

- 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

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,

presenting the work in a format the rights holder has not provided and to an audience that the rights holder is not serving. Making this material available to disabled patrons, furthermore, should not penalize other potential constituents, for instance, by removing the original copy for the time that the version for the disabled is available.

PRINCIPLE:

When fully accessible copies are not readily available from commercial sources, it is fair use for a library to (1) reproduce materials in its collection in accessible formats for the disabled upon request, and (2) retain those reproductions for use in meeting subsequent requests from qualified patrons.

LIMITATIONS:

- Libraries should provide patrons with information about their own rights and responsibilities regarding works provided to them in this way.
- When appropriate (taking into consideration the needs of the disabled patron), the requester's use of the materials should be time-limited by analogy to the limits the library imposes on use by other persons.
- Libraries should coordinate their response to requests with the university's disability services office, or the equivalent, and observe standard conventions on the identification of individuals entitled to service.

ENHANCEMENTS:

- Claims for fair use may well be further reinforced if technological protection measures are applied to assure that limitations on the use of accessible copies are observed.
- The fair use case will be enhanced by programs that are well publicized to the affected communities together with policies that are widely and consistently applied.