



FAIR USE IN THE VISUAL ARTS

OVERVIEW

Why fair use is important in the visual arts

Fair use: the basics

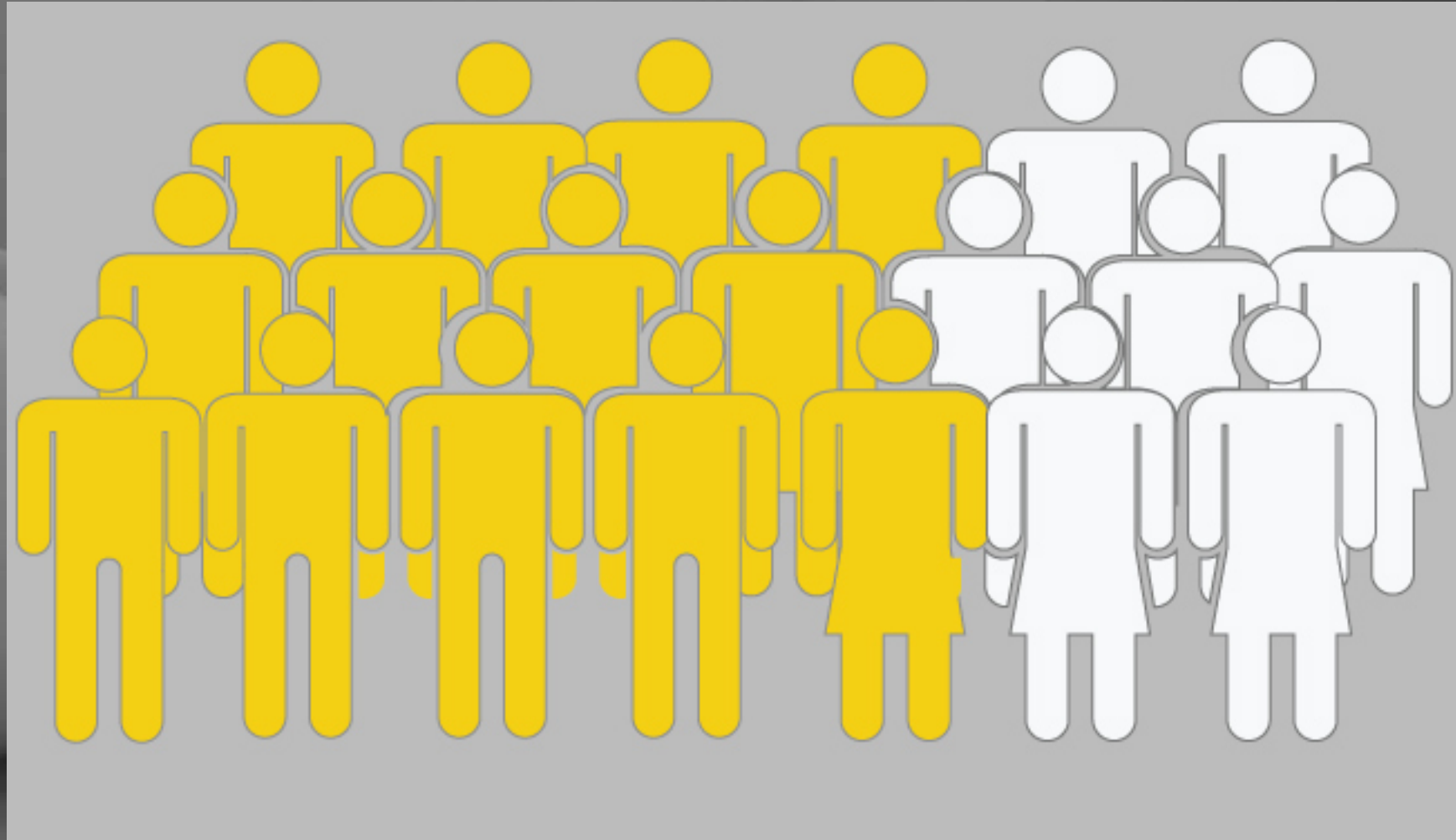
Why a code of best practices?

What's in the CAA code

More support

What you can do

WHY IT MATTERS: 2014 CAA ISSUES REPORT



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

FOR INSTANCE

“I found a suitable image online to illustrate my article. Do I still need a license?”

AND

“Can I use some photos I took of an artist’s work on my online course site?”



AND



“I’m making art from found images. Do I need to get permission to use them?”



AND



**“Can I use pictures from
our exhibition in museum
publications?”**



AND



**“Can we put our archival
collection online?”**

WHAT IS FAIR USE?



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

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



GOOD NEWS....

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

SELF-CENSORSHIP



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



The background of the image is a grayscale photograph of a modern interior. It features a light-colored wooden floor with a visible grain pattern. In the upper portion, there are dark, vertical architectural elements, possibly columns or walls, creating a sense of depth. A large, semi-transparent yellow rectangle is positioned in the center of the frame, serving as a backdrop for the text.

**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

ASoC
Center for Social Media

LAW
AMERICAN
UNIVERSITY

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

COMMUNICATION SCHOLARS



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

Co-facilitators:

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School of Communication, American University

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Peter Jaszi, Program on Information Justice and Intellectual Property,
Washington College of Law, American University

Jennifer Urban, University of California–Berkeley School of Law

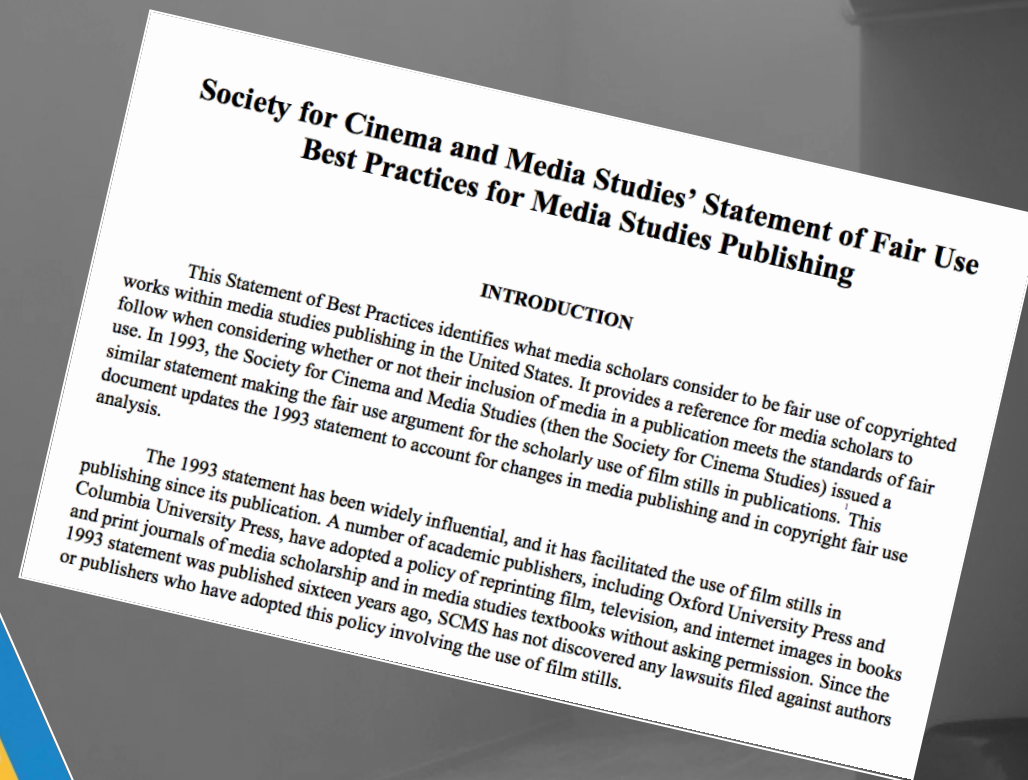
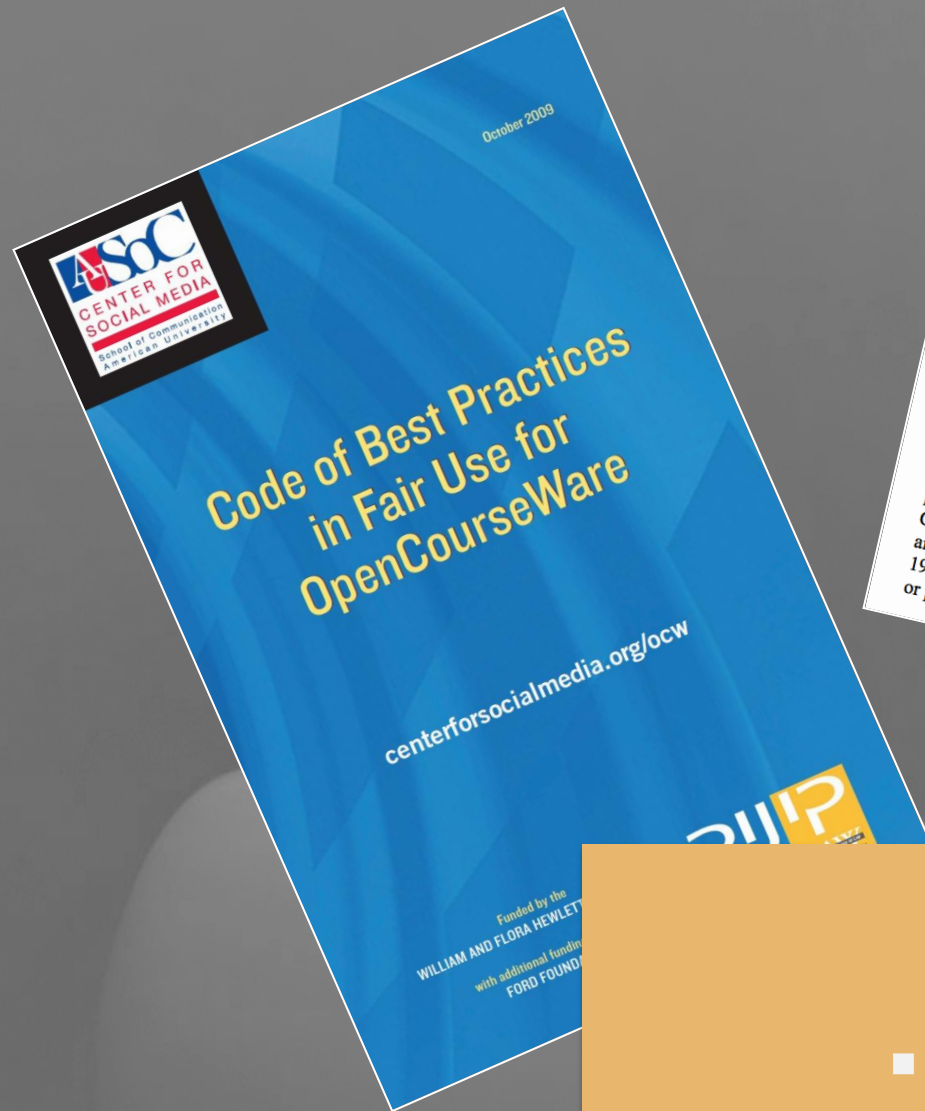
centerforsocialmedia.org/poetry • poetryfoundation.org/fairuse

LIBRARIANS

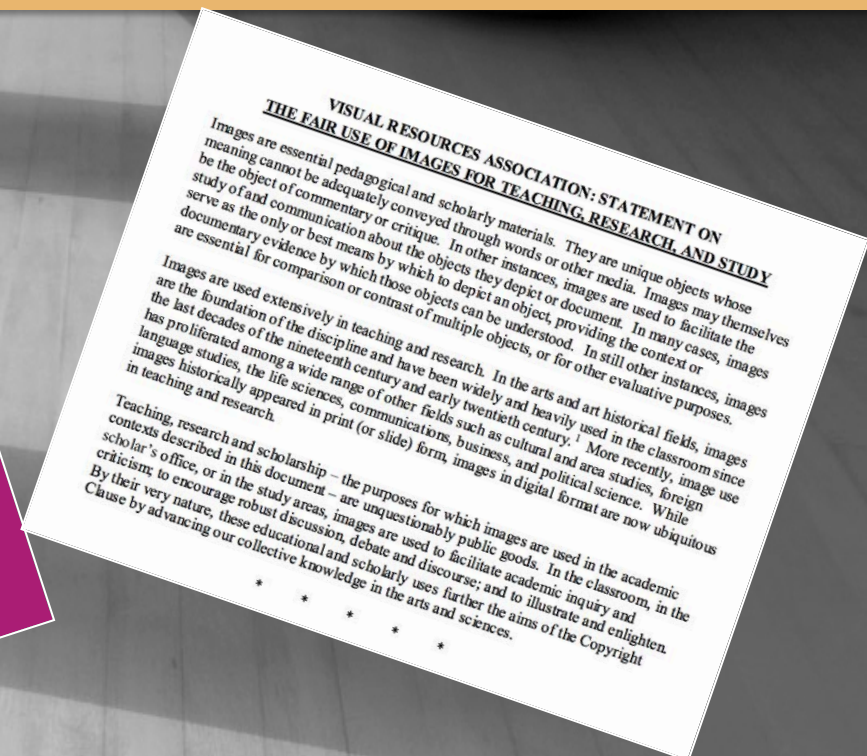


CODE OF BEST PRACTICES IN FAIR USE FOR ACADEMIC AND RESEARCH LIBRARIES

JANUARY 2012



...AND MORE!



NOT LIKE FAIR USE “GUIDELINES”!

A guide to reasoning, not a set of rules

No arbitrary limits or metrics

Based on professional consensus

Not negotiated with copyright holders

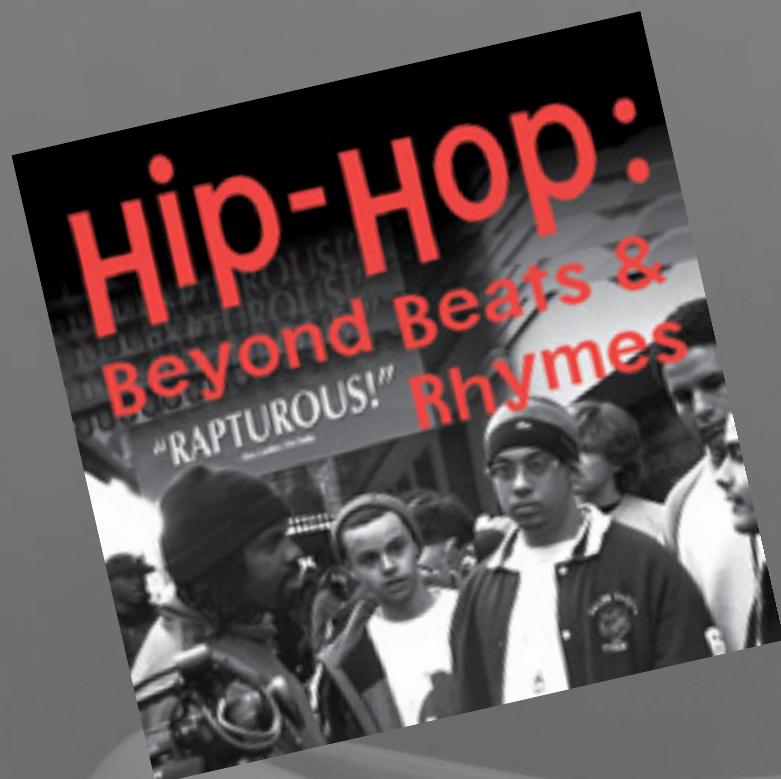
INFORMED RISK ASSESSMENT → BETTER PRACTICE: EXAMPLES

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

*The Graphic Design of the Radical Press
and the Rise of the
CounterCulture, 1964-1974*



EDITED BY
GEOFF KAPLAN

GEOFF KAPLAN
EDITED BY



AMERICAN UNIVERSITY
WASHINGTON, DC



JACOB'S PILLOW DANCE INTERACTIVE

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.

ARTIST»

GENRE»

ERA»

DIVE IN » GUESS »

DEVELOPING CAA'S CODE

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

SITUATIONS

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](https://cmsimpact.org/fair-use)

[Collegeart.org/fair-use](https://collegeart.org/fair-use)

RECLAIMING FAIR USE



How to Put Balance Back in Copyright

PATRICIA AUFDERHEIDE *and* PETER JASZI



AMERICAN UNIVERSITY
WASHINGTON, DC

FAIR USE

Practice
Makes
Practice

Please feel free to share this
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the principles of fair use.



THANK YOU!

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