

April 11, 2006

Mary Rasenberger  
Policy Advisor for Special Programs  
U.S. Copyright Office

Dear Ms. Rasenberger:

Please find enclosed a “response” to the Section 108 Study Group concerning Copyright Exceptions for Libraries and Archives.

Response to Section 108

Topic 1:

The Judah L. Magnes Museum comprises several collections. For the purposes of Section 108, the most important are:

- 1) the Western Jewish History Center
  - a) Reference library
  - b) Archival papers/manuscripts/historical records
- 2) The Blumenthal Library
  - a) Reference library
  - b) Archival papers/manuscripts/historical records
- 3) The Fine Arts and Judaica collection

By including further definitions of the terms “libraries and archives” or other types of institutions in section 108 of the U.S. Copyright Law, the Judah L. Magnes Museum would benefit.

Many of the non-published materials (i.e. the archival collections) that are held in the Western Jewish History Center relate to the Fine Arts and Judaica collection. Similarly, many of the materials that the Center is interested in acquiring relate to the Fine Arts and Judaica collection. For example, if the WJHC acquired a collection of letters or writings related to or even written by the western artist Toby Rosenthal, the Museum as a whole would want to be able to share these with outside researchers who were interested in some aspect of Rosenthal. The extension of the Fair Use provision of the Copyright Law to all institutions of higher learning would grant the Judah L. Magnes Museum permission as a whole to be able to make copies of these materials available for reasons already granted to libraries and archives.

Section 108 should be expanded to include museums since museums are established for similar reasons to libraries and archives. In fact, museums often follow the creation of archives and libraries and vice-versa. Seymour Fromer, co-founder of the Judah L. Magnes Museum, wished to show the important role the Jews of the West Coast played

in the global community. As he acquired the papers and documents of various noteworthy individuals and organizations, he also acquired materials about these individuals and organizations that were not in the “traditional” archival and library format. In short, they were not just papers, correspondence, notebooks, diaries, documents, and books. They often took the form of paintings, items of Judaica, plaques, and clothing. These materials were not typically housed in a library or archive; they were housed in museums. As a result, the creation of our museum collection grew practically simultaneously with that of our library and archive collection. Each of our collections directly relates to or provides contextual information about other collections. In short, the name of the type of institution that houses and collects these materials and makes them available to its public should not be hindered in helping to increase access to these materials.

There is also the fear of some staff members that if museums were prohibited from the exclusions offered by Section 108 all materials held in the museum, including those held in its archive and library, would be prevented from making accessible those types of materials that have traditionally been made available in institutions that have been designated solely as a “library” or an “archive.”

The Judah L. Magnes Museum does not see that eligible institutions should be limited to nonprofit and government entities. Many for profit institutions have acquired very important cultural items/materials that should not be prevented from being shared and made available.

Similarly, non-physical or “virtual” institutions of higher learning should not have restrictions placed upon their ability to make materials available to the research community under a “Fair Use” provision. There will come a time when individual original materials will disappear or become lost because of neglect or the actual destruction or misplacement of the original. In that case, it is possible that the only way to make these materials available is through a non-physical or “virtual” surrogate. And, it is quite possible, that the only institution that owns these materials or that has access to these materials is a non-physical or “virtual” one, such a web-site.

## Topic 2

The Judah L. Magnes Museum does not believe in the limiting of copies made of an item. As the museum is currently undergoing a major review and digitization of the collection, staff have come to see how incredibly important it is to allow a “Fair Use” provision to the museum as a whole. During this project, staff members are taking documentation photographs of all the items in its collection, for preservation, identification, and conservation issues. In addition to these issues, staff hope to make these collection images available online. This interest stems from the need to make collections more accessible to researchers and the general public. Museum staff also have a desire to be able to actively respond to inquiries by being able to disseminate information under its

purview and areas of interest and specialization more freely than would be the case if museums were exempted from Section 108.

How can the Judah L. Magnes Museum hope to provide greater access to its collections, if its staff members are not able to make their own decisions as to what is in the best interest for the item/s in the collections, their researcher community, and all members of the museum's community (both those who are able to physically visit the museum and those who are unable to visit)?

There will come a time when original items are no longer physically accessible and only surrogate copies can be made available. To prepare for that possibility and, in some cases, definite eventuality, libraries, archives, and museums should be able to make "pre-emptive" replacement copies. Since many institutions of higher learning are not able to bear the expense of acquiring an unused or undamaged copy, the institution itself should first determine what a reasonable search for a "replacement" or "extra" copy is before precluding itself from making its collections available to those it has deemed worthy.

I hope that the above "Response" to the Section 108 Study Group concerning Copyright Exceptions for Libraries and Archives will be of interest and of help to you. If I may provide further clarification or additional information, please let me know.

Sincerely,

Aaron T. Kornblum, Archivist  
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