

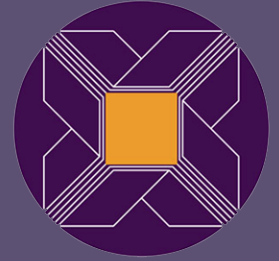
FAIR USE AND RESEARCH LIBRARIANS

Pat Aufderheide

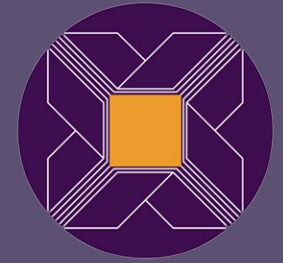
Brandon Butler

Peter Jaszi

OVERVIEW

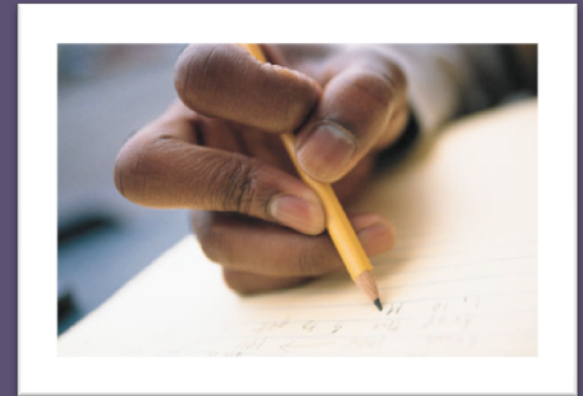
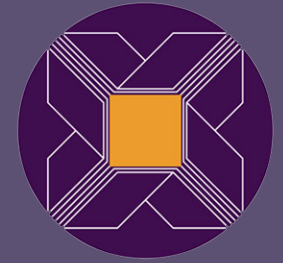


- **Copyright and its problems**
- **Why librarians need useable fair use**
- **Code of Best Practices in Fair Use for Academic and Research Libraries**



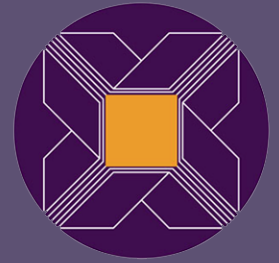
THE PURPOSE OF COPYRIGHT

ONE PURPOSE :



TO PROMOTE THE CREATION OF CULTURE

By:



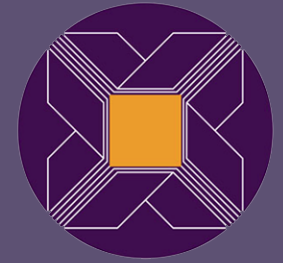
- **Rewarding creators with limited monopoly**
- **Encouraging new makers to use existing culture**

WHY BALANCE?



- All culture created on existing culture (we used to know that)
- The First Amendment (no censorship)

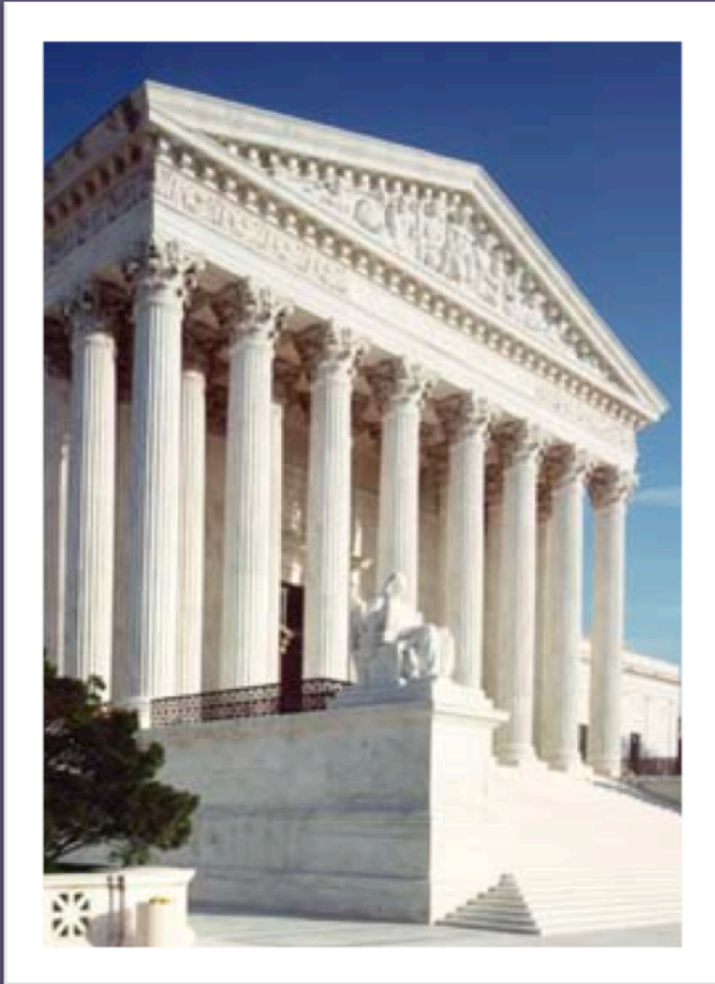
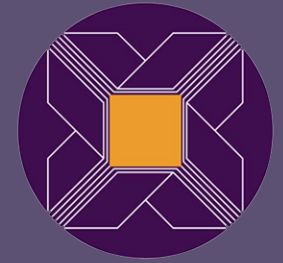
BIGGEST BALANCING FEATURE:



FAIR USE

**legal, unauthorized use of
copyrighted material--
under
some circumstances**

GOOD NEWS...



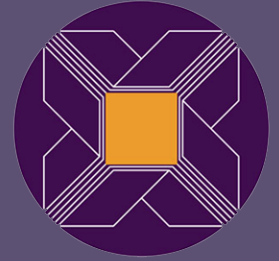
- Judges love balancing features
- Supreme Court: fair use protects free speech
- Fair use judicial interpretation shifts greatly since 1990

“FOUR FACTORS”



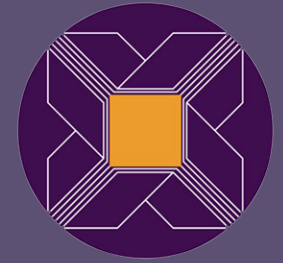
- Reason for the use
- Kind of work used
- Amount used
- Effect on the market

JUDGES ASK:



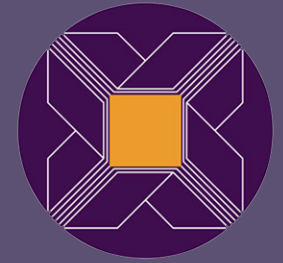
- **Did you transform the use?**
((i.e. use for new purpose, context, audience, insight) .
- **Did you use the appropriate amount to satisfy the transformative use?**

PLUS...



**Custom and practice of
individual creative
communities...**

**...especially when well-
documented**



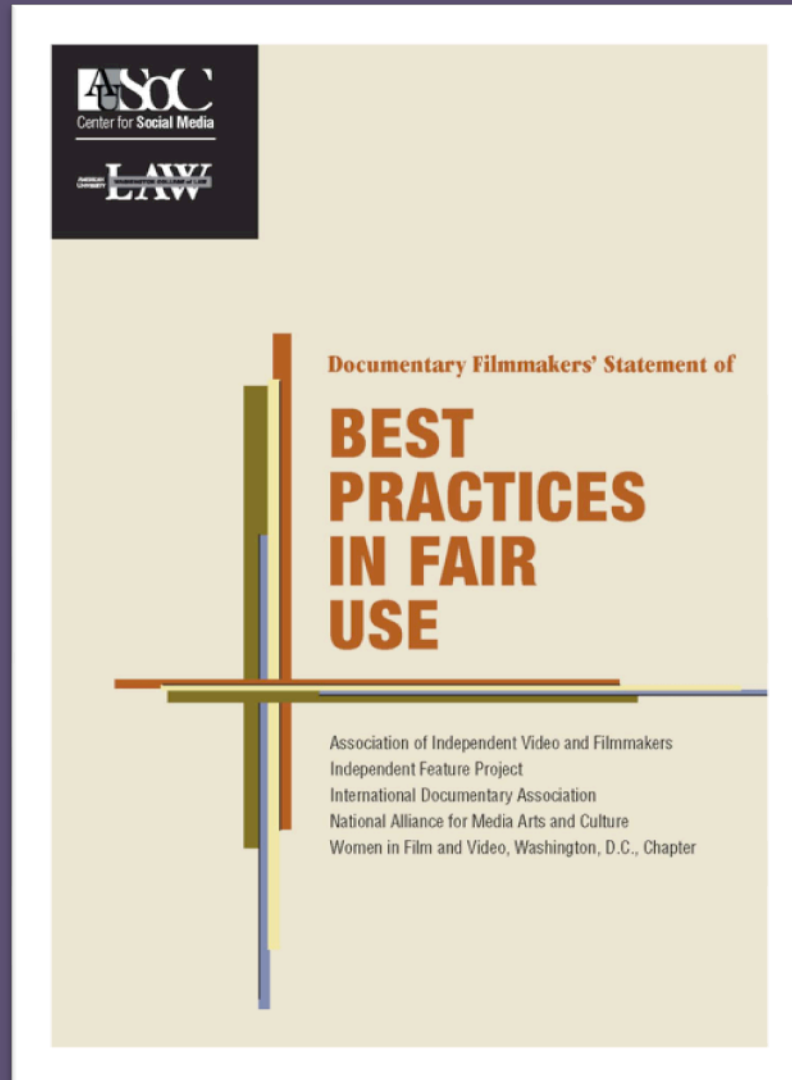
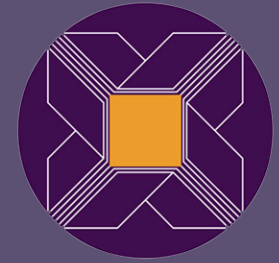
BEST PRACTICES CODES

COMMUNITIES INTERPRET FAIR USE:

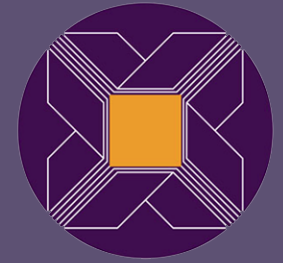


- **Documentary filmmakers**
- **Scholars**
- **Media literacy teachers**
- **Online video**
- **Dance collections**
- **OpenCourseWare**

DOCUMENTARY CODE

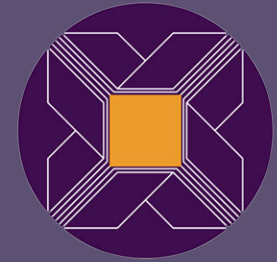


RESULTS:



- TV programmers air films
- New kinds of films
- **All insurers of errors and omissions insurance now accept fair use claims**
- Lawyers use the Statement to build their practices

FILM SCHOLARS



Society for Cinema & Media Studies

Devoted to the Scholarly Study of Film, Television, Video & New Media

MAIN MENU

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LOGIN

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[Statement of Best Practices in Fair Use in Teaching for Film & Media Educators](#) [Print](#)



Society for Cinema and Media Studies Statement of Best Practices in Fair Use in Teaching for Film & Media Educators

[Best Practices For Fair Use in Teaching](#)

(Direct inquiries to the SCMS Public Policy Committee c/o office@cmstudies.org)

[Next >](#)

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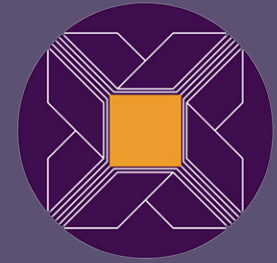
NEWS

- [Statement of Best Practices in Fair Use in Teaching for Film & Media Educators](#)
- [Welcome to SCMS](#)

WHO'S ONLINE

We have 139 guests online and 41 registered users online

MEDIA LITERACY TEACHERS



Action Coalition for Media Education
Media Education Foundation
National Association for Media
Literacy Education
National Council of Teachers of English
Visual Communication Studies Division
of the International Communication
Association

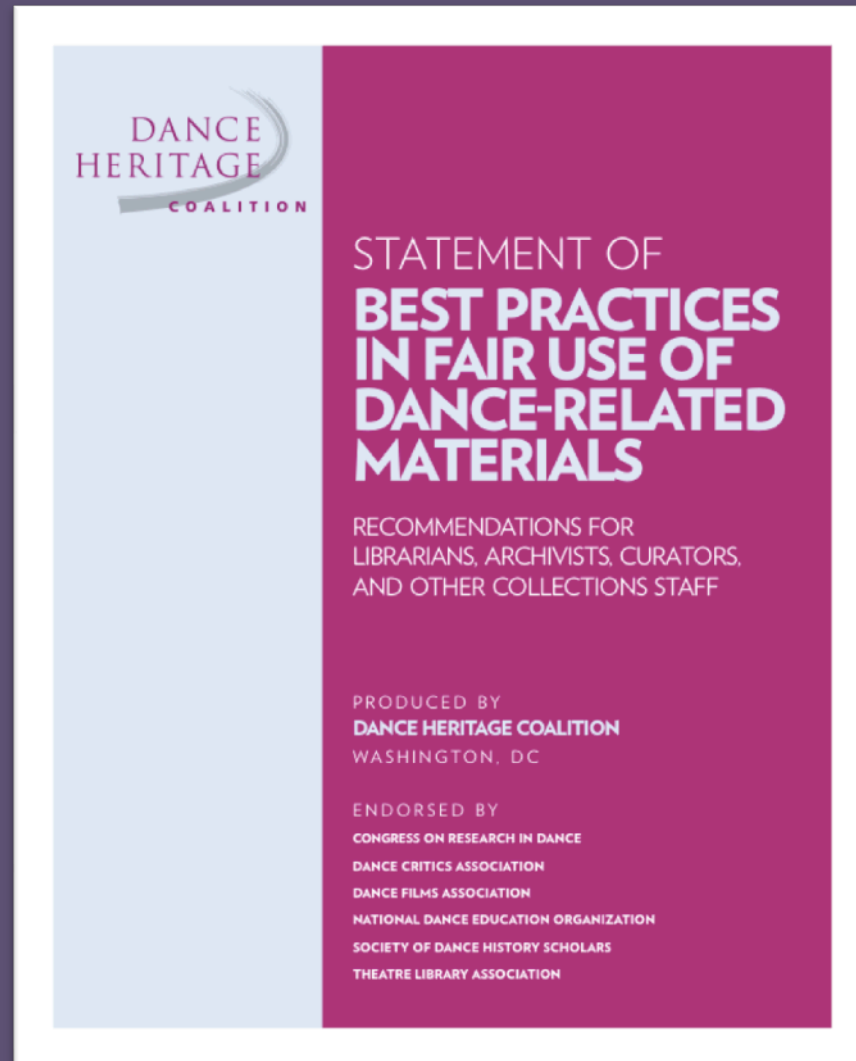
Code of
**Best Practices in
Fair Use for
Media Literacy
Education**



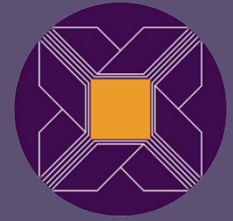
 **Media Education Lab**
TEMPLE UNIVERSITY®

centerforsocialmedia.org/medialiteracy

DANCE ARCHIVISTS



OPEN COURSEWARE



The cover features a blue background with a pattern of overlapping, semi-transparent white squares. The text is primarily in white and yellow. The ASoC logo is in the top left, and the date 'October 2009' is in the top right. The title is centered in large yellow font. The URL is centered below the title. Funding information and logos are at the bottom.

ASoC
CENTER FOR
SOCIAL MEDIA
School of Communication
American University

October 2009

Code of Best Practices in Fair Use for OpenCourseWare

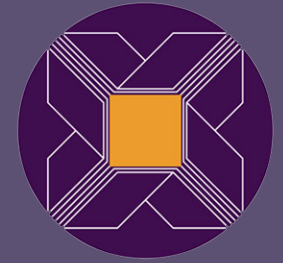
centerforsocialmedia.org/ocw

Funded by the
WILLIAM AND FLORA HEWLETT FOUNDATION

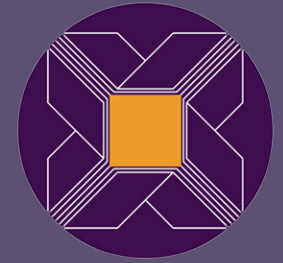
with additional funding from the
FORD FOUNDATION

PJIP
Program on Information Justice
and Intellectual Property
HEWLETT
FOUNDATION

BEST PRACTICES, NOT GUIDELINES

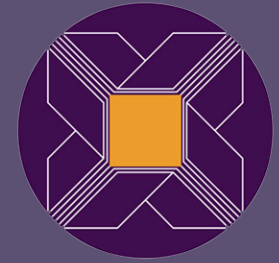


- **Principles, not rules**
- **Limitations, not bans**
- **Reasoning, not rote**



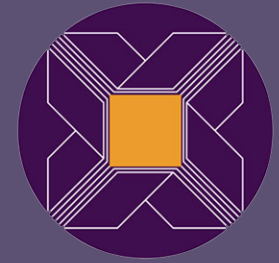
WHY FAIR USE MATTERS TO LIBRARIANS

FAIR USE ENABLES MISSION



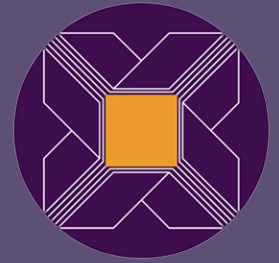
- **Mission to serve knowledge past, present, future**
- **Need to access copyrighted work**
- **Digital innovation/obsolescence**

BUT...

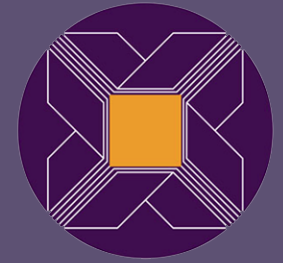


- **Insecurity and hesitation=staff costs, mission deformed**
- **Fair use would help, but is under-used**
- **Risk aversion substituted for fair use analysis**

The Code of Best Practices in Fair Use for Academic and Research Libraries



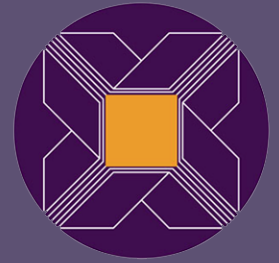
CREATED BY LIBRARIANS



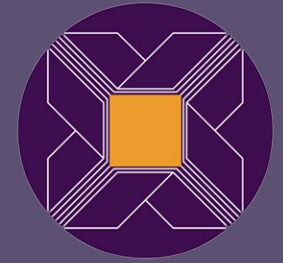
Deep deliberation by 90 librarians from 64 inst'ns in nine 4-hour discussions.

Review by diverse panel of legal experts.

NEW INPUT FOR RISK MANAGEMENT

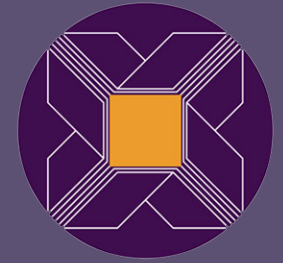


- **Put legal risks into perspective, “mission risk”**
- **Consider views of librarians**
- **Grounding for solidarity**



Fair Use Applies in 8 Common Situations

ONE:

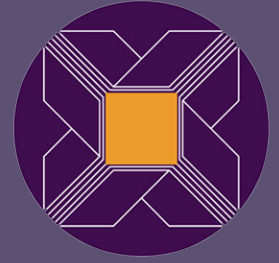


Digital access to teaching materials for students and profs

...with limitations!

...and enhancements, too.

TWO:

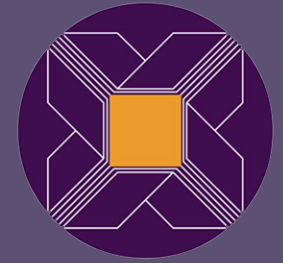


**Exhibits, both physical &
virtual**

...with limitations

...and enhancements!

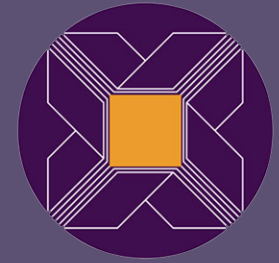
THREE:



**Digitizing to preserve
at-risk items**

**...when you can't buy it
(plus more limitations &
enhancements)**

NOTICING A TREND?



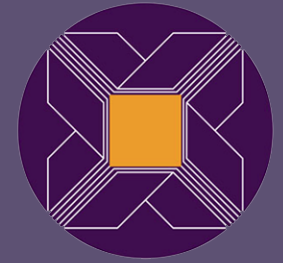
**Yup. All those
limitations and
enhancements mean
you will need to read
the Code with care.**

And now....



**Back to our
countdown.**

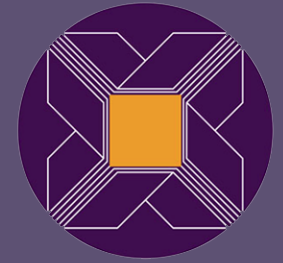
FOUR:



**Digital collections of
archives and special
collections**

**(+ limitations and
enhancements)**

FIVE:



**Access to research and
teaching materials for
disabled users**

**(+ limitations and
enhancements)**

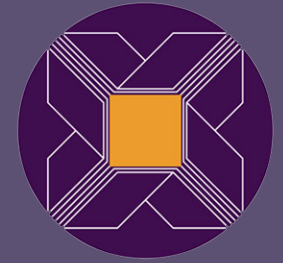
SIX:



**Institutional repositories,
e.g. dissertations,
multimedia research**

**((+ limitations and
enhancements))**

SEVEN:



**Create digital databases
for “non-consumptive
uses” (digitizing, indexing
for search)**

**(+ limitations and
enhancements, of course)**

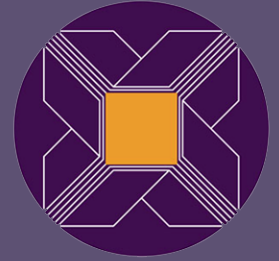
EIGHT:



**Making topically-based
collections of Web-based
material**

**(+ limitations and
enhancements)**

FAIR USE:



**Practice
Makes
Practice**

MORE INFORMATION

The code and much more (videos! Presentations! FAQs!)

- Arl.org/fairuse
- [Centerforsocialmedia.org/
fair-use](http://Centerforsocialmedia.org/fair-use)
- Pijip.wcl.edu/libraries

RECLAIMING
FAIR USE



How to Put Balance Back in Copyright

PATRICIA AUFDERHEIDE and PETER JASZI



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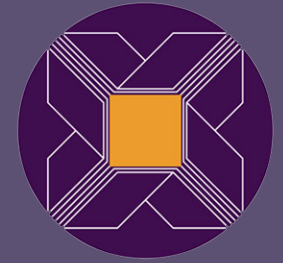
THANK YOU!



**Andrew W. Mellon
Foundation**

**Research librarians
everywhere**

CONTACT INFO



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