An academic and research library’s mission is to enable teaching, learning, and research. Increasingly this requires copying (especially digitizing), distributing, and displaying library materials. Library materials are mostly under copyright.

Life+70

4.8 million

85%

The Good News About Library Fair Use

 Libraries Need Fair Use

Fair use is the broad, flexible doctrine that will allow libraries to meet mission in the digital age.

"Life + 70" of a typical research library collection is likely under copyright.

70-80%

50%

of in-copyright materials in library collections will be "orphan works" (i.e., author/owner is unknown or unlocatable).

Current duration of copyright

Average number of volumes in ARL library collection

Academic librarians who expect online use of library materials to increase over next five years

The Code of Best Practices in Fair Use for Academic & Research Libraries

How it was Made (Three Phases)

1. Team interviewed 65 academic and research librarians in confidential phone conversations to learn how copyright was affecting their work

2. Team spoke with 90 librarians, from 64 libraries, in nine sessions, 4 hours each, to deliberate about best practices

3. Legal experts reviewed the draft and gave it a thumbs up as representing a reasonable application of fair use to library practice

Consensus of groups was distilled to 8 principles w/ limitations and enhancements

Principles

1. Providing course content to students digitally (e.g., course sites and e-reserves)

2. Creating physical and digital exhibits

3. Digitizing for preservation/embark at migration (e.g., VHS tapes)

4. Digitizing archives and special collections

5. Making library collections accessible for disabled users (e.g., hathitrust.org)

6. Managing institutional repositories

7. Next generation data mining and “non-consumptive” research (e.g., digital humanities research)

8. Collecting and preserving material from the Internet

Principles, limitations, and enhancements describe a reasonable consensus about what’s fair in these eight common situations.

The Old Guidelines Have Failed

Because They

→ purport to describe "minimum safe harbors" but are inevitably treated as ‘outer limits’ by practitioners and rightsholders

→ were negotiated with rightsholders from a position of fear and intimidation

→ take no account of legitimate library practice or mission

→ have no legal force, despite appearances and pretense to the contrary

→ do not reflect current legal or scholarly understandings of fair use

→ include arbitrary numeric limitations

→ are promoted and distributed by groups hostile to libraries and our rights

→ are based on solid research into how courts decide fair use cases

→ are informed by the latest scholarly and judicial opinions about fair use

→ do not impose arbitrary and absurd limitations

→ are endorsed by leading library and educational groups: ALA, ACRL, ARL/NA, CAA, CCUMC, MLA, VRA

→ are grounded in library mission and practice

→ are based on legal force, not appearances and pretense to the contrary

→ are rooted in current legal or scholarly understandings of fair use

→ do not include arbitrary numeric limitations

→ are born of compromise

→ are promoted and distributed by groups hospitable to libraries and our rights

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→ do not impose arbitrary or absurd limitations

→ are endorsed by library and educational groups, not special interest groups

Best Practices Rule!

Because They

→ describe centrist, moderate practices that are neither the bare minimum nor the absolute maximum of fair use, but a comfortable middle ground

→ are developed by practice communities themselves, without intimidation from hostile outside groups

→ are based on legal force, not appearances and pretense to the contrary

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Average number of volumes in ARL library collection

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Next generation data mining and “non-consumptive” research (e.g., digital humanities research)

Collecting and preserving material from the Internet

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