

## 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.

This dynamic legal doctrine will no doubt continue to evolve along with educational, scholarly, and artistic practice. One area in which further developments certainly can be expected is that of so-called “orphan works”—texts (or images or music) that can no longer be reliably traced to a known copyright owner, and therefore cannot be licensed for use. Although the principles below address this problem obliquely, they do not by any means exhaust the range of possible solutions—including those based in the application of fair use.

This code is not a guide to using material that people give the public permission to use, such as works covered by Creative Commons licenses. While fair use applies to such works, anyone may use those works in ways their owners authorize in addition to ways permitted by the fair use doctrine. Similarly, it is not a guide to the use of works that are in the public domain; those works may be used without any copyright limitation whatever, including uses that otherwise would far exceed the bounds of fair use.

Copyright law is “territorial,” which means that fair use applies to uses of copyrighted material in the United States, regardless of where in the world it originates. Hence, the principles in this code also apply regardless of a work’s origin, so long as the use takes place in the U.S. By the same token, these principles will not necessarily apply to uses outside the U.S., where fair use may have little or no legal status.<sup>3</sup>

Under some circumstances, fair use rights can be overridden by contractual restrictions. Thus, these principles may not apply if a library has agreed, in a license agreement, donor agreement, or other contract, to forgo the exercise of fair use with respect to some set of collection materials. If fair use rights are to be preserved, library personnel in charge of acquisitions and procurement should be vigilant as they negotiate and enter into contracts related to collections materials.

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3. At this time, the issue of “choice of laws” in copyright disputes that cross national boundaries is unclear, whether or not those disputes involve the Internet. See Peter K. Yu, “Conflicts of Laws Issues in International Copyright Cases” (2001), <http://www.peteryu.com/gigalaw0401.pdf>.