

Warning Notice for 3D Printers and Related Technologies in Libraries

Prepared by

Tomas A. Lipinski, Dean and Professor,
School of Information Studies, University of Wisconsin—Milwaukee, tlipinsk@uwm.edu.

The Notice:

Library professionals can eliminate liability from copyright infringement and reduce the impact of liability from patent or trademark infringement and other unlawful conduct that may result from patron use of 3D printing processes by posting the following notice on their 3D printer(s):

“NOTICE WARNING CONCERNING COPYRIGHT AND OTHER LEGAL RESTRICTIONS. The copyright (Title 17, United States Code), intellectual property (patent law for example under Title 35, United States Code) and other laws of the United States may govern the making of photocopies or other reproductions of content protected by copyright, patent and other laws. Libraries and archives furnish unsupervised photocopy or reproducing equipment for the convenience of and use by patrons. Under 17 U.S.C. § 108(f)(2) the provision of unsupervised photocopy or reproducing equipment for use by patrons does not excuse the person who uses the reproduction equipment from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107 or any other provision of the copyright law, nor does the provision of unsupervised photocopy or reproducing equipment for use by patrons excuse the person who uses the reproducing equipment from liability for patent, tort (such as products liability) or other laws. This institution reserves the right to refuse to make available or provide access to photocopy or other reproducing equipment if, in its judgment, use of such equipment would involve violation of copyright, patent or other laws.”

Legal Context:

Section 108(f)(1) of Title 17 of the United States Code states that “Nothing in this section ... shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law.” This is an important statutory immunity given to qualifying libraries under section 108. A library and its employees are protected from ‘downstream’ copyright liability due to the infringing conduct of library patrons, vis-à-vis the reproduction of copyrighted material through the misuse of reproducing equipment, and the ‘upstream’ secondary liability that might result from a claim of contributory infringement, for example. According to the authors of the White Paper on intellectual property reform, regarding the section 108(f)(1) provision, “no other provider of equipment enjoys any statutory immunity.” Information Infrastructure Task Force, Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights 111, n. 357 (1995). The U.S. Copyright Office does not

offer a sample notice that libraries can use. Notices are offered by the U.S. Copyright Office for use in other subsections of section 108 and again under section 109. Use of the above notice, adapted from those notices (37 C.F.R. § 201.14 and 37 C.F.R. § 201.24) can fulfill the obligation of a library under section 108(f)(1). However, there is no parallel immunity provision in the trademark, patent or other laws. This notice is further adapted for use in conjunction with the availability of 3D printing technologies in libraries. The notice signals library and librarian awareness of the legal issues associated with the use of 3D printing technology in libraries, serves to make patrons aware of these issues and informs patrons of their potential for liability.

A practical matter, the notice should be placed on all photocopiers or other reproduction equipment in the library that is accessible by patrons that is capable of reproducing copyrighted, patented, or other content protected by law, not just the photocopier but the computer, printer, scanner, sampler, VCR, 3D printer or any other technology that has a reproducing capacity. The use of a warning notice sends an important message of awareness by the library and its employees. However, section 108(f)(1) does not offer immunity for other acts of infringement unrelated to the use of photocopying or other reproduction equipment, e.g., allowing a public performance of an audio visual work in the library meeting room with the use of the library VCR or DVD player. This would raise an issue of the public performance right of a copyright holder, not the exclusive reproduction or public distribution rights that section 108 addresses.

A generic warning notice, sans the section 108(f)(2) patron liability language, can be used on other photocopiers and reproduction equipment accessible by staff, as the library is not protected under section 108 for their acts of infringement. As employee use of such photocopying or other reproducing equipment located on its premises, would not be “unsupervised” as required by section 108(f)(1), the immunity offered by that subsection would not apply. However, such notice serves a valuable purpose nonetheless in the overall risk management and compliance endeavors of the institution. An employee-oriented warning notice can evidence attempts by the library to control employee infringement. While this may have no impact on liability it can impact the assessment of damages should liability be determined. Use of such notices may further evidence a good faith effort on the part of the library and its staff that short of “policing” patron activity the library is informing patrons of the potential risk involved when using reproducing technologies including 3D printers.