FAIR USE AND RESEARCH LIBRARIANS

Brandon Butler
OVERVIEW

• Copyright and Fair Use
• The Best Practices Approach
• Libraries and 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
BIGGEST BALANCING FEATURE

FAIR USE
legal, unauthorized use of copyrighted material—under some circumstances
“FOUR FACTORS”

• Reason for the use
• Kind of work used
• Amount used
• Effect on the market
GOOD NEWS...

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

• Is your use “transformative”? (i.e., use for new purpose, context, audience, insight)

• Did you use an appropriate amount given your transformative purpose?
library

home library  library books  library building  beautiful libraries  famous libraries
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
To enable, rather than preempt, reasoning

- Principles, not rules
- Limitations, not bans
- Reasoning, not rote
- TRY THIS AT HOME
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
REFERENCE FOR FRONT LINE LIBRARIANS

• Replacement for Classroom Guidelines
• Guidance for smaller projects
• Addresses common scenarios
SOURCE OF RHETORIC AND ARGUMENTS

- Front matter
- Intro paragraphs for each principle
- Supporting materials online
Fair Use Applies in 8 Common Situations
Principles, limitations, and enhancements

- Intrinsically linked
- Principle identifies category of practice
- Limitations give outer bounds of consensus
- Enhancements are above and beyond
• Posting course material to electronic platforms
• Exhibits, physical and virtual
• Digitizing for preservation
• Digitizing special collections
• Access for the disabled
• Inst'l Repositories
• Non-consumptive research
• Web harvesting
Would you post this 1950s magazine image online, without payment or permission?
Would you post this archival photo online, even though you have no way to determine who took it?
Would you digitize these tapes and circulate the DVD, or stream the film to classrooms, without permission?
FAIR USE:

Practice Makes Practice
MORE INFORMATION
The code and much more (videos! Presentations! FAQs!)

- www.arl.org/fairuse
- Centerforsocialmedia.org/fair-use
RECLAIMING FAIR USE

How to Put Balance Back in Copyright

PATRICIA AUFDERHEIDE and PETER JASZI
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THANK YOU!

The Andrew W. Mellon Foundation

Research librarians everywhere
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