

## HOW THIS DOCUMENT WAS CREATED

The first step in creating this code was to conduct an in-depth survey, using long-form interviews, with 65 librarians at a diverse array of academic and research institutions in the United States, from Ivy League colleges to rural satellite campuses. The results demonstrated clearly both that fair use is an essential component of copyright exemptions for librarians, and also that they lacked a clear sense of what they and their peers might agree to as appropriate employment of fair use in recurrent situations.<sup>2</sup> As a result, librarians frequently did not use their fair use rights when they could have, and they overestimated the level of conflict between the strictures of copyright law on the one hand and their respective libraries' missions on the other. The cost of this uncertainty was amplified because many research and academic librarians routinely act as the de facto arbiters of copyright practice for their institutions and the constituencies they serve.

Working librarians with many different institutional roles at a wide range of institutions then gathered together in a series of small group discussions about fair use held in five cities between October 2010 and August 2011. In each conversation, participants were asked to discuss a series of brief hypothetical examples designed to raise questions about fair use and its limitations. Conversations revealed that members of this community understand that their mission depends on copyright, both the protection it provides for those who have already produced knowledge and the important rights it creates for those who need access to copyrighted material to enable learning, scholarship, and creativity. Their understanding of fair use, represented below, is grounded in this understanding of copyright balance. To ensure that the applications of fair use represented by the principles fall within the bounds of reason, an outside panel of distinguished copyright experts reviewed this document. However, this document is not intended and should not be construed as representing their legal advice. With this information in hand, each institution can undertake its own legal and risk analysis in light of its own specific facts and circumstances.

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2. See Association of Research Libraries et al., *Fair Use Challenges in Academic and Research Libraries* (2010), [http://www.arl.org/bm-doc/arl\\_csm\\_fairusereport.pdf](http://www.arl.org/bm-doc/arl_csm_fairusereport.pdf).

## WHAT THIS IS

This is a code of best practices in fair use devised specifically by and for the academic and research library community. It enhances the ability of librarians to rely on fair use by documenting the considered views of the library community about best practices in fair use, drawn from the actual practices and experience of the library community itself.

It identifies eight situations that represent the library community's current consensus about acceptable practices for the fair use of copyrighted materials and describes a carefully derived consensus within the library community about how those rights should apply in certain recurrent situations. These are the issues around which a clear consensus emerged over more than a year of discussions. The groups also talked about other issues; on some, there seemed not to be a consensus, and group members found others to be less urgent. The community may wish to revisit this process in the future to deliberate on emerging and evolving issues and uses.

## WHAT THIS ISN'T

This code of best practices was not negotiated with rights holders. This code is the work of the academic and research library community and arises from that community's values and mission. It presents a clear and conscientious articulation of the values of that community, not a compromise between those values and the competing interests of other parties.

This code of best practices does not exhaust the application of fair use rights when copyrighted material is concerned. The objective of this code is not to constrain librarians' reliance on fair use, but to enable it. The principle of fair use can and does operate in a wide diversity of contexts, along with the ones specifically addressed below.

Although the code incorporates consensus-based community standards relating to commonly experienced conflicts between library practice and perceived copyright constraints, it is not a comprehensive or exhaustive guide to all possible applications of fair use in and around libraries—even in the recurrent situations detailed below. Institutions may be able to make persuasive arguments for fair use that go beyond the shared norms expressed here. Likewise, institutions engaging in their own “risk management” may choose policies that do not take full advantage of these consensus principles.