FAIR USE IN THE VISUAL ARTS
Why fair use is important in the visual arts

Fair use: the basics

Why a code of best practices?

What’s in the CAA code

More support

What you can do
70% of respondents say they use copyrighted material in doing their own work.
Fair use in the visual arts

- Writing about art
- Teaching
- Managing museums
- Making art
- Organizing documentation
“I found a suitable image online to illustrate my article. Do I still need a license?”
“Can I use some photos I took of an artist’s work on my online course site?”
“I’m making art from found images. Do I need to get permission to use them?”
“Can I use pictures from our exhibition in museum publications?”
“Can we put our archival collection online?”
WHAT IS FAIR USE?
THE PURPOSE OF COPYRIGHT
ONE PURPOSE

TO PROMOTE THE CREATION OF CULTURE
Rewarding creators with limited monopoly

Encouraging new makers to use existing culture
Non-infringing, unauthorized use of copyrighted material—under some circumstances
“FOUR FACTORS”

1. Purpose of the use
2. Kind of work used
3. Amount used
4. Effect on the market
Judges balance interests in fair use analysis

Supreme Court: Fair use promotes free speech

Judicial interpretation has changed a lot since 1990
JUDGES ASK...

1. Is the use for a new "transformative purpose? (in terms of context, audience, added insight, etc.)

2. Does it employ an appropriate amount to fulfill the transformative purpose?
Judges also consider...

Custom and practice of individual creative communities...

...especially when well-documented
WHY DON’T WE EMPLOY FAIR USE MORE FULLY?
Perceived Risk

Legal trouble
Lost relationships
Bad publicity
WHAT'S THE BIGGEST PROBLEM?

1) Restrictive publishing contracts
2) High licensing fees
3) Difficulty of obtaining clearances
4) None of the above
ASSESSING RISK?
CONSIDER BOTH!

Legal risk associated with pursuing mission

Mission risk associated with failing to act
2014 CAA REPORT:

1/3 in the visual arts community have avoided or abandoned work because of copyright concerns.
WE HAVE A PROBLEM

COPYRIGHT HYPERCOMPLIANCE = SELF-CENSORSHIP
EFFECTIVE RISK MANAGEMENT BEGINS WITH KNOWING YOUR RIGHTS
BEST PRACTICES
CODES
CODES, IN FOUR STEPS:

- Research discovers most common problems
- Creative community discusses terms of fair use
- Consensus synthesized
- Lawyers check work
Documentary Filmmakers' Statement of

Best Practices in Fair Use

Association of Independent Video and Filmmakers
Independent Feature Project
International Documentary Association
National Alliance for Media Arts and Culture
Women in Film and Video, Washington, D.C., Chapter
CODE OF BEST PRACTICES IN
FAIR USE FOR
SCHOLARLY RESEARCH
IN COMMUNICATION
JUNE 2010
INTERNATIONAL COMMUNICATION ASSOCIATION
POETS

CODE OF BEST PRACTICES IN FAIR USE FOR POETRY

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centersocialmedia.org/poetry • poetryfoundation.org/fairuse
LIBRARIANS
A guide to reasoning, not a set of rules

No arbitrary limits or metrics

Based on professional consensus

Not negotiated with copyright holders

NOT LIKE FAIR USE “GUIDELINES”!
INFORMED RISK ASSESSMENT ➔ BETTER PRACTICE: EXAMPLES

Doc filmmakers: Fair use now gets insured

Librarians: Collections digitized

Scholars: New work published

Archivists: Digital exhibits on line
U Colorado-Boulder: YES to digital format shifting
Power to the People


EDITED BY GEOFF KAPLAN

AMERICAN UNIVERSITY
WASHINGTON, DC
Inside this online exhibit view brief performance excerpts spanning from 1930s dance pioneers to today’s most exciting artists. All recorded at Jacob’s Pillow, this collection expands each month with many paths to explore, meaningful connections to discover, and surprises to share. Welcome.
Nationwide fact-finding
10 discussion sessions in 5 cities
Confidential meetings building consensus
Input from CAA Fair Use Task Force
Review by Legal Advisory Committee
Writing about art
Teaching about art
Making art
Museum uses
Archives online
FOR EACH SITUATION IN THE CODE:

Description

Principle

Limitations
WHAT YOU CAN DO

Use the Code
Tell a colleague
Tell a student
Tell a publisher
Find an endorser
WHERE DO I GET MORE INFORMATION?

THE CODES AND MUCH MORE

(VIDEOS! PRESENTATIONS! FAQS!)

Cmsimpact.org/fair-use
Collegeart.org/fair-use
Practice Makes Practice

FAIR USE
Please feel free to share this presentation in its entirety.
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THANK YOU!

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