




OVERSHARING?

COPYRIGHT, OPEN ACCESS & MANAGING RISKS IN ILL

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Northwest ILL & Resource Sharing Conference
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COPYRIGHT & ILL



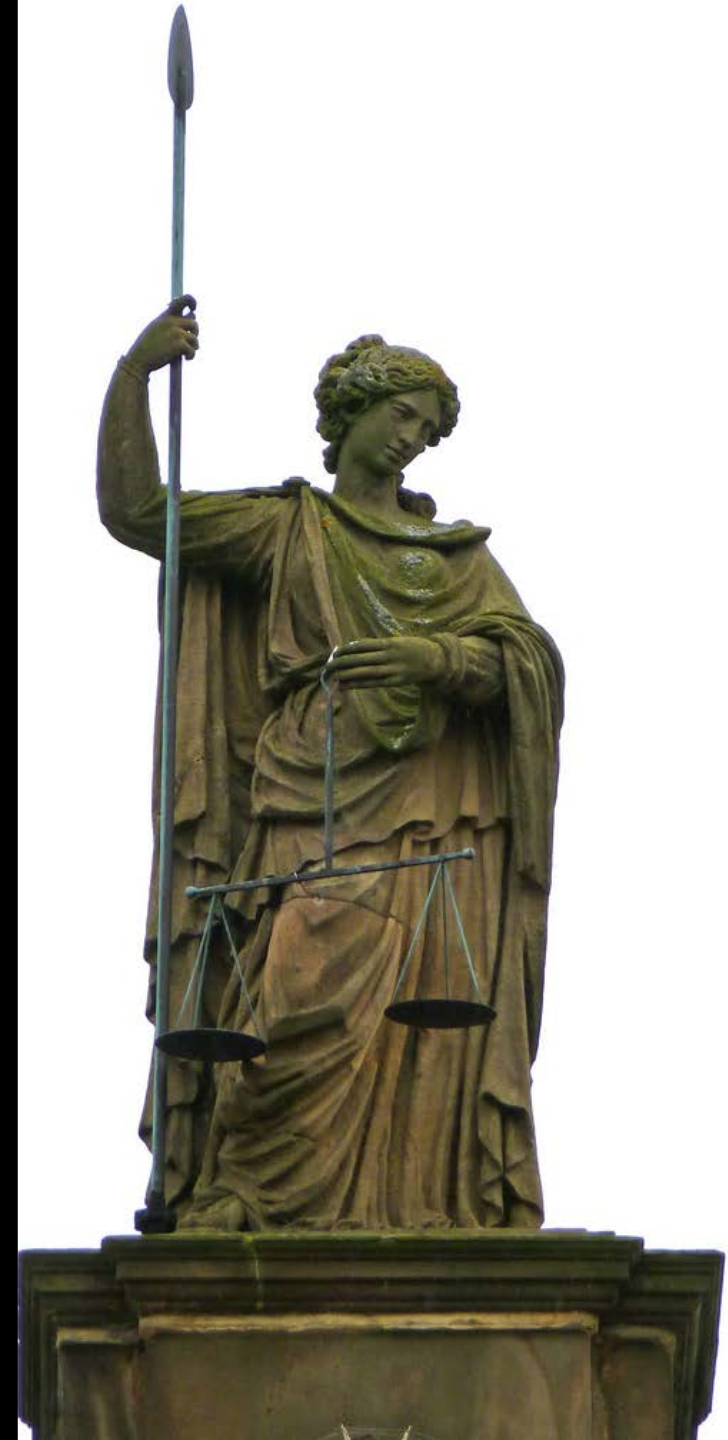


Sections 108(d) and (e)

- Rights of reproduction & distribution
- From one library to another
- Must become property of the user
- For “private study, scholarship, or research”
- Copyright warning displayed
- (d): One article or “small part”
- (e): The entire work or “substantial part”
 - *Only if a copy cannot be obtained at a “fair price” based on a “reasonable search”*

Section 108(g)

“...nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so *in such aggregate quantities as to substitute for a subscription to or purchase* of such work.”



FINAL REPORT

of the National Commission
on New Technological Uses
of Copyrighted Works

CONTU Guidelines

- “Rule of 5”
- CCG
- Guidelines, not law
- “Safe harbor”
- Easy, low risk

Full text of report available at:

<http://www.digital-law-online.info/CONTU/PDF/>

CCG vs CCL: What's the difference?

CCG = CONTU Compliance

CCL = Complies with Copyright Law



Use CCL for:

- Public domain
- Fair use
- Articles older than 5 years
- Articles for which you've paid permissions

Fair Use: A Balancing Act

Four Factors:

- Purpose and character of the use
- Nature of the work used
- Amount & substantiality used
- Effect of the use upon the potential market

All four factors must be considered together.

Simply being for educational purposes is not enough to constitute fair use!



Public Domain

Not protected by copyright

- Copyright expired
- Not eligible for copyright
- Dedicated to the public domain
- Many U.S. Government works



Creative Commons

- Works protected by copyright
- Copyright licenses
- “Some rights reserved”
- Many different flavors



Know your licenses before you lend.



OPEN ACCESS



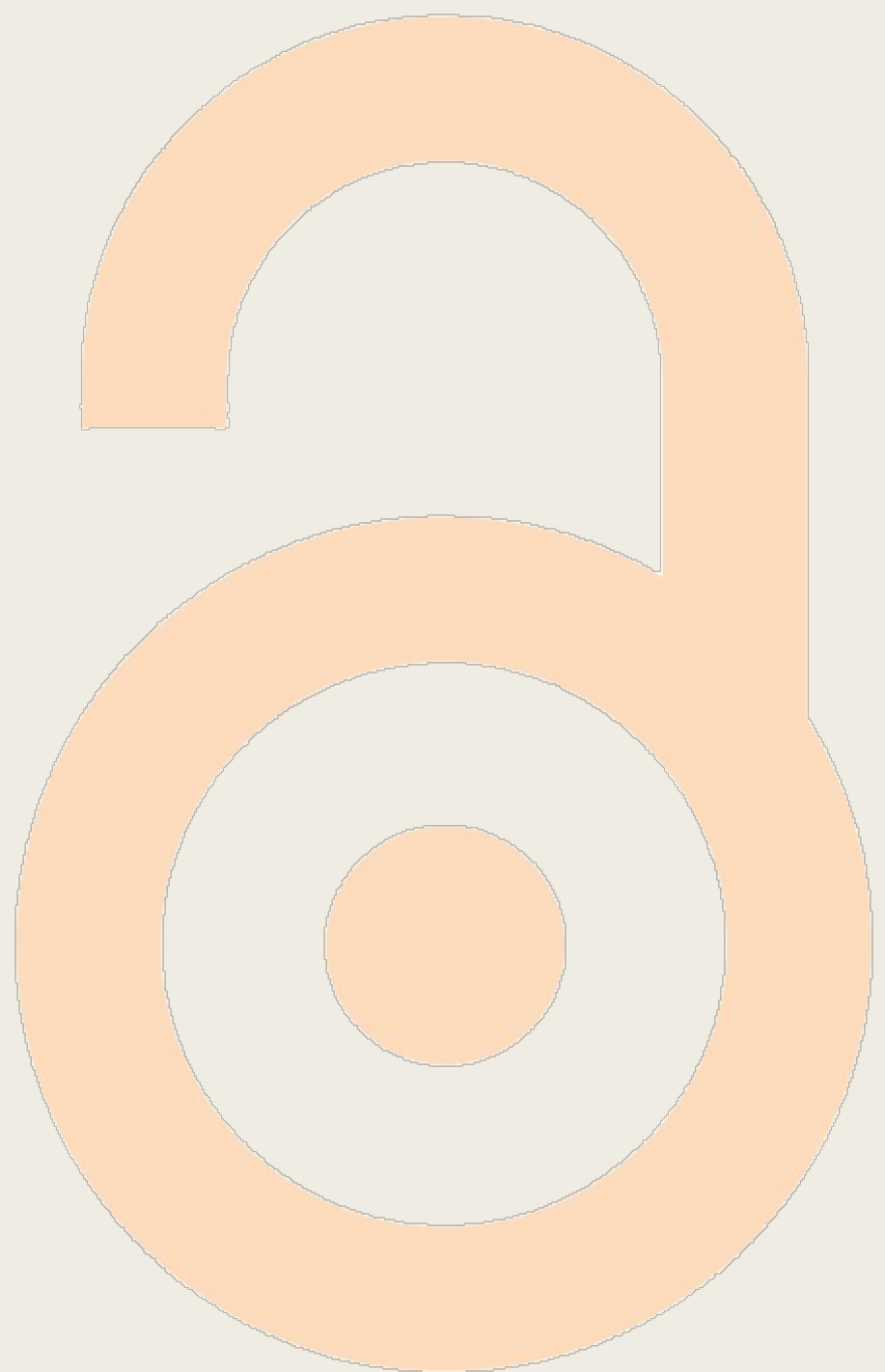
digital

online

free of charge

free of *most*
copyright
and licensing
restrictions

Peter Suber



Open access models

GOLD

Open access publishing

GREEN

Author self-archiving

HYBRID



Creative Commons provides a free licensing system that provide a simple, standardized way for creators to give the public permission to share and use their creative work — on conditions of their choice.



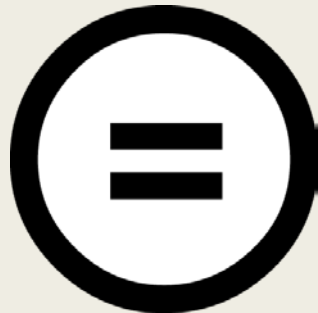
BY

Attribution



NC

Non-Commercial



ND

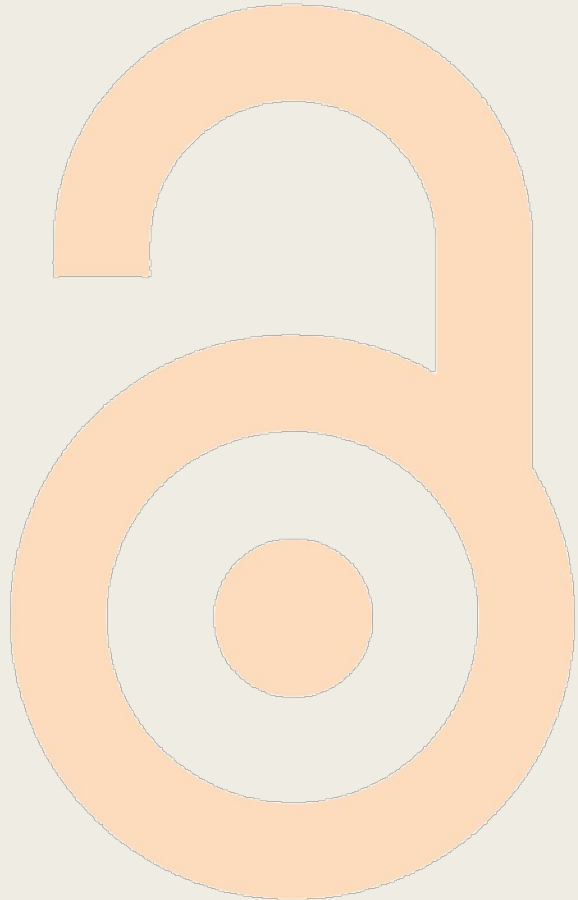
No Derivatives



SA

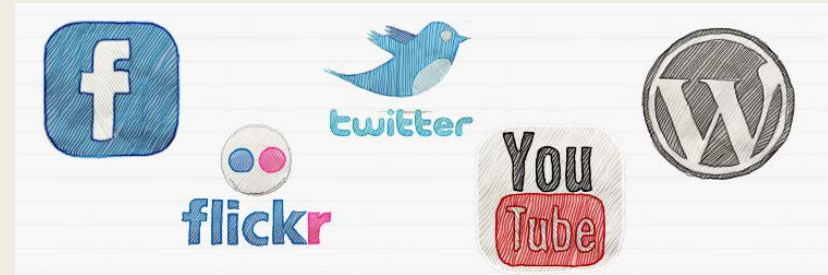
Share Alike

Beware of unauthorized sharing



V.

ACADEMIA



MANAGING RISK



What are the risks?

- Lawsuits or legal issues
- Monetary loss (fines, legal fees)
- Trouble with bosses or employers
- Damage to reputation
- Difficult to negotiate ILL rights
- Unauthorized sharing





Education

- Be familiar with applicable sections of copyright law
- Know your library's licenses
- Know how to identify true open access materials
- Educate your staff
- Engage in continuing education – track developments in US copyright law

Risk assessment

- Start with existing policies
- What's your risk tolerance?
 - *Personal*
 - *Departmental*
 - *Institutional*
- Document your process



High Risk

Entire works

Works from unauthorized sites

License does not allow ILL

Low Risk

Government works

Analysis strongly favors fair use

License allows general ILL

Medium Risk

Orphaned works

Fair use analysis ambiguous

No Risk

Public domain

CONTU

License allows electronic ILL specifically

Paid permission

True open access

Documentation

ILL Copyright Policy

- Gather model policies
- Consider external v. internal policy info
- Obtain approval from library administration & counsel

Copyright Information

The copyright law of the United States ([Title 17, United States Code](#)) governs the making of photocopies or other reproductions of copyrighted materials.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

This notice is posted in compliance with [Title 37 C. F. R., Chapter II, Part 201.14](#)

For more information about copyright law and its interpretation, please see the [U. S. Copyright Office](#) or the Copyright Clearance Center's [Copyright Basics Page](#).



Interlibrary Loan

Choose an option from the choices below.

- **Logoff cbaich**

- **Main Menu**

- **New Request**

- ↳ Article
- ↳ Book
- ↳ Book Chapter
- ↳ Conference Paper
- ↳ Thesis
- ↳ Standards Document
- ↳ Audio/Visual

- **View**

- ↳ Outstanding Requests
- ↳ Electronically Received Articles
- ↳ View/Renew Checked Out Items
- ↳ Cancelled Requests
- ↳ History Requests
- ↳ All Requests
- ↳ Notifications

- **Tools**

- ↳ Change User Information
- ↳ Faculty Proxy Request

Outstanding Requests

Transaction	Type	Title	Author	Status
No Requests				

Warning Concerning Copyright Restrictions

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For more information about copyright law and its interpretation, please see the [U.S. Copyright Office](#).

Internal Copyright Policy Considerations

- Inclusion of copyright notice on articles, request forms, etc.
- Adherence to CONTU Guidelines
- Method for determining fair use
- How & when staff will obtain copyright permissions
- Record retention

Open Access Policy

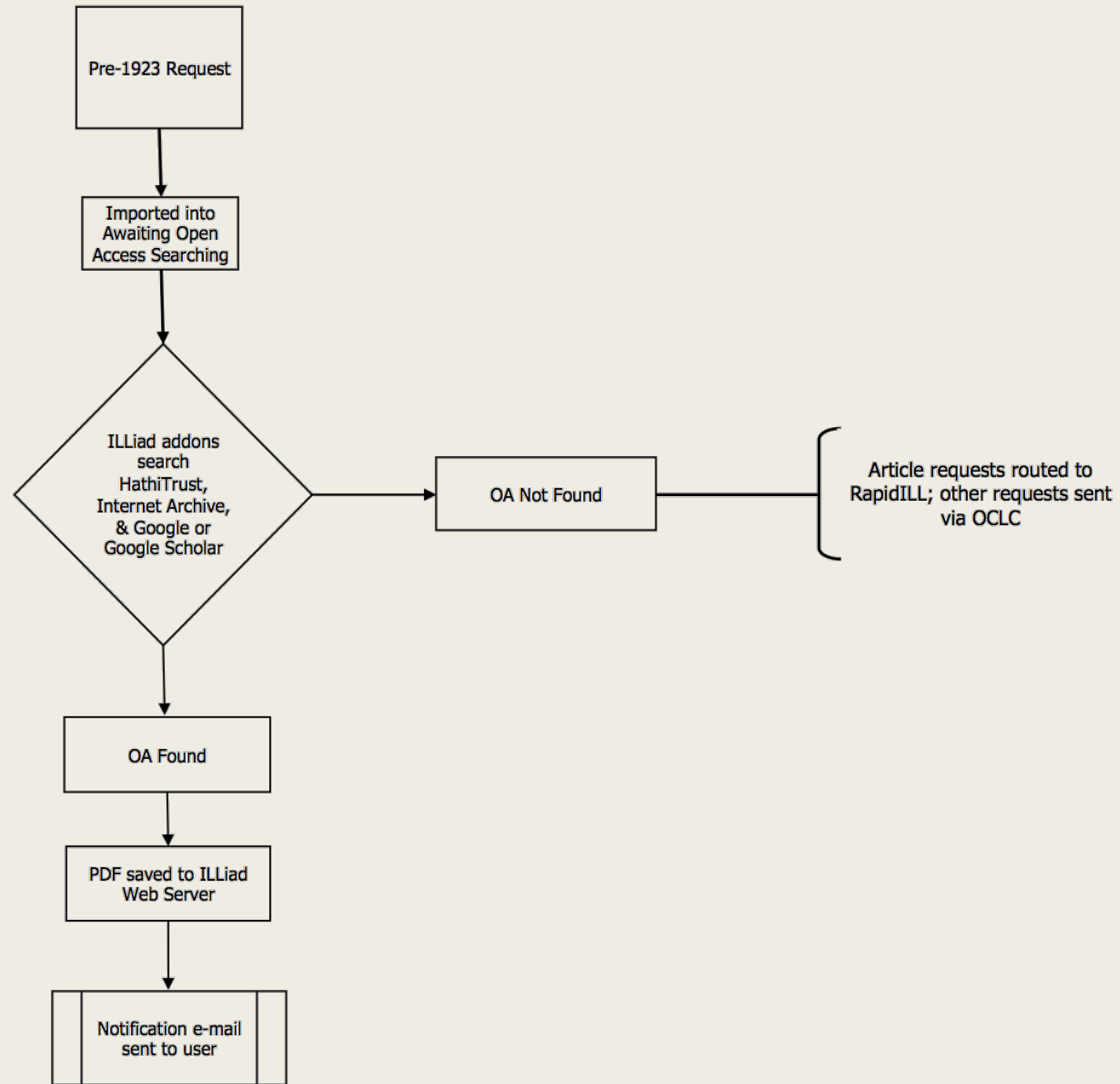
Decide what type of content you can most easily ensure is open access

RuleNo	1
RuleActive	Yes
ProcessType	Borrowing
TransactionStatus	Awaiting Request Processing
MatchString	((t.LoanDate < '1923') or (t.PhotoJournalYear < '1923'))
NewProcessType	Borrowing
NewTransactionStatus	Awaiting Public Domain Searching
RuleDescription	This rule moves all requests with a pre-1923 publication date into an Awaiting Public Domain Searching queue.

QueueName	Awaiting Public Domain Searching
ProcessType	Borrowing
NVTGC	ILL

Open Access Policy

- Choose search strategies & techniques
- **Decide from where you will deliver**
- **Decide what you will deliver**
- Decide how you will communicate
- Decide whether OA requests will count as cancelled or filled



Tools

Directions:

- Set arrow at correct date
- Read information in windows
- Mouse-over any [notes] or asterisks [*] for clarifying information

Is it Protected by Copyright?

For works first published in the U.S.A.*

No

Permission Needed?

Copyright
Status/Term

In Public Domain*

Unpublished Works
(date of creation)

Date of First Publication

Before 1923

After 1922 & Before 1978

If published without © notice

After 1922 & Before 1964

If published with © notice, but not renewed after 28 years

After 1922 & Before 1964

If published with © notice & renewed after 28 years

After 1963 & Before 1978

If published with © notice

After 1977 & Before 2003

Created (unpublished) before 1978 & first published before January 1, 2003

After 1977 & Before March 1, 1989

If published without © notice & without subsequent registration

After 1977 & Before March 1, 1989

If published without © notice but registered within 5 years; or published with © notice

On or after March 1, 1989

Published with or without © notice

Published after 2002

Created before 1978 and author died more than 70 years ago

Created by Individual or Joint Authors

Created under Corporate Authorship



COPYRIGHT ADVISORY OFFICE



ABOUT

COPYRIGHT BASICS

FOR FACULTY

FOR STUDENTS

FAIR USE CHECKLIST

Introduction to the Checklist

The Fair Use Checklist and variations on it have been widely used for many years to help educators, librarians, lawyers, and many other users of copyrighted works determine whether their activities are within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). The four factors form the structure of this checklist. Congress and courts have offered some insight into the specific meaning of the factors, and those interpretations are reflected in the details of this form.



[Benefits of Using the Checklist](#) | [The Checklist as a Road Map](#) | [Caveat](#) | [Fair Use Checklist](#)

Thinking Through Fair Use - My Analysis

Name/title of document or item to be used

Factor #1: Purpose and character of the use [\(more info\)](#)

Favors Fair Use

- Educational, scholarly, and research uses, and/or news reporting
- Criticism or commentary
- Non-profit use, including personal uses
- Transformative use (creates a new work with a new purpose), including parody and transformative technologies

Weights Against Fair Use

- Commercial activity
- Profiting from use
- Decorative or other non-critical, non-commentary use

Notes: Enter additional thoughts regarding the purpose of your proposed use.

Overall thoughts on your *purpose*





Fair Use Evaluator

What this tool can do for you:

- Help you better understand how to determine the "fairness" of a use under the U.S. Copyright Code.
- Collect, organize & archive the information you might need to support a fair use evaluation.
- Provide you with a time-stamped, PDF document for your records [\[example\]](#), which could prove valuable, should you ever be asked by a copyright holder to provide your fair use evaluation and the data you used to support it. [\[why is this important?\]](#)
- Provide access to educational materials, external copyright resources, and contact information for copyright help at local & national levels.

What this tool cannot do for you:

- This tool does not provide legal advice. It records the information you provide it as well as your own judgment on the fairness of the use. See the tool [\[disclaimer\]](#) for more information.
- Only a court of law can definitively rule on whether a use is fair or unfair. This tool does not assume or predict a court outcome.



Make a Fair Use Evaluation



Learn More about Fair Use

Search - Publisher copyright policies & self-archiving

English | [Español](#) | [Magyar](#) | [Nederlands](#) | [Português](#)

2 possible journals were found, please select from the list below or search again:

Journal	ISSN	ESSN	RoMEO Colour	Publisher	Notes
Interlending and Document Supply	0264-1615	-	Green	Emerald	-
Interlending Review	0140-2773	-	Green	Emerald	-

Search again?

Journal titles or ISSNs Publisher names

interlending

Exact title starts with contains ISSN

[Advanced Search](#)

Search

Reset


RoMEO Colour	Archiving policy
Green	Can archive pre-print <i>and</i> post-print or publisher's version/PDF
Blue	Can archive post-print (ie final draft post-refereeing) or publisher's version/PDF
Yellow	Can archive pre-print (ie pre-refereeing)
White	Archiving not formally supported

[More on colours and restrictions](#)

or [View all publishers](#)

Use this site to find a summary of permissions that are normally given as part of each publisher's copyright transfer agreement.

- the [EMERGE](#) journal list hosted by the RCUK.



Make the most of
open access!



Flex your
fair use
muscles!

QUESTIONS?

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cbaich@iupui.edu

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