



Western New York Library Resources Council



Ask the Lawyer: Resources

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New Resource June 2022!

The *2022 Public Library Collection Policy Template and Guide* is now available for any New York State public library to use when developing their own policies. Based on requests from public libraries across the state, ESLN and PULISDO have partnered on the creation of an annotated "Collection Management Policy Template & Guide" to help public libraries confirm that their policies are ready for materials challenges. While inspired by the need of a public library be "challenge ready", this resource addresses every phase of collection management. Written by attorney, Stephanie Cole Adams (Ask the Lawyer), but reviewed by experienced library directors, it clarifies and emphasizes not only the law underlying collection management issues, but the very different roles of trustees and directors in the collection management process.

Link to annotated resource ([PDF/Word](#))

Above all, we hope this "Library Collection Management Policy Template and Guide" is helpful. As with any resource put forward by ESLN and PULISDO, we invite further analysis and commentary. If the materials have proven useful to your library, we hope to hear that, too. For an unannotated version, contact your public library system director. Please provide feedback by completing the [online form](#).

Past Ask The Lawyer Recordings

- [Ready Set Policy! Using the 2022 Collection Management Policy and Guide](#) (July 19, 2022)
- [ESLN Services: Ask The Lawyer](#) (May 27, 2022)
- [Libraries and First Amendment Audits](#) (April 26, 2022)
 - [Presentation slides](#)

- [Calm, Legally Cool, and Collected: Tactics for Libraries Facing Book Challenges and Collection-based Protests](#) (December 2, 2022)
- [New Sick Leave Law](#) (January 13, 2021)
- [Know Your Rights: Copyright Hacks for Librarians and Educators](#) (May 14, 2020)

Reference Sources

- [17 U.S. Code Section 108](#)
- [17 U.S. Code 108: Fundamental Resources](#)
- [17 U.S. Code Section 108: Eligibility](#)
- [Trustees Handbook](#)
- [Becker Ruling 2020](#)

17 U.S. Code Section 108

Many questions on “Ask the Lawyer” relate 17 U.S. Code, Section 108, which **carves out exceptions to infringement** for certain library and archive-provided services, including:

- *On-site patron copies*
- *Copies of book or article for inter-library loan*
- *Preservation copies*
- *Format transfer due to obsolescence.*

Different and distinct from Fair Use, Section 108 is a critical protection for librarians and archivists. It is relied on every day for essential services.

Because 108 is so fundamental, many government agencies, trade associations and institutions maintain excellent guidance on it. Whenever deeper background in a question might be helpful, “Ask the Lawyer” will link to those resources.

17 U.S. Code 108: Fundamental Resources

- Cornell Law School maintains a [copy of the law](#).
- The Copyright Office maintains [Circular 21](#), which breaks down this important provision in great detail. This guide is helpful for policy creation.
- Copyright Regulations prescribe [the precise language](#) that must be posted to benefit from 108; this guidance is essential for qualifying for the exemption.
- The American Library Association breaks down the interaction between 108 and the Digital Millennium Copyright Act (DMCA), which created new provisions related to (at the time) emerging technologies.
- The American Association of Law Librarians maintains an excellent guide on the extent of access allowed by both 108, and 107 (Fair Use). This shows of 107 and 108 are distinct, but can be combined to enhance access.
- To assist in assessing if 108 can apply to providing copies to a particular patron, Columbia maintains a very helpful [analysis checklist](#).

17 U.S Code Section 108: Eligibility

Before assessing the facts under 108's 9 different sub-sections (which address the different types of copying are allowed, and dis-allowed), Section 108 requires that your institution:

- Be open to the public;
- Reliably include a [108 notice](#), as set by regulation, on any 108-provided copy;
- Prominently display a [warning of copyright](#) where orders are accepted, and include a copyright warning on order form(s);
- Post a copyright notice at all publicly accessible copying equipment.

If these factors are not present, your library or archives might not be able to claim a 108 exemption, even if the other criteria (such as searching for a commercially available copy, or confirming that a format is obsolete) are met.

To ensure your institution reliably qualifies for 108, it is advisable that your library or archives have a Section 108 compliance policy, and that the policy and its related practices are annually reviewed.

Handbook for Library Trustees of New York State; 2015 Edition; Revised October 2016 By Jerry Nichols, Palmer School of Library and Information Science, Long Island University, Brookville, New York; and Rebekkah Smith Aldrich, Mid-Hudson Library System, Poughkeepsie, NY; with the assistance of the Public Library System Directors Organization of New York, Library Trustees Association of New York State, New York State Library and New York Library Association: <http://www.nysl.nysed.gov/libdev/trustees/handbook/index.html>

Library Trustees Association Members: Get Questions Answered:

<http://librarytrustees.org/blog/2014/03/lta-introduces-a-new-service-for-members/>

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