CODE OF BEST PRACTICES IN FAIR USE FOR SOFTWARE PRESERVATION
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CMSi
CENTER FOR MEDIA & SOCIAL IMPACT
SCHOOL OF COMMUNICATION
AMERICAN UNIVERSITY • WASHINGTON, D.C.

AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW
PROGRAM ON INFORMATION JUSTICE AND INTELLECTUAL PROPERTY

ASSOCIATION OF RESEARCH LIBRARIES
SITUATIONS
ACCESSIONING, STABILIZING, EVALUATING, AND DESCRIBING DIGITAL OBJECTS
DOCUMENTING SOFTWARE IN OPERATION, AND MAKING THAT DOCUMENTATION AVAILABLE
#3 PROVIDING ACCESS TO SOFTWARE FOR USE IN RESEARCH, TEACHING, AND LEARNING
PROVIDING BROADER NETWORKED ACCESS TO SOFTWARE MAINTAINED AND SHARED ACROSS MULTIPLE COLLECTIONS OR INSTITUTIONS
#5

PRESERVING FILES EXPRESSED IN SOURCE CODE AND OTHER HUMAN-READABLE FORMATS
FAIR USE

The right to use copyright material without permission or payment—Under some circumstances
UNCERTAINTY LEADS TO:

\[ \frac{1}{3} \text{ of creators have avoided or abandoned work because of copyright concerns} \]
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
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
ASSESSING RISK?
CONSIDER BOTH!

Legal risk associated with pursuing mission

Mission risk associated with failing to act
BEST PRACTICES CODES
DOCUMENTARY FILMMAKERS

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 ON SCHOLARS

CODE OF BEST PRACTICES IN
FAIR USE FOR
SCHOLARLY RESEARCH
IN COMMUNICATION

JUNE 2010
INTERNATIONAL COMMUNICATION ASSOCIATION
LIBRARIANS
Society for Cinema and Media Studies’ Statement of Fair Use for Media Studies Publishing

INTRODUCTION

This Statement of Best Practices identifies what media studies scholars can do in the use of copyrighted works within media studies publishing in the United States. A practice or activity for media scholars in following legal concerns about the fair use of multimedia in a publication needs to assess the standards of fair use in the United States. A significant issue is whether fair use of multimedia in a publication means the fair use of such works in a book, a journal, or a film. This document updates the 1995 statement to account for changes in media publishing and in copyright law.

The 1995 statement has been widely influential, and it has standardized the use of film stills in publishing since its publication. A number of academic libraries, notably Oxford University Press and Columbia University Press, have adopted a policy of using film, television, and internet images in books and film reviews. It is generally believed that these images are not in the public domain, although it is not clear whether film and television images are protected by copyright or fair use. Since the 1995 statement was published sixteen years ago, MCM has revised its own statement against authors and publishers who have adopted this policy involving the use of film stills.

...AND MORE!
BETTER RISK ASSESSMENT, BETTER PRACTICE

Doc filmmakers: Fair use now gets insured

Librarians: Collections digitized

Scholars: New work published

Archivists: Digital exhibits online
Power to the People
EDITED BY
GEOFF KAPLAN

AMERICAN UNIVERSITY
WASHINGTON, D.C.
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.
A guide to reasoning, not a set of rules

No arbitrary limits or metrics

Based on professional consensus

NOT negotiated with copyright holders/brokers (estates, ARS/VAGA)

NOT LIKE FAIR USE “GUIDELINES”!
FOR EACH SITUATION IN THE CODE:

Description

Principle

Limitations
FAIR USE

Practice Makes Practice
WHERE DO I GET MORE INFORMATION?

MORE RESOURCES

softwarepreservationnetwork.org
arl.org/fairuse
cmsimpact.org/fairuse
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