

Maker Spaces in Libraries: Legal Considerations

**Makerspaces in Libraries:
Legal Issues**

An Infopeople Webinar
Tuesday, July 22, 2014

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Legal Disclaimer

Legal information
Not legal advice!

Protecting Libraries and Users

Copyright, Patent, Trademark
Let users take responsibility
Guide users to resources

Policies: [3D Printer et al.](#)
Free speech, rules of conduct, guns, privacy,
disability access


Legal Docs
Permissions, Liability, Permits and Partnerships

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Maker Spaces in Libraries: Legal Considerations

• Poll 1


Will 3D printers be used to infringe copyright, trademark and patents?



Wrong question.
Emphatic Yes.
Right question:
Whose problem will it be?


Cory Doctorow by Joi Ito 2008 Some Rights Reserved
<http://www.flickr.com/photos/35034362631@N01/2196901054>

**Protect the library
Copyright, Patent, Trademark**



Is a library legally responsible when users make copies of someone else's stuff?

- Copyright – expression (songs, videos, stories)
- Patent – applied ideas (inventions)
- Trademark – words or design to identify source
- Trade secret - secrets (can't accidentally infringe)



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Maker Spaces in Libraries: Legal Considerations

Copyright: Library protected if “unsupervised” use


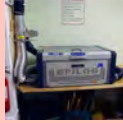

Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement



we have experience ...
and the law
notice on equipment

Put notice on all reproducing equipment

Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of copies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement



Rhode Island State Council on the Arts
Chattanooga Public Library

Uses push “print” “copy” “replicate”

Tip: Put notice on old style replicators: scanners, computers ...

Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of copies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement



Toledo-Lucas County Public Library http://www2.lca.gov/files/grantees/images/teal_bia_group.jpg

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Maker Spaces in Libraries: Legal Considerations

Reference for you: the law

17 U.S.C. § 108(f) Nothing in this section—(1) 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

Recommendation:
Users push buttons to make copies

User uploads to library spaces

Girls
are like apples
on trees. The best ones
are at the top of the tree.
The boys don't want to reach
for the good ones because they
are afraid of falling and getting hurt.
Instead, they get the rotten apples
from the ground that aren't as good,
but easy. So the apples up top think
something is wrong with them when
in all reality they're amazing. They just
have to wait for the right boy to
come along, the one who's
brave enough to
climb all
the way
to the top.



Love Poem by [Alysan](https://www.flickr.com/photos/alpenami/2502414859/) (CC BY 2.0)

Character Reference Sheet: Alysia by Jesterbells
<http://jesterbells.deviantart.com/art/Character-Reference-Sheet-Alysia-469385957> © 2014 Jesterbells
Permission by artist Mira Singer

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the way
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**Cool!
But what if
there's a
copyright
problem?**



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Character Reference Sheet: Alysia by Jesterbells
<http://jesterbells.deviantart.com/art/Character-Reference-Sheet-Alysia-469385957> © 2014 Jesterbells
Permission by artist Mira Singer

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Maker Spaces in Libraries: Legal Considerations

Law offers SAFE HARBOR to Library if:

“user generated content”



Register an agent with Copyright Office (one time filing)


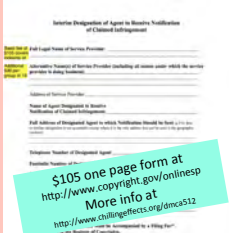
Put notice on site

- *agent contact info
- *take-down policy

17 U.S.C. § 512
See also <http://chillingeffects.org>

www.noaa.gov/world.noaa.gov/postcards/postcard3_w200th.jpg

Check to see if your institution already registered. If not, register.

\$105 one page form at <http://www.copyright.gov/onlinefp>
More info at <http://www.chillingeffects.org/dmca512>

http://www.copyright.gov/onlinefp/list/a_agents.html



SAMPLE NOTICE

Copyright agent, procedures are readily findable on your site

REMEMBER, USER UPLOADS CONTENT

“copyright” or “terms” link in footer

<http://www.columbia.edu/content/copyright.html>

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Maker Spaces in Libraries: Legal Considerations

Protect the Library user creations

- don't "actively induce infringement"
- check carefully before taking user creations to city council
 - make sure original or licensed
- check *really* carefully before selling user creations in library store



Davis Doherty, "Downloading infringement: Patent law as a roadblock to the 3D printing revolution," *Harvard Journal of Law & Technology* (Fall 2012) <http://jolt.law.harvard.edu/articles/pdf/v26/HarvJLTech353.pdf>

MAKERBOT THINGIVERSE
The 3D Design Community for Downloading, Printing, and Sharing 3D Models

Largest site for user shared 3D designs

Take-down notices

INTELLECTUAL PROPERTY POLICY

The Community respects the intellectual property of others and asks that users of the Site and Services do the same. In compliance with the Site and Services, the Community has adopted and implemented a policy regarding intellectual property that provides for the removal of any infringing or unauthorized materials and for the removal of users in appropriate circumstances. For users of our Site and Services who are subject to various intellectual property rights or who necessarily assert intellectual property rights:

Copyright Policy Pursuant to Digital Millennium Copyright Act

If you believe that the use of our Site or Services, including anything by posting unauthorized content or posts to have the copyright infringing or unauthorized material removed, the following information in the form of a written notification (pursuant to 17 U.S.C. § 512(c)) must be provided to our Designated Copyright Agent:

- a statement of your identity, including name and contact information;
- identification of the material or filing that you claim to have infringed;
- identification of the material on our website that you claim to have infringed and that you request to be removed;
- a statement that you have a good faith belief that you are the copyright owner or that you are authorized to act on behalf of the copyright owner;
- a statement that you have a good faith belief that the use of the copyrighted material is not authorized by the copyright or other right owner; or
- a statement that you have a good faith belief that you are the copyright or other right owner.


Please note that, pursuant to 17 U.S.C. § 512(f), any person who is found to be liable for copyright infringement may be liable for any damages caused by the infringer. The copyright owner or other right owner may be liable for any damages caused by the infringer if the infringer is found to be liable for copyright infringement.

The Designated Copyright Agent for the Community is:
Designated Agent: Thomas McCarty
Address of Agent: One Union Square Center, 30th Floor, Boston, MA 02101
Telephone: (617) 552-5800
Email: dmccarty@thingiverse.com

<http://www.thingiverse.com/legal/ip-policy>

User Thingiverse Accounts

MAKERBOT/THINGIVERSE CONTENT



*no commercial use
*no copying/modifying content
*no stealing code

USER CONTENT

*gives Makerbot permission
*suggests creative commons
*disputes are between users
**"bad" stuff may be removed and action taken against

- Illegal, pornographic, threatening, abusive, hateful, obscene, and commercially exploitative material...

*user should backup content

Terms of Use <http://www.thingiverse.com/legal>

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Maker Spaces in Libraries: Legal Considerations

Copyright Remixes



enormous headache for unauthorized remixes especially if commercial use or potential market harm

<http://www.djtechtools.com/2012/03/25/legal-concerns-for-digital-djs-should-i-worry-about-copyright/>

Changes in the Future?



<http://www.insidecounsel.com/2014/05/23/disney-decides-to-let-it-go-when-it-comes-to-copyr>

Your voice? Congressional Maker Caucus



<https://twitter.com/MakerCaucus>



<http://3dprintingindustry.com/2014/02/28/3d-printing-fans-capitol-hill-congressional-maker-caucus/>

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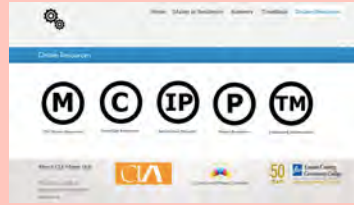
Resources for library user

What if someone takes my idea?

How much of this song can I use?

Maker info on:

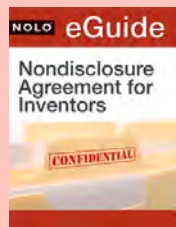
- Copyright
- Patent
- Trademark



<http://clemakerhub.org/online-resources/>

See also CakeBoss Software for Bakers interview with intellectual property attorney Michael Atkins on Selling Cakes with Copyrighted Characters <http://www.cakeboss.com/Cake-Stuff/Articles/Copyrighted-Cakes> Katie Long, Esq., Selling Copyrighted Character Cakes: Should you do it <http://www.cakeboss.com/Cake-Stuff/Articles/Licensed-Cake-Pans>

NOLO: Books and website



user ideas in makerlabs are not protected without effort



<http://www.nolo.com/legal-encyclopedia/patent-copyright-trademark>

Patents in 3D

WARNINGS:

INDEPENDENTLY CREATED does not eliminate liability

ITEM MAY ALSO HAVE COPYRIGHT original creative expression apart from useful article lifetime plus 70 years

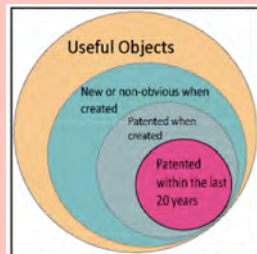


Figure 2: Only a small percentage of useful objects will be protected by an active patent at any time

What's the deal with copyright and 3D printing / Michael Weinberg, Public Knowledge (2013) <https://www.publicknowledge.org/issues/3d-printing>

Davis Doherty, "Downloading infringement: Patent law as a roadblock to the 3D printing revolution," *Harvard Journal of Law & Technology* (Fall 2012) <http://jolt.law.harvard.edu/articles/pdf/v26/26HarvJLTech353.pdf>

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Licensed brands now MakerBot store



<http://www.makerbot.com/blog/tag/licensed-brand/>

Using trademarks



Test:
Is a consumer likely to be confused?
*ok to put MAKE magazine on table
*ok to license mini Maker Faire



AMERICAN MAKER
MAKER PRESS MAKER SHED

<http://makerfaire.com/mini/guidelines/>

More trademarks



TechShop chain of for-profit spaces offering public access to high-end manufacturing equipment – membership fees

FabLabs, inspired by MIT, have core set of tools including laser cutter, vinyl cutter, space requirements 1000-2000 sq ft ...



<http://makezine.com/2013/05/22/the-difference-between-hackerspaces-makerspaces-techshops-and-fablabs/>

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Maker Spaces in Libraries: Legal Considerations

Choosing your own name

Check to see if already trademarked

Do your own knockout search
Attorney / professional search once you choose a name



USPTO - Official

<http://tsearch.uspto.gov/>

Makerspace

“makerspace” is generic
community centers, for-profit,
nonprofit, schools, libraries ...

...
but read Makerspace playbook
before using their logos

Make:

Makerspace playbook (April 2012 draft)

<http://makerspace.com/wp-content/uploads/2012/04/makerspaceplaybook-201204.pdf>

- Poll 2

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Maker Spaces in Libraries: Legal Considerations

Makerspace Policies

Use existing policies to **FEND off lawsuits**

- Free Speech
- Equal treatment
- Notice to users
- Due process (appeals)



First Amendment and govt libraries

CONTENT NEUTRAL

- Too loud (may enforce)
- Not bad words (trickier)

Ok to ask for civility
Check with lawyer before removing someone for bad language

Infopeople: Writing a Library Behavior Code <https://infopeople.org/civircivm/eventinfo?reset=1&id=237>

3D Printing Policies

- American Library Association is collecting policies and working on recommendations
- Remember First Amendment
 - Don't prohibit "inappropriate for library environment"
 - Do prohibit "illegal"
 - Uphold agreement with 3D printer company (e.g. no guns)

3D Printing and Guns in California



June 25, 2014 – passed out of Assembly public safety committee, referred to Appropriations

AMENDED IN SENATE JANUARY 21, 2014
AMENDED IN SENATE JANUARY 6, 2014
AMENDED IN SENATE APRIL 21, 2013
AMENDED IN SENATE APRIL 11, 2013

SENATE BILL No. 808

Introduced by Senator De León
February 27, 2013

An act to amend Sections 11506, 14530, 23030, and 26230 of, and to add Chapter 3 commencing with Section 20180 to Division 7 of Title 4 of Part 6 of the Penal Code, relating to firearms.

LEGISLATIVE COUNCIL'S SUMMARY

SB 808, as amended: De León. Personal identifying information.
Existing law authorizes the Department of Justice to assign a distinguishing number to each of identification to any license holder for firearms. Such a
identification or failure of identification is that
This bill would create
make modifications to
Department for a single
period. The bill would
of January 1, 2014, even
to license holder of
most of identification
provisions a nonresident
issue a state resident



<http://sd22.senate.ca.gov/news/2014-01-30-release-ghost-gun-ban-moves-assembly>

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Maker Spaces in Libraries: Legal Considerations

Policies: Children and Privacy

Look at library's policy
If collecting personal information online (e.g. for badges)
use best security practices



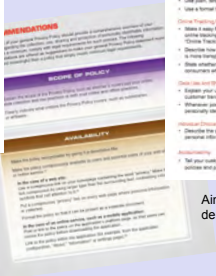
LAW only requires *commercial* users to get parental consent

California Civil Code § 3344 parental consent for commercial use name, voice, photograph ..under 18

Federal Children's Online Privacy Protection Act (COPPA) commercial use .. Under 13

http://www.ftc.gov/system/files/documents/amicus_briefs/jo-batman-v-facebook-inc./140321batmanfacebookamicusbrief.pdf
<http://www.scribd.com/doc/214214378/CalAG-Facebook-COPPA-state-regs>

California New Guidance on Privacy Policies



HIGHLIGHTS OF RECOMMENDATIONS
Accessibility
• Use clear, straightforward language. Avoid technical or legal jargon.
• Use a format that makes the policy readable, such as a liquid format.
Clear Formatting (Do Not Track)
• Make a link to a statement to find the section in which you describe your policy regarding Do Not Track requests is available. For the purposes of the Do Not Track Request, "Do Not Track" means a signal that a browser or other software sends to a website or other service to indicate that the user does not want to be tracked.
Obtain Consent
• Explain your uses of personally identifiable information (except what is necessary for fulfilling a contract transaction or for the basic functionality of an online service).
• Wherever possible, provide a link to the privacy policies of third parties with which you share personally identifiable information.
Personal Choice and Control
• Describe the choices a consumer has regarding the collection, use and sharing of his or her personally identifiable information.
Accountability
• Set your customers where they can contact you with questions or concerns about your privacy policies and practices.

Aimed at commercial sector but demonstrates best practices

https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersecurity/making_your_privacy_practices_public.pdf

Medical Policies

Time to review and train staff on local policy



Band aids?

Defibrillators?

make sure everyone is on the same page

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Disability Access



http://www.ada.gov/2010_regs.htm

Infopeople Webinar Feb. 16, 2011 ADA Update: Revised Regulations for Disability Accommodations for the Public

Stronger obligations for government



200+ settlements with localities in all 50 states

<http://www.ada.gov/civicac.htm>

Stronger obligations for government

than for nonprofit partners

**Legal Docs :
PERMISSIONS and WAIVERS**

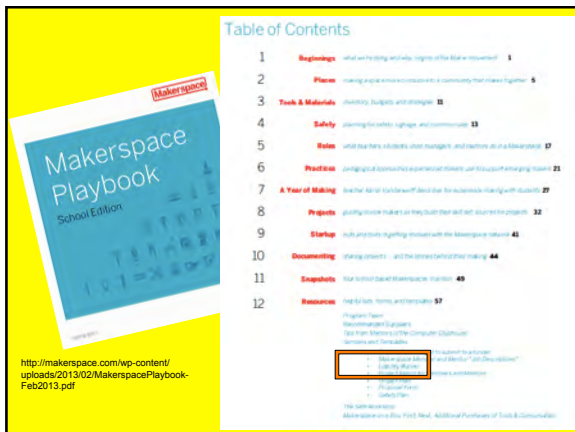


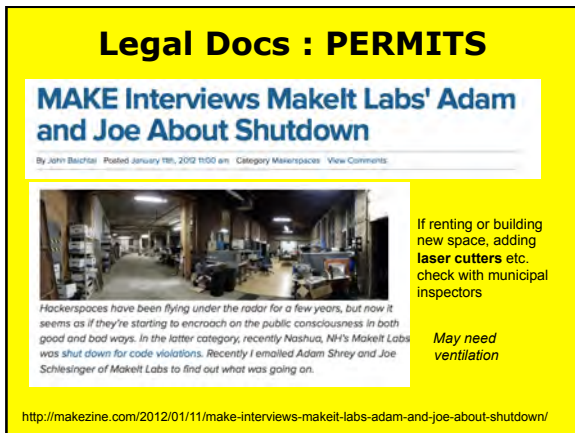
If I don't have waiver form for craft sessions, do I need one for makerspace?

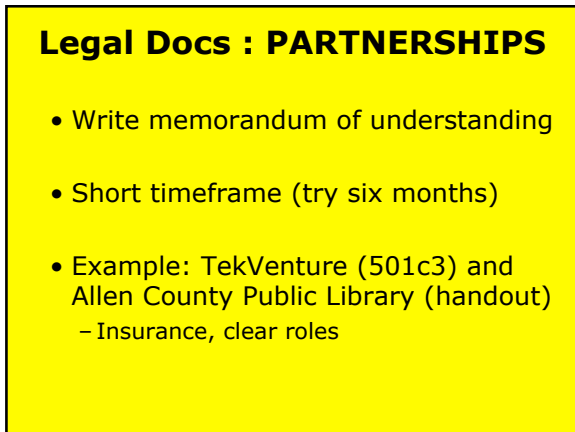
- Safety certifications (all ages)
- Permissions for minors
- Examples in resources handout

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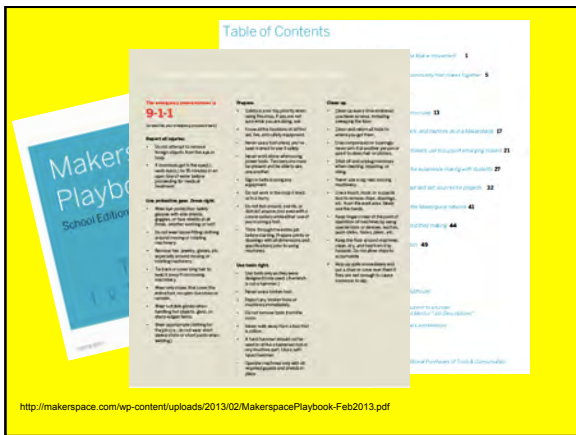
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Legal Docs : Liability and Insurance

- Check your library's liability waiver forms
- Compare to samples in Resources handout
- Insurance – lots of online discussion; read and call your agent

“Product liability” murkier than traditional production
 Nora Freeman Engstrom, 3-D Printing and Product Liability: Identifying the Obstacles (2013)



Recap: Protecting Libraries and Users

Copyright, Patent, Trademark
 Let users take responsibility
 Guide users to resources

Policies: **3D Printer et al.**
 Free speech, rules of conduct, guns, privacy,
 disability access

Legal Docs
 Permissions, Liability, Permits and Partnerships


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Questions?



Comments?
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