



Success of Fair Use Codes of Best Practices

Does the approach of creating a code of best practices, anchored in professional practice, actually work to expand the utility of fair use? What has happened to others who used codes of best practices to gain access to their rights?

This topic is discussed at length in Aufderheide and Jaszi, Reclaiming Fair Use (University of Chicago Press, 2011), but some specific examples include:

- Since documentary filmmakers created a code of fair use best practices in 2005, documentarians' fair use decision making has been ratified by their sternest judges in daily practice: insurers. Documentary filmmakers must obtain insurance for any legal errors and omissions they may make; before 2005, such insurers—not knowing what was expectable in the field—usually refused to insure against fair use claims. Within a year of creating the code, every single such insurer in the U.S. offered it without incremental costs.
- In media literacy education, which had been hobbled by fears of employing copyrighted material to teach with until they created a code in 2008, school systems in Wisconsin, Virginia and Maryland have incorporated the language of their code of best practices into their own standards and practices documents. The National Writing Project has trained all its members in use of the media literacy code.

- After makers of OpenCourseWare created a code in 2009, the makers at MIT launched 31 new courses online within a year. Previously, the courses had been out of consideration, because they contained copyrighted material used for teaching purposes.
- After the Dance Heritage Coalition sponsored a code of best practices for dance archivists in 2009, institutions around the country have been taking new advantage of fair use to make scarce and significant collection materials available to the public on line. For one example, take a look at <http://danceinteractive.jacobspillow.org/>, a virtual exhibit constructed (on the basis of fair use) from the archival resources of the venerable Jacob's Pillow Dance Festival.
- The 2010 release of the Poetry Foundation's fair use best practices statement is changing the practices of publishers, whose once-exacting clearance practices long have represent the greatest impediment to the publication of new books and articles providing critical perspectives on modern poetry. Indeed, in poetry and also scholarly publishing (where disciplinary codes such as the Code of Best Practices in Fair Use for Communication Research exist), publishers such as University of Chicago Press, Princeton University Press and Oxford University Press have been able to make their licensing decisions with much greater confidence, and have been able to employ fair use.

Finally, no codes of best practices in fair use have been challenged in court.