

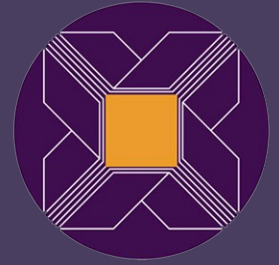
FAIR USE AND STUDENTS

Pat Aufderheide

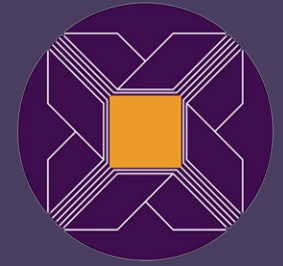
Brandon Butler

Peter Jaszi

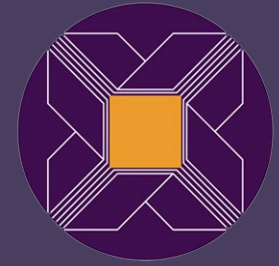
OVERVIEW



- **Why students need to understand fair use**
- **Copyright and its problems**
- **How codes of best practices help**



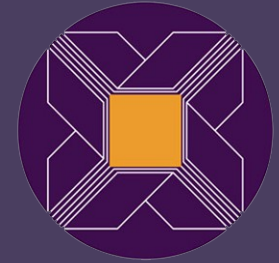
WHY COPYRIGHT MATTERS TO YOU



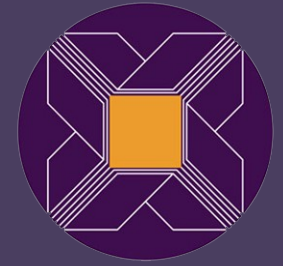
COMMON QUESTIONS:

- **When is P2P filesharing illegal?**
- **How much can I quote or excerpt in my homework?**
- **Is the stuff on my Blackboard/Moodle/Sakai site free for me to use?**

AND...

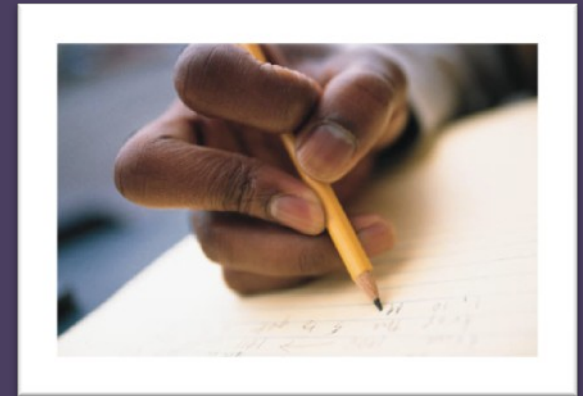
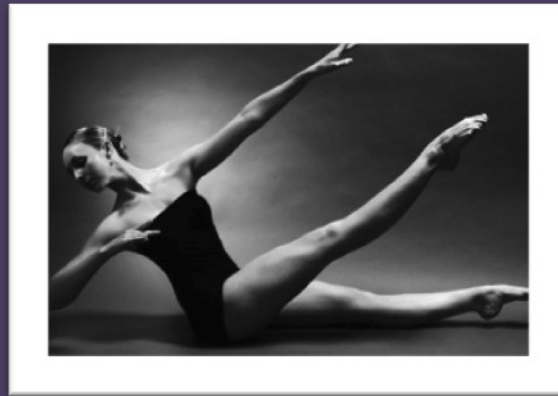
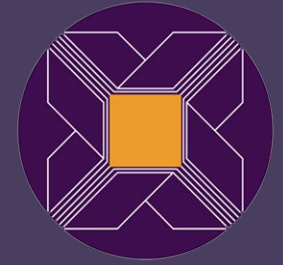


- **What's the diff copyright infringement/plagiarism?**
- **Is my work copyrighted?**
- **And...what other questions do you have?**



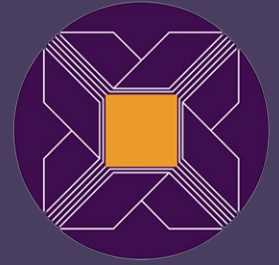
THE PURPOSE OF COPYRIGHT

ONE PURPOSE :



TO PROMOTE THE CREATION OF CULTURE

By:



- **Rewarding creators with limited monopoly**
- **Encouraging new makers to use existing culture**

Plagiarism v.

Copyright

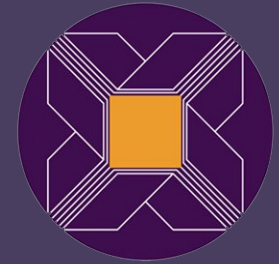
Plagiarism:

Pretending

**someone else's
work is yours**

**(You give no
credit!)**

**(You took their
actual picture or
words or
something pretty
close!)**



Copyright

Infringement:

**Using someone
else's work**

without

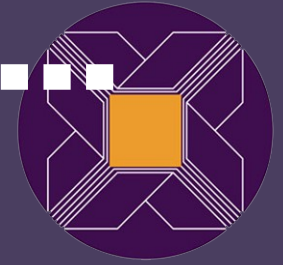
permission and

without the

**protection of fair
use/other**

exceptions

My limited monopoly... and yours



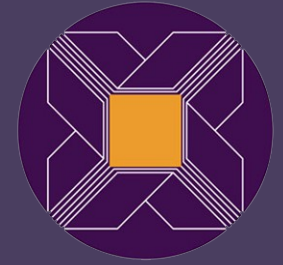
Yours:

**I pay you or
get
permission
for use,
unless I have
a right under
an exception
(Downloading**

Mine:

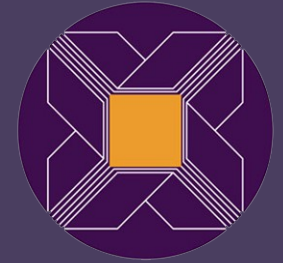
**Once I've
made it, I've
got a
copyright,
and you'll
pay/get
permission,
unless you**

WHY ARE MONOPOLY RIGHTS LIMITED?



- **All culture created on existing culture (we used to know that)**
- **The First Amendment (no censorship)**

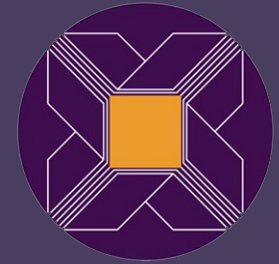
IMBALANCE



Today's copyright law and practice tilts toward copyright holders:

- **Long copyright terms**
- **Default copyright**
- **Many derivative products copyrighted**
- **Plus...limiting terms of service**

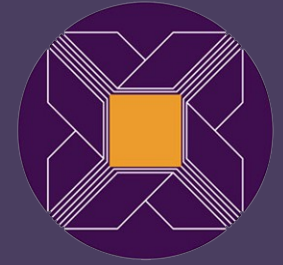
BIGGEST BALANCING FEATURE:



FAIR USE

**legal, unauthorized use of
copyrighted material--
under
some circumstances**

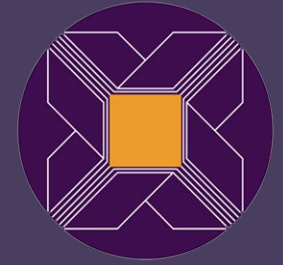
FREE SPEECH!



Fair use is a free speech right

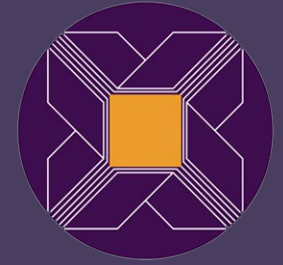
- **Private censorship is unconstitutional**
- **Copyright law encourages speech**
- **Like other free speech rights, fair use is a case-by-case decision**
- **Like other free speech rights, it involves risk calculation**

GOOD NEWS...



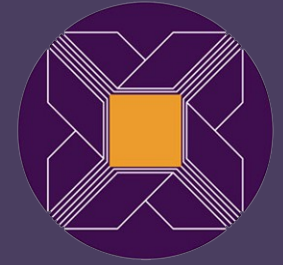
- Judges love balancing features
- Supreme Court: fair use protects free speech
- Fair use judicial interpretation shifts greatly since 1990

JUDGES ASK:



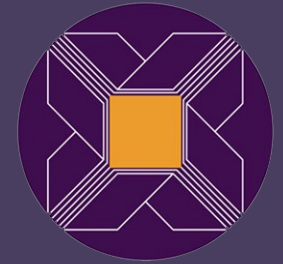
- Did you transform the use?
- Did you use the appropriate amount to satisfy the transformative use?

“FOUR FACTORS”



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

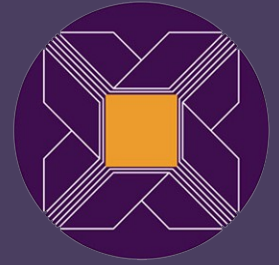
PLUS...



**Custom and practice of
individual creative
communities...**

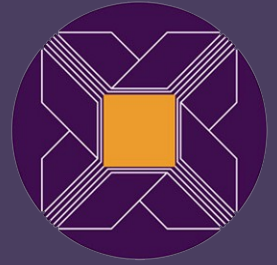
**...especially when well-
documented**

ASK YOURSELF:

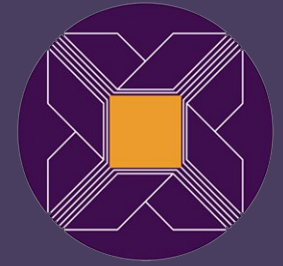


- Did I use this stuff for a new purpose or just to avoid paying for it?
- Did I use only the amount needed for the new purpose?

ARE YOU WORRIED?

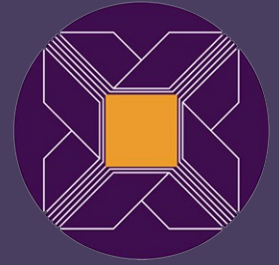


- Will I get it wrong?
- Will I get a bad grade?
- Will I be accused of cheating?
- Will I get sued?



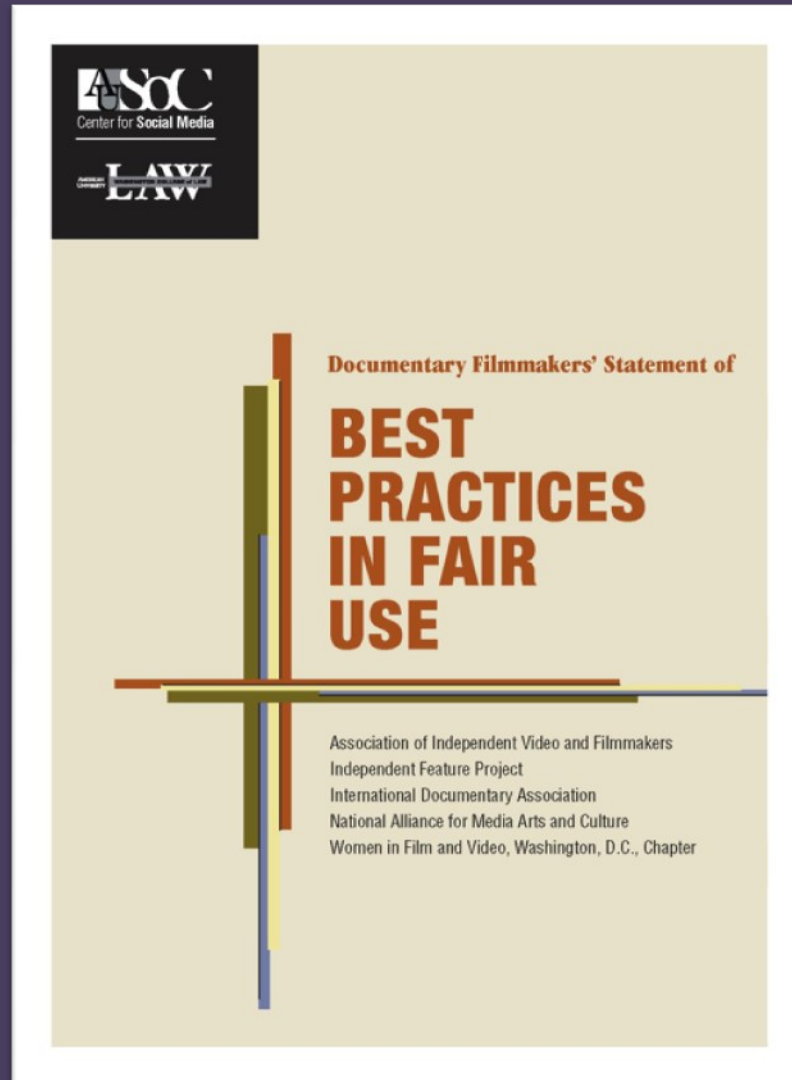
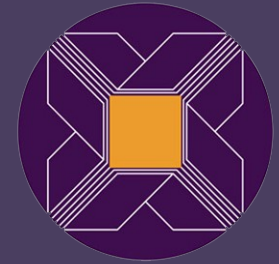
BEST PRACTICES CODES

COMMUNITIES INTERPRET FAIR USE:

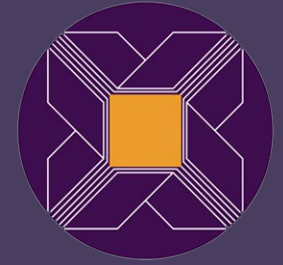


- **Documentary filmmakers**
- **Scholars**
- **Media literacy teachers**
- **Online video**
- **Dance collections**
- **OpenCourseWare**

DOCUMENTARY CODE

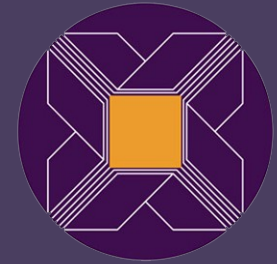


RESULTS:



- 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

FILM SCHOLARS



Society for Cinema & Media Studies

Devoted to the Scholarly Study of Film, Television, Video & New Media

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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@cmstudies.org)

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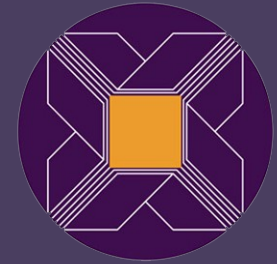
NEWS

- [Statement of Best Practices in Fair Use in Teaching for Film & Media Educators](#)
- [Welcome to SCMS](#)

WHO'S ONLINE

We have 139 guests online and 41 registered users online

MEDIA LITERACY TEACHERS



Action Coalition for Media Education
Media Education Foundation
National Association for Media
Literacy Education
National Council of Teachers of English
Visual Communication Studies Division
of the International Communication
Association

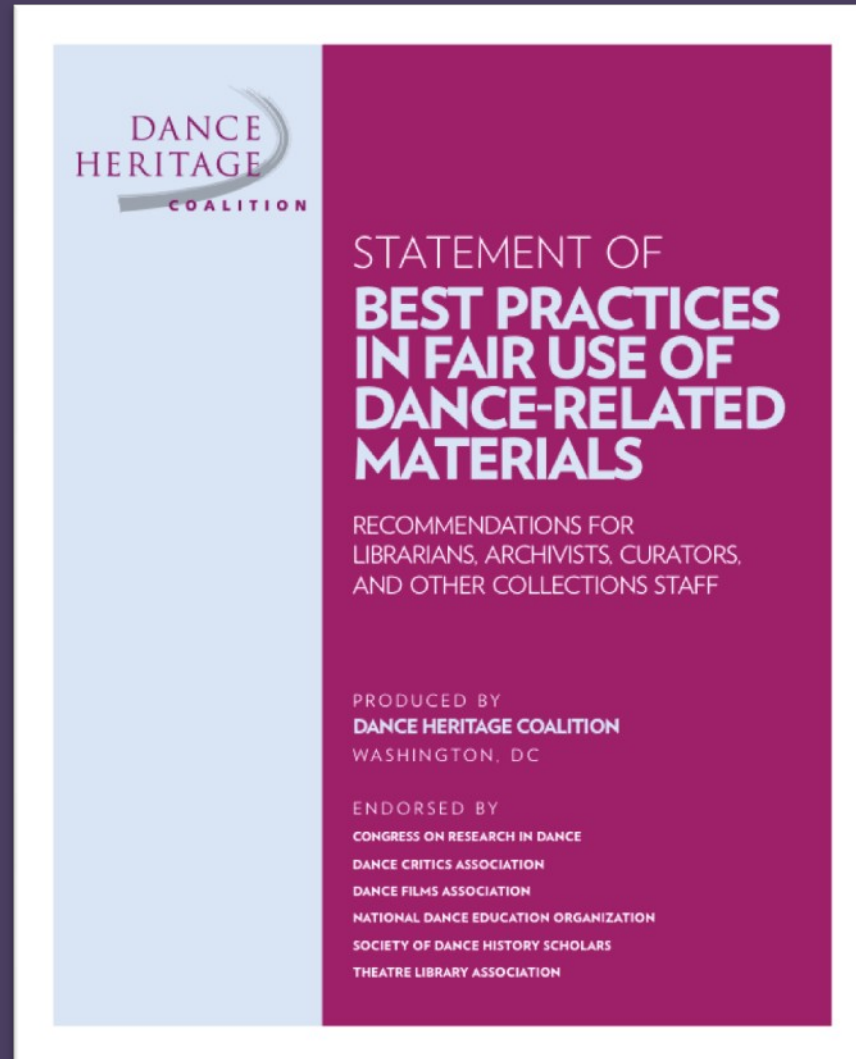
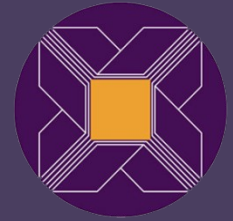
Code of
Best Practices in
Fair Use for
Media Literacy
Education



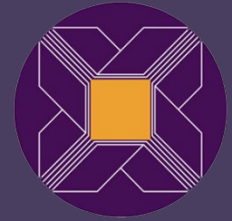
 Media Education Lab
TEMPLE UNIVERSITY

centerforsocialmedia.org/medialiteracy

DANCE ARCHIVISTS



OPEN COURSEWARE



The cover features a blue background with a geometric pattern of overlapping squares. In the top left corner, there is a logo for the Center for Social Media, which includes the letters 'ASoC' in a stylized font and the text 'CENTER FOR SOCIAL MEDIA' and 'School of Communication American University'. In the top right corner, the date 'October 2009' is printed. The main title 'Code of Best Practices in Fair Use for OpenCourseWare' is centered in a large, bold, yellow font. Below the title, the website 'centerforsocialmedia.org/ocw' is listed. At the bottom, there are two funding sources: 'Funded by the WILLIAM AND FLORA HEWLETT FOUNDATION' and 'with additional funding from the FORD FOUNDATION'. To the right of the Ford Foundation text is the logo for the Program on Information Justice and Intellectual Property (PIJIP), which consists of the letters 'PIJIP' in a stylized font and the text 'Program on Information Justice and Intellectual Property' and 'THE AMERICAN UNIVERSITY'.

ASoC
CENTER FOR
SOCIAL MEDIA
School of Communication
American University

October 2009

**Code of Best Practices
in Fair Use for
OpenCourseWare**

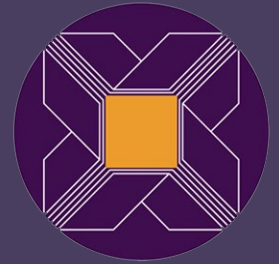
centerforsocialmedia.org/ocw

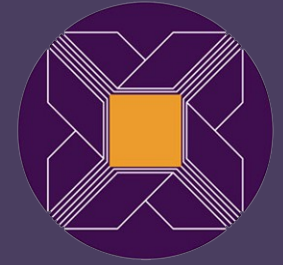
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with additional funding from the
FORD FOUNDATION

PIJIP
Program on Information Justice
and Intellectual Property
THE AMERICAN UNIVERSITY

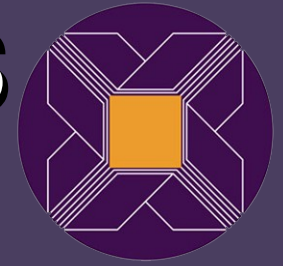
The Code of Best Practices in Fair Use for Academic and Research Libraries





**Librarians Can
Use Fair Use to
Help Students:**

GET COURSE MATERIALS ONLINE (E-RESERVES)

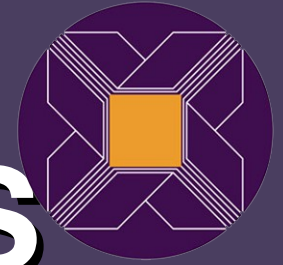


**.All formats (print, audio,
video, etc)**

Passworded

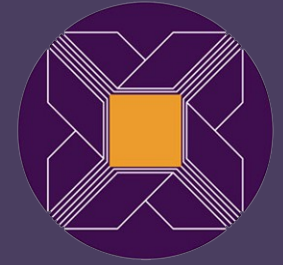
For course use only

GET ACCESS TO OBSOLETE FORMATS



For instance, the out-of-circulation video you need for a research project is on VHS, but you need a DVD format

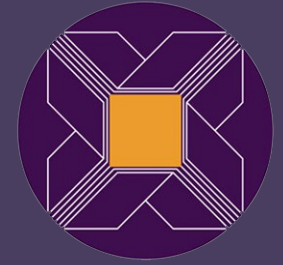
ACCESS SPECIAL COLLECTIONS/ ARCHIVES ONLINE



**You can work on your
schedule, remotely**

**The library's original
materials aren't put at
risk by handling**

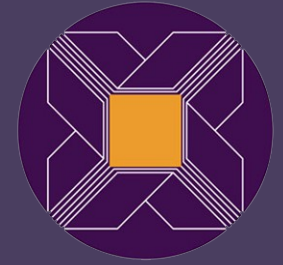
GET ACCESS TO THE VERSION THEY NEED, IF DISABLED



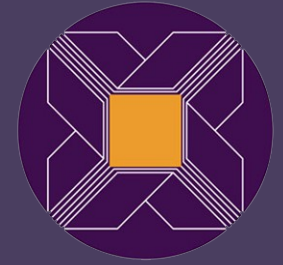
**With appropriate time
limits**

**Coordinated with
disability services**

FILE A COMPLETE VERSION OF A DISSERTATION



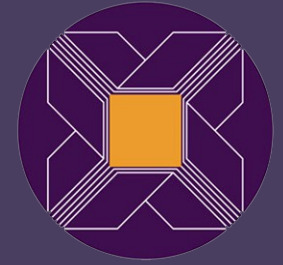
**If the copyrighted
material it quotes was
employed under fair use**



USE INNOVATIVE RESEARCH TECHNIQUES

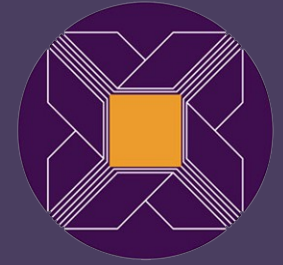
**For instance, using
search techniques to
comb entire databases
for patterns**

AND MORE...



**Ask your librarian for help
in making copyright work
for you, to protect your
work and help you make
the best work you can!**

FAIR USE:



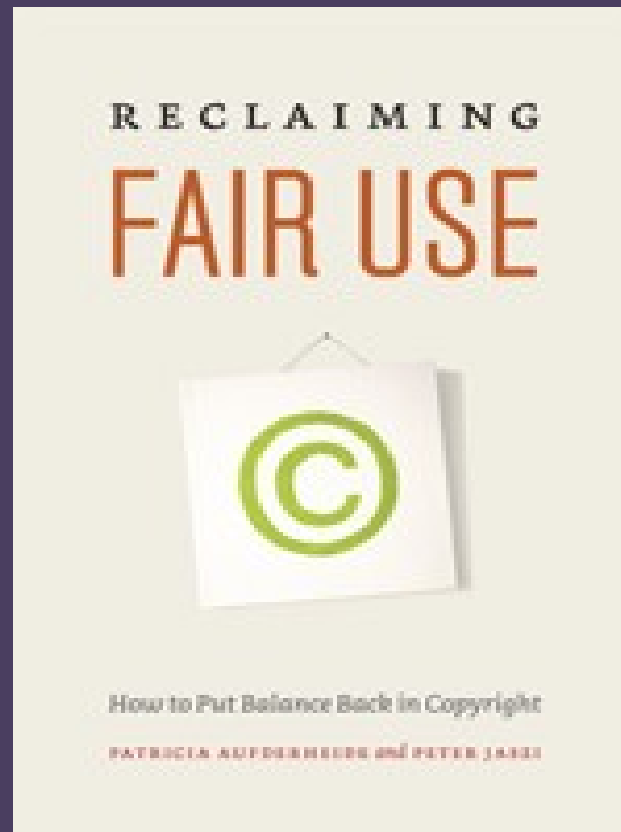
**Practice
Makes
Practice**

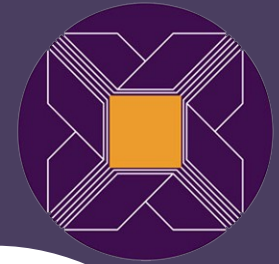
MORE INFORMATIO N

much more (videos! Presentations!

- **Arl.org/fair-use (#FAQs!)**
- **Centerforsocialmedia.org/**
- **fair-use**
- **Pijip.wcl.edu/libraries**

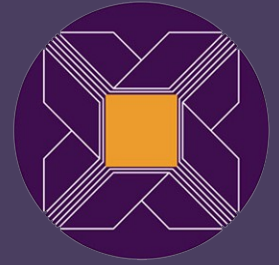
Handy Guide to Copyright and Fair Use





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presentation in its entirety.
For excerpting, kindly
employ
the principles of fair use.**

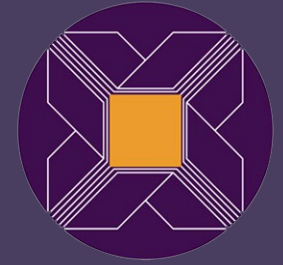
THANK YOU!



**Andrew W. Mellon
Foundation**

**Research librarians
everywhere**

CONTACT INFO



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