Are You Legal?
The Copyright Law and Resource Sharing Under Section 108
Section 108 of U. S. Code Title 17

Is entitled:

Limitations on exclusive rights: Reproduction by Libraries and Archives.

This section of the law gives special privileges to libraries & archives!
Exemptions

Section 108 is a limitation on the exclusive rights of the copyright holder. It limits the exclusive rights of copyright holders in order to give special privileges to libraries and archives.

Another exemption to the law occurs in Section 107 (Fair Use).
The Fair Use Exemption

While our topic is Section 108, keep Section 107 (Fair Use) in mind.

Fair Use is the use of copyrighted material, without the holder’s permission, for purposes such as: teaching, preparation for teaching, scholarship, research, criticism/comment/parody and news reporting.
Sections 107 & 108

Section 107 (Fair Use) and Section 108 (Reproduction by Libraries and Archives) co-exist. Both are available at the same time. While ILL relies heavily on 108, sometimes 107 applies.
Section 108

Has two distinct parts, which allow Libraries to copy for:

1. Interlibrary Loan; and
2. Replacing material in collections.
Importance of Section 108

Section 108 is the section of the copyright law that enables a library to request a copy of part of a work, such as a chapter from a book or an article from a journal, for a library patron for interlibrary loan purposes.
More on Importance of Section 108

Section 108 also enables libraries to obtain copies of materials for the library’s collection.

Section 108 ILL rules are not needed for materials loaned under the First Sale Doctrine.
First Sale Doctrine

Under the First Sale Doctrine of the copyright law, Section 109, libraries may loan without limit the whole work—that is, the book or the journal.
To Qualify for 108 privileges

- Reproduction or distribution must be without any purpose of direct or indirect commercial advantage
- Collections must be open to public or available to persons doing research in a specialized field
- Any reproduction or distribution copy must have a notice of copyright
Under 108

- Interlibrary loan is permitted as long as the library receiving copies does not substitute ILL for subscriptions to or purchase of such works.
Section 108 allows isolated and unrelated reproduction of a single copy.

As opposed to systematic copying.
All copies must carry a © notice

Section 108 (3) mandate: The reproduction or distribution of the work MUST include a notice of copyright … that is reproduced from the work…or must include a legend stating that the work may be protected by copyright if no such notice can be found on the copy…. 
If notice on work can’t be found

“This material may be protected by copyright law (Title 17 U.S. Code)”

1. Stamp this on first page; or
2. If scanning directly from the original material, use a sheet with the notice permanently printed, or a transparency overlay, or
Limits on Ill copying, Serials

CONTU Guidelines apply--
During 1 calendar year,
From one periodical title
published within the last 5 years,
5 articles may be copied (in any combination).

6th copy might indicate systematic copying, which is prohibited.
Limits on ILL copying, Monographs (including fiction & poetry)

Contu guidelines apply:

Within any calendar year, filled requests should not exceed a total of 6 or more copies of or from a given work during the entire period that the material is protected by copyright.
Check CCG on ILL form:
When request is within quantities set forth in CONTU guidelines; or
When requesting library has ordered a subscription to the publication; or
When requesting library’s own copy is unavailable.

CCG=Conforms to Copyright Guidelines
Check CCL--

1. When requesting library considers the copy a “fair use;”
2. When copy is requested from periodical over 5 years old;
3. If request is for entire work or substantial part and where requesting library cannot obtain unused copy at a fair price;
Also check CCL

When the requested copy becomes part of the collection of requesting library and:

1. Requested facsimile or digital copy of a published work replaces damaged, deteriorating, lost or stolen work for which unused copy could not be found at fair price; or

2. Requesting library believes the copy is covered under “fair use.”
Keeping ILL records

1. Requesting entity keeps them;
2. Keeps both requests and fills;
3. Records to be kept to end of 3\textsuperscript{rd} calendar year after end of calendar year in which request was made.
Contu limits reached on ILL?

Borrow whole issue of serial;
Borrow whole monograph;
Get reprint (probably for a fee);
Ask permission, get it in writing;
Send patron to a holding library;
Wait for new year to place request if feasible.
Libraries & archives may reproduce as many as 3 copies, including digital ones (DMCA Oct. ’98).

Purpose: To replace damaged, deteriorating, lost, or stolen items.

Must first make effort to find an unused copy at a fair price.

Allows for replacing pages torn from periodicals as well.
108 Copying for library collection, unpublished works

- Up to 3 copies may be made & distributed, including digital ones
- Purposes include preservation, security, or deposit for research use in another library
- Reproduction can only be of an item currently in the copying library’s collection
Caveat re digital copies!

- Digital copies of published or unpublished works **cannot be made available** to the public in that format **outside the premises** of the library in lawful possession of such a copy.
Responsibilities of Libraries
Providing Copies

- Require requesting library to indicate compliance with copyright law or guidelines (CCG or CCL)
- Ensure that copyright notice appears on copied material
Section 108 rights of reproduction & distribution DO NOT APPLY
To Ill requests for musical, pictorial, graphic, or sculptural works;
Or to a motion picture or other AV work other than one dealing with news.
Libraries may obtain reproductions of these works only for their collections.
Last 20 years of copyright term

- During the last 20 years of copyright of a published work, a library or archives may reproduce, distribute, display or perform in facsimile or digital form a copy of the work or portions of it, for purposes of preservation, scholarship, or research, under certain conditions.
Is the work in its last 20 years of ©?

To determine this, go to Public Domain tool at Cornell:
http://copyright.cornell.edu/resources/docs/copyrightterm.pdf

If it is in its last 20 years of copyright protection, special conditions apply.
In that last 20 years--

No reproduction, distribution, display, or performance is authorized if

a. The work is subject to normal commercial exploitation;

b. A copy of the work can be obtained at a reasonable price; or

c. the copyright owner provides notice that either a. or b. applies.
Helpful Sites

- ALA ILL Code for U.S.
  [http://www.ala.org/Template.cfm?Section=InterLibrary_Loan&template=/ContentManagement/ContentDisplay.cfm&ContentID=31579](http://www.ala.org/Template.cfm?Section=InterLibrary_Loan&template=/ContentManagement/ContentDisplay.cfm&ContentID=31579)

- Code Explained
  [http://www.ala.org/ala/mgrps/divs/rusa/resources/guidelines/interlibraryloancode.cfm](http://www.ala.org/ala/mgrps/divs/rusa/resources/guidelines/interlibraryloancode.cfm)

- Preservation and Replacement Copying Checklist
  [http://library.columbia.edu/content/dam/libraryweb/services/preservation/copyrightchecklist108private study.pdf](http://library.columbia.edu/content/dam/libraryweb/services/preservation/copyrightchecklist108private study.pdf)