CODE OF BEST PRACTICES IN FAIR USE FOR SOFTWARE PRESERVATION

Software Preservation Network Webinar
Feb. 25, 2019

CODE OF BEST PRACTICES IN FAIR USE FOR

SOFTWARE PRESERVATION

SEPTEMBER 2018

CMSi
CENTER FOR MEDIA & SOCIAL IMPACT
SCHOOL of COMMUNICATION
AMERICAN UNIVERSITY • WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON
COLLEGE of LAW

PROGRAM ON
INFORMATION JUSTICE AND
INTELLECTUAL PROPERTY

ASSOCIATION
OF RESEARCH
LIBRARIES

SITUATIONS

#1

ACCESSIONING, STABILIZING, EVALUATING, AND DESCRIBING DIGITAL OBJECTS

#2

DOCUMENTING SOFTWARE IN OPERATION, AND MAKING THAT DOCUMENTATION AVAILABLE

#3

PROVIDING ACCESS TO SOFTWARE FOR USE IN RESEARCH, TEACHING, AND LEARNING

#4

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

without permission or material
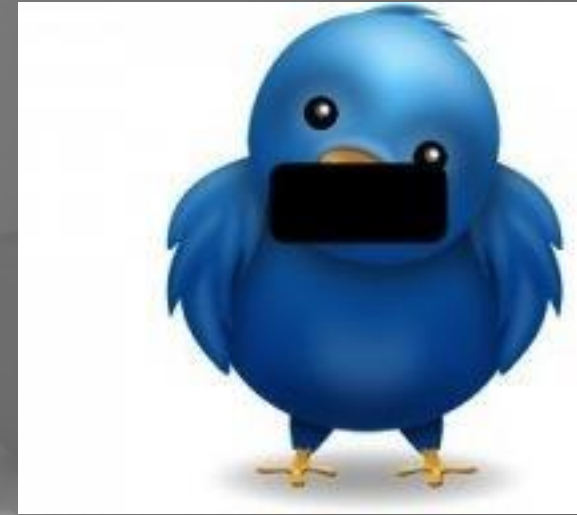
payment--

Under some circumstances

UNCERTAINTY LEADS TO:

1/3 of creators have avoided or abandoned work because of copyright concerns

SELF-CENSORSHIP

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
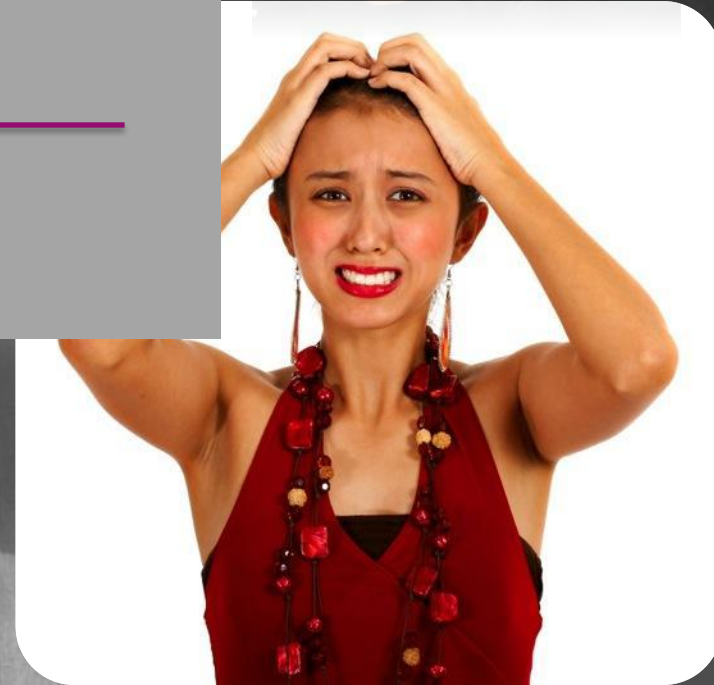
ASSESSING RISK? CONSIDER BOTH!

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

COMMUNICATI ON SCHOLARS

CODE OF BEST PRACTICES IN

FAIR USE FOR SCHOLARLY RESEARCH IN COMMUNICATION

JUNE 2010
INTERNATIONAL COMMUNICATION ASSOCIATION

CENTER FOR SOCIAL MEDIA

School of Communication
American University

POETS

CODE OF BEST PRACTICES IN FAIR USE FOR POETRY

ASoC
CENTER FOR SOCIAL MEDIA
School of Communication
American University

PIJIP
Program on Information Justice
and Intellectual Property

Co-facilitators:

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Katharine Coles, Harriet Monroe Poetry Institute, The Poetry Foundation

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Washington College of Law, American University

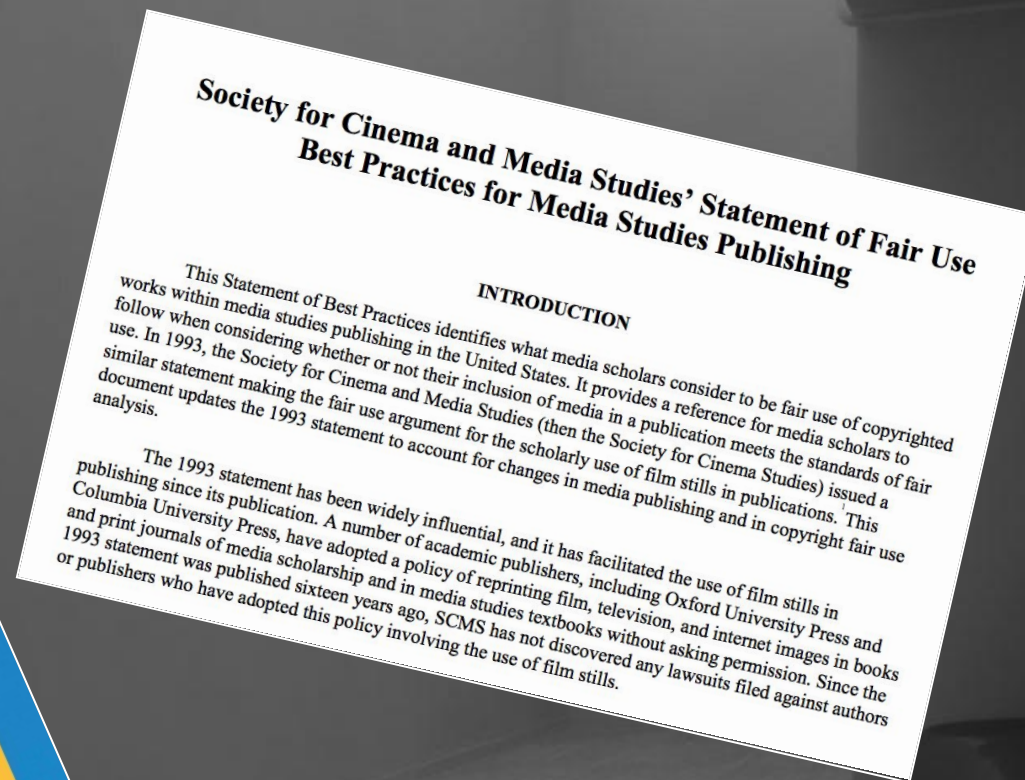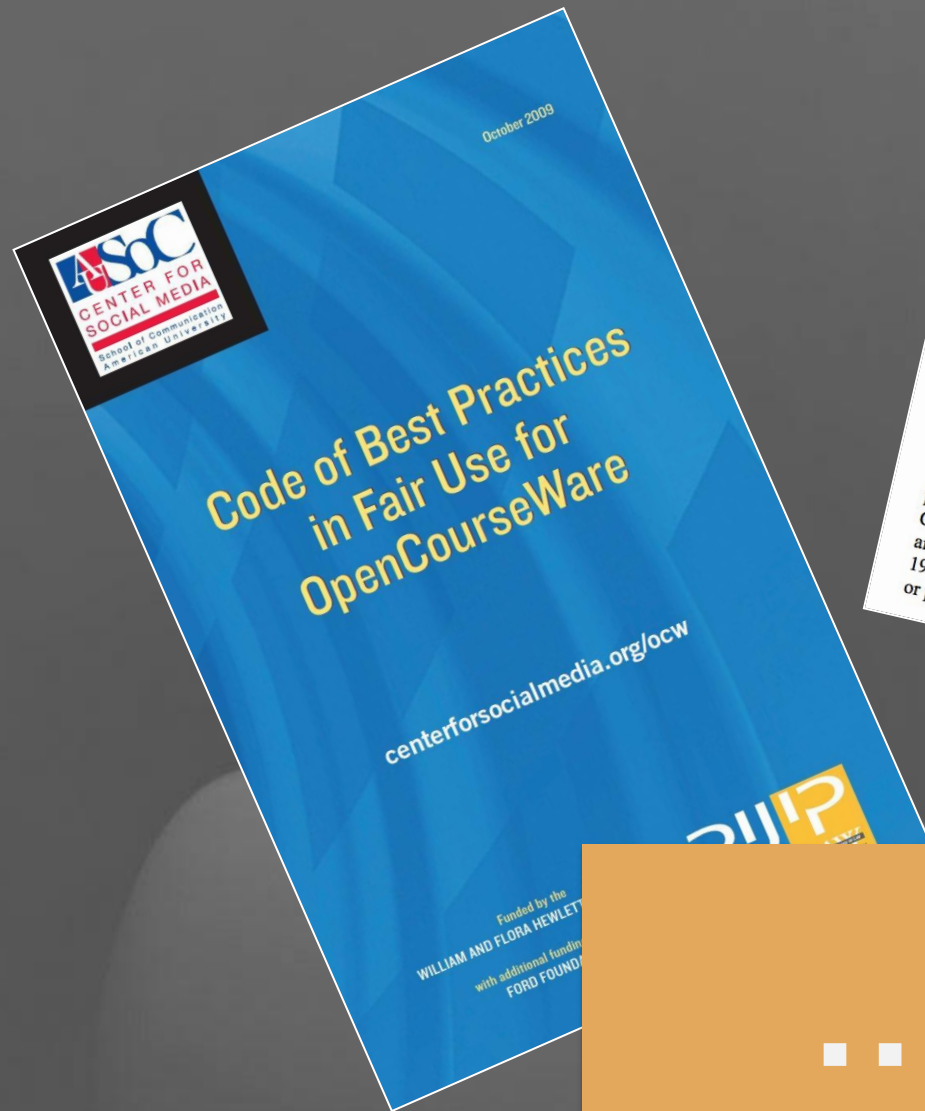**Jennifer Urban,** University of California–Berkeley School of Law

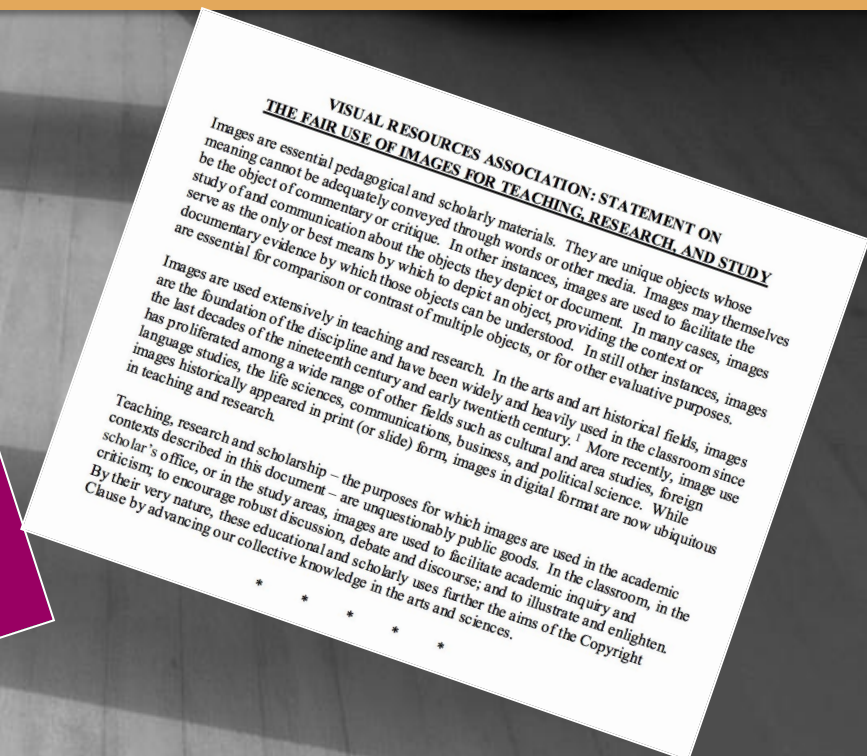centerforsocialmedia.org/poetry • poetryfoundation.org/fairuse

October 2009

Code of Best Practices in Fair Use for OpenCourseWare

centerforsocialmedia.org/ocw

Funded by the
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FORD FOUNDATION

Society for Cinema and Media Studies' Statement of Fair Use
Best Practices for Media Studies Publishing

INTRODUCTION

This Statement of Best Practices identifies what media scholars consider to be fair use of copyrighted works within media studies publishing in the United States. It provides a reference for media scholars to follow when considering whether or not their inclusion of media in a publication meets the standards of fair use. In 1993, the Society for Cinema and Media Studies (then the Society for Cinema Studies) issued a similar statement making the fair use argument for the scholarly use of film stills in publications. This document updates the 1993 statement to account for changes in media publishing and in copyright fair use analysis.

The 1993 statement has been widely influential, and it has facilitated the use of film stills in publishing since its publication. A number of academic publishers, including Oxford University Press and Columbia University Press, have adopted a policy of reprinting film, television, and internet images in books and print journals of media scholarship and in media studies textbooks without asking permission. Since the 1993 statement was published sixteen years ago, SCMS has not discovered any lawsuits filed against authors or publishers who have adopted this policy involving the use of film stills.

June 2008

Code of Best Practices in Fair Use for Online Video

centerforsocialmedia.org/remix

...AND MORE!

Society for Cinema and Media Studies' Statement of
Best Practices in Fair Use in Teaching for Film and
Media Educators

Society for Cinema and Media Studies

This code of best practices [1]in fair use in teaching for film/media educators was designed by The Society for Cinema and Media Studies. It deals with classroom screenings, broadcasts, and derivative works.

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
WASHINGTON, DC

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

VISUAL RESOURCES ASSOCIATION: STATEMENT ON
THE FAIR USE OF IMAGES FOR TEACHING, RESEARCH, AND STUDY

Images are essential pedagogical and scholarly materials. They are unique objects whose meaning cannot be adequately conveyed through words or other media. Images may themselves be the object of commentary or critique. In other instances, images are used to facilitate the study of and communication about the objects they depict or document. In many cases, images serve as the only or best means by which to depict an object, providing the context or documentary evidence by which those objects can be understood. In still other instances, images are essential for comparison or contrast of multiple objects, or for other evaluative purposes.

Images are used extensively in teaching and research. In the arts and art historical fields, images are the foundation of the discipline and have been widely and heavily used in the classroom since the last decades of the nineteenth century and early twentieth century. More recently, image use has proliferated among a wide range of other fields such as communications, business, and political science, language studies, the life sciences, communications, business, and political science, foreign images historically appeared in print (or slide) form, images in digital format are now ubiquitous in teaching and research.

Teaching, research and scholarship – the purposes for which images are used in the academic contexts described in this document – are unquestionably public goods. In the classroom, in the scholar's office, or in the study areas, images are used to facilitate academic inquiry and criticism; to encourage robust discussion, debate and discourse; and to illustrate and enlighten. By their very nature, these educational and scholarly uses further the aims of the Copyright Clause by advancing our collective knowledge in the arts and sciences.

BETTER RISK ASSESSMENT, BETTER PRACTICE

Doc filmmakers: Fair use now gets insured

Librarians: Collections digitized

Scholars: New work published

Archivists: Digital exhibits on line

Power to the People

The Graphic Design of the Radical Press
and the Rise of the
Counter-Culture, 1964–1974

EDITED BY

GEOFF KAPLAN

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/brokers (estates, ARS/VAGA)

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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