

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

themes and ideas that can be quite different from those of the single work. Curation, in-line commentary, and juxtaposition add to the transformative nature of exhibits, displays, and other illustrative uses.

PRINCIPLE:

It is fair use for a library to use appropriate selections from collection materials to increase public awareness and engagement with these collections and to promote new scholarship drawing on them.

LIMITATIONS:

- Full attribution, in a form satisfactory to scholars in the field, should be provided for each work included or excerpted in an exhibit, to the extent it can be determined with reasonable effort.
- The amount of any particular work used and the format in which it is displayed should be appropriate to the illustrative purpose, i.e., tailored to support the goals of the exhibit or other illustrative project. The use of a work (other than a single image) in its entirety is likely to require a special level of justification. Similarly, larger-scale, high-resolution images should be displayed only when appropriate to the pedagogical or illustrative purpose of the exhibit.
- This principle does not apply to the sale of souvenirs and other nonprint merchandise in connection with an exhibit.

ENHANCEMENTS:

- For publications such as catalogs of exhibitions, the case for fair use will be stronger when the material is offered to the public without charge, or on a cost-recovery basis.
- Where library websites are concerned, fair use claims will be enhanced when libraries take technological steps, reasonable in light of both the nature of the material and of institutional capabilities, to discourage downloading.
- Fair use claims will be further enhanced when libraries provide copyright owners a simple tool for registering objections to use of copyrighted works, such as an e-mail address associated with a full-time employee.