fair use will be discussed further throughout this book.) You could make up a set of rules that must be followed and that in essence become definitive answers by becoming standard practice—and there are many examples out there—but these would be arbitrary rules without the force and effect of law.<sup>13</sup> It is in our best interests to have ambiguity in the law. To set copyright rules in stone would be to “freeze” the law.<sup>14</sup> The law must be malleable to serve us now and in the future, a future that we can only speculate on. Fair use will serve us well because it is more open to new technologies.

Some of the exceptions to copyright law—like section 108 (library reproductions) or section 110 (public performances for educational and other purposes) in the federal Copyright Act of 1976—are more definite than fair use. If your use falls within these exceptions, it is always permitted. However, these exceptions are relatively rigid and don’t necessarily address all situations that may confront a teacher or librarian. Section 108 addresses preservation, replacement, interlibrary loan, copies of works for library users—but

it doesn't address when you can reproduce an image on the internet for your library home page. It doesn't address whether you can make a reproduction for a student who is learning English as a second language. It doesn't address whether you can make a copy of a page from a book to replace a missing page in your damaged copy. You get the idea.

It is not easy for some to deal with the ambiguity of fair use and the complex elements of specific copyright exceptions. Many of us like rules—can I do this or not?—but to be an effective librarian or teacher dealing with copyright requires that you bite the bullet, learn the four factors of fair use and apply them, and accept (and maybe appreciate) gaps in the law. It is a strength of our copyright law that it has both definite exceptions as well as flexible exceptions.

**Misconception 5: Fair use is too difficult to understand and apply.**

Not so. Once you learn the four factors of fair use (which will be explored in greater detail in chapter 3), making a fair use determination comes more naturally, although it is never definitive.

A court of law makes the final call on whether a use is fair or not, but because we aren't in litigation over every fair use, we must learn to make our own decisions, even when we cannot be absolutely certain that we are 100 percent correct. You do not have to have a law degree to conclude that a use is fair. Nor should you consult a lawyer or higher authority every time you need to determine fair use. It is your professional responsibility to understand fair use because your role is to facilitate access to and use of information. Your underlying commitment to the public is to ensure that its rights are fully explored. Fair use is the best way to balance user rights with the interests of rights holders.

Librarians and teachers are not to blame in having these misconceptions. Information distributed to librarians over the years has been wrong or incomplete, and often conflicting. The software industry prepared several copyright education guides for librarians written with a focus, naturally, on software piracy. User rights were not a highlight of these documents, which instead assumed the position that librarians should take the role of copyright police for the school and report software license infractions.<sup>15</sup>

In an educational video published by one coalition, the link between copyright infringement and stealing property is made at the outset.<sup>16</sup> Copyright infringement at school is just like the driver's education teacher stealing a school car, the narrator asserts. Librarians are urged to work with their vendors on copyright compliance to keep prices low. Fair use is mentioned but described incorrectly—we are told that all four factors must be fair for the use to be fair. Librarians are urged to “exercise caution”—advised that it's probably best to ask permission all of the time. The threat of litigation is introduced, with the narrator warning that if the school were sued, the individuals involved in the alleged infringement would be sued as well. One would assume after watching this video that users had very few rights under the law.

Even the American Library Association (ALA), in its educational materials produced in the 1980s and 1990s, misdirected librarians to focus on guidelines rather than on a full understanding of what the copyright law is.<sup>17</sup> Throughout the drafting of the Copyright Act of 1976, librarians asked Congress for more clarity on what they and their library users could lawfully reproduce. The gorilla in the room at the time was the photocopy machine. Most libraries had photocopy machines, and of course, the public was using them. Librarians wanted clear instructions to solve their immediate problem rather than focusing on longer-term solutions based on the interests of their user community. Of course, hindsight is 20/20, but by emphasizing compliance, many librarians demonstrated a lack of foresight and a willingness to give up decision-making to the publishers. ALA and other library associations fought hard for the library exceptions included in the Copyright Act, but librarians on the front line still wanted clarity. Publishers and authors, who were concerned that libraries would start copying everything, were happy to develop “fair use guidelines” as models for libraries, but unfortunately, these guidelines were never used as Congress intended. The widespread use of fair use guidelines led in part to misconceptions about fair use. Very few librarians knew the four factors of fair use.

Another reason these misconceptions exist is because most schools still do not focus on copyright education for their librarians and teachers. And it can

be difficult to find a copyright instructor who presents a balanced approach to the subject. Too often, when librarians do attend a copyright workshop, they note that no two copyright instructors seem to say the same thing, making it difficult to know whom to believe and what one should do. And there's a myriad of sources of information on copyright on the web, often also contradictory, leading to more confusion.

Finally, librarians and teachers—in part to deal with the confusion—have surrendered to reliance on checklists—hard-and-fast rules that tell you what to do, not how to think. Checklists, by their very nature, have an audit quality—when you use a checklist you look for things that are on the list or must be checked for compliance. If something is not checked off, the assumption is that the action is unlawful or, at least, against the rules of the school. Checklists, over time, become “the copyright law” to many people and greatly limit one's ability to teach.

## Key Learnings

In *The Cost of Copyright Confusion for Media Literacy*, an ethnographic study of educators who teach information and media literacy skills, the authors report that “too many teachers fear they will misinterpret fair use or are simply unaware of its expansive nature.”<sup>18</sup> Teachers report that at least some of their copyright fears are based on what they have been told by their librarians. Librarians are described as “sticklers” or “copyright police,” taking it upon themselves to enforce copyright rules. This perception, whether true or not, should give us pause to rethink how we manage copyright in our schools. If we are the copyright experts at our schools, we had better know what we are doing. Our copyright misconceptions have led us to believe that copyright law is first and foremost about infringement. This is wrong. The copyright law serves our community by promoting the advancement of learning. Of course, we have a role in ensuring that copyright law is followed, but that responsibility should not lead to an overcompliance that limits the information rights of the people we serve. Instead, we should help our teachers and students use information to the broadest extent possible under the law.

NOTES

1. Amanda Wakaruk, Celine Gareau-Brennan, and Matthew, Pietrosanu, “Introducing the Copyright Anxiety Scale,” *Journal of Copyright in Education and Librarianship* 5, no. 1 (2021), <https://doi.org/10.17161/jcel.v5i1.15212>.
2. Some of the better copyright education materials can be found on college and university library and other websites. These resources are applicable for the K–12 school environment with minor revisions.
3. “The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. CONST. art. I, § 8, cl. 8.
4. “The limited scope of the copyright holder’s statutory monopoly, like the limited copyright duration required by the Constitution, reflects a balance of competing claims upon the public interest: Creative work is to be created and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music and the other arts.” *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975).
5. *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 431–432 (1984)
6. Copyright Act of 1976, 17 U.S.C. § 504(c)(2).
7. “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI.
8. *Allen v. Cooper*, 140 S. Ct. 994 (2020).
9. U.S. COPYRIGHT OFFICE, 117TH CONG., COPYRIGHT AND STATE SOVEREIGN IMMUNITY: A REPORT OF THE REGISTER OF COPYRIGHTS (August 2021), <https://www.copyright.gov/policy/state-sovereign-immunity>.
10. Mark Lemley believes the term *intellectual property* became a common descriptor beginning with the World Intellectual Property Organization in the 1980s. Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, 83 TEX. L. REV. 1031, 1033 n.4 (2005). I think *intellectual property* is a misnomer because exclusive rights of copyright are not the same as property rights. I do not encourage the use of the term.
11. The copyright owner, however, holds no ordinary chattel. A copyright, like other intellectual property, comprises a series of carefully defined and carefully delimited interests to which the law affords correspondingly exact protections. . . . It follows that interference with copyright does not easily equate with theft, conversion, or fraud.  
*Dowling v. United States*, 473 U.S. 207, 216–217 (1985).
12. If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. . . . He who receives an idea from me, receives instructions himself

without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature.

Thomas Jefferson to Isaac McPherson, Monticello, August 13, 1813, in *Founders Online, National Archives*, <https://founders.archives.gov/documents/Jefferson/03-06-02-0322>. Original source: *The Papers of Thomas Jefferson, Retirement Series*, ed. J. Jefferson Looney, vol. 6, 11 March to 27 November 1813 (Princeton: Princeton University Press, 2009), 379–386.

13. See, e.g., appendix A, “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals.”
14. [Section 107] endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change. Beyond a very broad statutory explanation of what fair use is and some of the criteria applicable to it, the courts must be free to adapt the doctrine to particular situations on a case-by-case basis. Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.

H. COMM. ON THE JUDICIARY, COPYRIGHT LAW REVISION, H.R. REP. NO. 94-1476, at 66 (1976), <https://law.resource.org/pub/us/works/aba/ibr/H.Rep.94-1476.pdf>.
15. *The K-12 Guide to Legal Software Use* (Washington, DC: Software Publishing Association, 1994); *Don't Copy That Floppy* (Washington, DC: Software Publishing Association, 1992), VHS; and *It Could Be So Easy* (Washington, DC: Software Publishing Association, 1995), VHS. See also *You Wouldn't Steal a Car*, a 2004 public service announcement created for films and DVDs by the Motion Picture Association of America.
16. The coalition was called F.A.C.T. (Folks Against Copyright Transgressions). F.A.C.T., *Copyright Law: What Every School, College and Public Library Should Know* (Northbrook, IL: AIME, 1987), VHS.
17. See, e.g., American Library Association, “ALA Model Policy Concerning College and University Photocopying for Classroom, Research, and Library Reserve Use,” *College and Research Library News* no. 43 (1982): 127–31; and appendix D, “Model Policy Concerning College and University Photocopying for Classroom, Research, and Library Reserve Use.”
18. Renee Hobbs, Peter Jaszi, and Pat Aufderheide, *The Cost of Copyright Confusion for Media Literacy* (Washington, DC: American University, Center for Social Media, 2007).

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