FAIR USE IN RESEARCH LIBRARIES

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OVERVIEW

• Why fair use matters to librarians

• Imbalance in copyright policy

• Research into library practices

• Results

• Next steps
Why Fair Use Matters

- Mission to serve knowledge past, present, future
- Need to access copyrighted work
- Digital innovation/

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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
WHY BALANCE?

• All culture created on existing culture (we used to know that)

• The First Amendment (no censorship)
BIGGEST BALANCING FEATURE:

FAIR USE
legal, unauthorized use of copyrighted material—under some circumstances
GOOD NEWS...

- Judges love balancing features
- Supreme Court upholds term extension... because fair use exists
- Fair use judicial interpretation has greatly shifted in last 15 years

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JUDGES ASK:

• Did you transform the use?

• Did you use the appropriate amount to satisfy the transformative use?
INTERPRETING
FAIR USE
“FOUR FACTORS”

- Reason for the use
- Kind of work used
- Amount used
- Effect on the market
PLUS...

Custom and practice of individual creative communities...

...especially when well-documented
FEAR...

- Will I get it wrong?
- Will I get sued?
- Will my boss/general counsel client get angry?
What Research Librarians Do
CATEGORIES

• Teaching and Learning
• Research
• Preservation
• Exhibits
• Disability/Access
TEACHING AND LEARNING

• “e-reserves”
• Video
• Copyright education
• Digitizing teaching collections (e.g. art slides)
E-reserves

• Restricting content

• Limit access (e.g. classtime only, no repeats)

• Offload responsibility (IT, labs, faculty)
Video

• No streaming

• Limiting access/
  Restricting content

• Favored Vendors
Copyright training

• Arbitrary guidelines (e.g. 10%, one chapter)
• “maybe,” “probably”
Teaching collections

- Delay and deferral
- Partial inclusion
- Accept underground use
RESEARCH

• Digitizing collections
• Managing access
• ILL
Digitizing Collections

- Prioritize public domain and the obscure
- Create partial collections
- Stalled projects
Managing access

• Defer to licenses that limit legitimate research

• Require form for access to collections

• Limit access to site
The “rule of five”
PRESERVATION: Limits of 108

- Format shifting delayed
- Public domain and the obscure prioritized
- Deferral of decision-making
EXHIBITS

• Delay and deferral

• Limited on-line access

• Restricted content (variable by media)
DISABILITY

• Limited access

• Librarians sidelined in policy making

• Delay

• Unnecessary duplication of effort
Overall...

- Insecurity and hesitation = staff costs, mission deformed
- Fair use would help, but is under-used
- Risk management substituted for fair use analysis
HOW TO STRENGTHEN ACCESS TO FAIR USE?
COMMUNITIES

INTERPRET FAIR USE:

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COMMUNITIES
INTERPRET FAIR USE:

• Documentary filmmakers
COMMUNITIES

INTERPRET FAIR USE:

• Documentary filmmakers
• Scholars

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• Media literacy teachers
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• Online video
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• Dance collections

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• Dance collections
• OpenCourseWare
STORIES UNTOLD:

Creative consequences of the rights clearance culture for documentary filmmakers

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DOCUMENTARY

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
RESULTS:

• TV programmers air films
• New kinds of films
• All insurers of errors and omissions insurance now accept fair use claims
• Lawyers use the Statement to build their practices
Statement of Best Practices in Fair Use in Teaching for Film & Media Educators

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

Best Practices For Fair Use in Teaching
(Direct inquiries to the SCMS Public Policy Committee c/o office@cmstudied.org)

Next >
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
A Research Librarians’ Code...and You
Process:

- Release report Jan 2011
- Confidential meetings through Sep 2011
- Code released c. Jan 2012
- Implement and educate, 2012-2013
FAIR USE:
FAIR USE:

Practice
FAIR USE:

Practice Makes
FAIR USE:
Practice Makes Practice
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THANK YOU!

Andrew W. Mellon Foundation
Research librarians everywhere
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