

extent that they are the most appropriate, relevant, and still timely materials for the course.

PRINCIPLE:

It is fair use to make appropriately tailored course-related content available to enrolled students via digital networks.

LIMITATIONS:

- Closer scrutiny should be applied to uses of content created and marketed primarily for use in courses such as the one at issue (e.g., a textbook, workbook, or anthology designed for the course). Use of more than a brief excerpt from such works on digital networks is unlikely to be transformative and therefore unlikely to be a fair use.
- The availability of materials should be coextensive with the duration of the course or other time-limited use (e.g., a research project) for which they have been made available at an instructor's direction.
- Only eligible students and other qualified persons (e.g., professors' graduate assistants) should have access to materials.
- Materials should be made available only when, and only to the extent that, there is a clear articulable nexus between the instructor's pedagogical purpose and the kind and amount of content involved.
- Libraries should provide instructors with useful information about the nature and the scope of fair use, in order to help them make informed requests.
- When appropriate, the number of students with simultaneous access to online materials may be limited.
- Students should also be given information about their rights and responsibilities regarding their own use of course materials.
- Full attribution, in a form satisfactory to scholars in the field, should be provided for each work included or excerpted.

ENHANCEMENTS:

- The case for fair use is enhanced when libraries prompt instructors, who are most likely to understand the educational purpose and transformative nature of the use, to indicate briefly in writing why particular material is requested, and why the amount requested is appropriate to that pedagogical purpose. An instructor's justification can be expressed via standardized forms that provide a balanced menu of common or recurring fair use rationales.
- In order to assure the continuing relevance of those materials to course content, libraries should require instructors of recurrently offered courses to review posted materials and make updates as appropriate.

TWO: USING SELECTIONS FROM COLLECTION MATERIALS TO PUBLICIZE A LIBRARY'S ACTIVITIES, OR TO CREATE PHYSICAL AND VIRTUAL EXHIBITIONS**DESCRIPTION:**

Academic and research libraries have always sought publicity of a certain kind—in order to introduce themselves, their services, and their valuable holdings to potential students, scholars, and others, as well as to attract donors of materials and to assure administrators and funders of their fidelity to mission. Just as libraries have chosen in the past to display their holdings through on-site exhibitions, or through in-house publications ranging from simple newsletters to glossy magazines, they now use the Internet as a tool for making themselves known. Library websites have become extremely important modes of access for library patrons, and most temporary physical exhibitions now have permanent virtual counterparts. While the lawfulness of past practices has been widely (and correctly) assumed, the use of new technology adds a new dimension to the issue. The wider audience that online exhibits reach, and the possibility of downstream misuse, could lead librarians to avoid online uses, but in fact these uses can be just as fair as their physical counterparts.

Section 109(c) of the Copyright Act provides a safe harbor for certain on-site exhibits. However, exhibition and related illustrative uses, whether physical or virtual, can also be transformative. They highlight and publicize library collections and stimulate interest in the individual original works of which they are comprised. Exhibits place original works in a new context to convey information and illustrate