



## Fair Use and Copyright

**Archives acquire and preserve all kinds of creative works for one reason only – use.**

Most archival works have no commercial value, but people need them to learn about their culture, protect both human and property rights, and support innovation through new creative works. Archivists should be able to share copyrighted works with researchers while protecting the intellectual property rights of artists and writers. Congress can help to preserve that balance.

**We urge Congress to encourage the use and preservation of archives by taking three actions:**

- Ensure that current copyright terms are not extended,
- Strengthen fair use protections, and
- Protect archivists from criminal prosecution under the Digital Millennium Copyright Act.

**Support Current Copyright Terms:** Current copyright terms exist to protect copyright holders from the misuse of their intellectual property. Archivists comply with these current terms, but often are prevented from sharing valuable historical records—most of which were not created for commercial use or are “orphan works” without copyright holders—because of an excessive duration of copyright. *We urge Congress to resist any further extension of the already-too-long term of copyright.*

**Strengthen Fair Use:** Fair use is a doctrine in copyright law that permits individuals and institutions to use copyrighted material in certain situations. These permissions are indispensable for archivists: They allow us to provide access to archival materials in all formats. Fair use protections permit archivists to share both analog and online materials. Furthermore, archivists use the existence of fair use permissions to justify preservation and conservation within our institutions. *Please stand with professional archivists to strengthen fair use.*

**Allow for the Preservation of Digital Works:** The Digital Millennium Copyright Act places certain protections on digital media and provides for the criminal prosecution of those who violate those protections. Archivists stand by these protections in general -- digital media, like all original work, should be protected as intellectual property. However, it is important to insulate archivists from fear of criminal prosecution under the DMCA. Currently archivists who need to circumvent “Technical Protection Measures” to copy and preserve digital works are potentially subject to criminal prosecution. Archivists fulfilling their mission of preserving important cultural and educational materials should be encouraged, not punished, for their efforts. Digital preservation requires a greater level of intervention (for example, transferring content from an obsolete format to a digital preservation system) than does preservation of analog items. That work must be recognized and legalized. *We urge you to consider an exception to the DMCA for archivists.*

---