FAIR USE AND RESEARCH LIBRARIANS

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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
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
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)
STATEMENT OF
BEST PRACTICES
IN FAIR USE OF
DANCE-RELATED
MATERIALS

RECOMMENDATIONS FOR
LIBRARIANS, ARCHIVISTS, CURATORS,
AND OTHER COLLECTIONS STAFF

PRODUCED BY
DANCE HERITAGE COALITION
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ENDORSED BY
CONGRESS ON RESEARCH IN DANCE
DANCE CRITICS ASSOCIATION
DANCE FILMS ASSOCIATION
NATIONAL DANCE EDUCATION ORGANIZATION
SOCIETY OF DANCE HISTORY SCHOLARS
THEATRE LIBRARY ASSOCIATION
Code of Best Practices in Fair Use for OpenCourseWare

centersocialmedia.org/ocw
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
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:

Acess 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
- Pijip.wcl.edu/libraries

09/30/09
RECLAIMING FAIR USE

How to Put Balance Back in Copyright

PATRICIA AUXERNEEDE AND PETER JASSZI
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THANK YOU!

Andrew W. Mellon Foundation

Research librarians everywhere
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