

transformative uses of the collection as a whole—see principle seven below regarding digitization for search and other nonconsumptive uses.

PRINCIPLE:

It is fair use to create digital versions of a library's special collections and archives and to make these versions electronically accessible in appropriate contexts.

LIMITATIONS:

- Providing access to published works that are available in unused copies on the commercial market at reasonable prices should be undertaken only with careful consideration, if at all. To the extent that the copy of such a work in a particular collection is unique (e.g., contains marginalia or other unique markings or characteristics), access to unique aspects of the copy will be supportable under fair use. The presence of non-unique copies in a special collection can be indicated by descriptive entries without implicating copyright.
- Where digitized special collections are posted online, reasonable steps should be taken to limit access to material likely to contain damaging or sensitive private information.
- Full attribution, in a form satisfactory to scholars in the field, should be provided for all special collection items made available online, to the extent it is reasonably possible to do so.

ENHANCEMENTS:

- The fair use case will be even stronger where items to be digitized consist largely of works, such as personal photographs, correspondence, or ephemera, whose owners are not exploiting the material commercially and likely could not be located to seek permission for new uses.
- Libraries should consider taking technological steps, reasonable in light of both the nature of the material and of institutional capabilities, to prevent downloading of digital files by users, or else to limit the quality of files to what is appropriate to the use.
- Libraries should also provide copyright owners with a simple tool for registering objections to online use, and respond to such objections promptly.

- Subject to the considerations outlined above, a special collection should be digitized in its entirety, and presented as a cohesive collection whenever possible.
- Adding criticism, commentary, rich metadata, and other additional value and context to the collection will strengthen the fair use case.
- The fair use case will be stronger when the availability of the material is appropriately publicized to scholars in the field and other persons likely to be especially interested.

FIVE: REPRODUCING MATERIAL FOR USE BY DISABLED STUDENTS, FACULTY, STAFF, AND OTHER APPROPRIATE USERS

*US copyright law has been updated since this was written in 2012. Please see the addendum on page 30 for updated information.

DESCRIPTION:

Print-disabled academic and research library patrons require access to readable text in order to function as full members of an academic community; likewise, hearing-disabled patrons require captioned audiovisual materials, while those with physical disabilities may require the electronic delivery of materials outside the library setting. Relatively new electronic technologies make these kinds of accommodations possible at relatively low cost. True accommodation for these patrons means access to any materials in the library's collection for any reason the patron may have (required reading, voluntary study, or recreation), i.e., access that is equivalent to the access afforded to students without disabilities. In addition to moral and mission-related imperatives to serve all patrons, there are also legal obligations to accommodate scholars and researchers with diverse needs. Although Section 121 of the Copyright Act authorizes the reproduction of copyrighted materials to meet these needs under some circumstances, there is continued controversy over its exact scope. Some stakeholders insist, however unreasonably, that Section 121 does not cover academic libraries' efforts to provide accessible materials to print-disabled members of a college or university community. No specific exception to copyright even arguably addresses the needs of patrons with disabilities related to media other than print.

Making library materials accessible serves the goals of copyright, not to mention the goals of a just and inclusive society, and has no negative consequence for rights holders who have not entered the market to serve these users. Such uses add value to a work by making it available to communities that would otherwise be excluded,