FAIR USE IN RESEARCH LIBRARIES

Pat Aufderheide
Brandon Butler
Peter Jaszi
OVERVIEW

• Why fair use matters to librarians
• Imbalance in copyright policy
• Research into library practices
• Results
• Next steps
Why Fair Use Matters to Librarians

• Mission to serve knowledge past, present, future
• Need to access copyrighted work
• Digital innovation/obsolescence
THE PURPOSE
OF
COPYRIGHT
ONE PURPOSE:

TO PROMOTE THE CREATION OF CULTURE
By:

• Rewarding creators with limited monopoly
• Encouraging new makers to use existing culture
WHY BALANCE?

• All culture created on existing culture (we used to know that)

• The First Amendment (no censorship)
BIGGEST BALANCING FEATURE:

FAIR USE
legal, unauthorized use of copyrighted material--under some circumstances
GOOD NEWS…

• Judges love balancing features

• Supreme Court upholds term extension… because fair use exists

• Judges changed fair use interpretation post-1990
JUDGES ASK:

• Did you transform the use?

• Did you use the appropriate amount to satisfy the transformative use?
INTERPRETING FAIR USE
“FOUR FACTORS”

- Reason for the use
- Kind of work used
- Amount used
- Effect on the market
PLUS...

Custom and practice of individual creative communities...

...especially when well-documented
FEAR...

• Will I get it wrong?
• Will I get sued?
• Will my boss/general counsel client get angry?
What Research Librarians Do When They’re Unsure
CATEGORIES

• Teaching and Learning
• Research
• Preservation
• Exhibits
• Disability/Access
TEACHING AND LEARNING

• “e-reserves”

• Video

• Copyright education

• Digitizing teaching collections (e.g. art slides)
E-reserves

• Restricting content

• Limit access (e.g. classtime only, no repeats)

• Offload responsibility (IT, labs, faculty)
Video

• Streaming???

• Limiting access/
Restricting content

• Favored Vendors
Copyright training

• Arbitrary guidelines (e.g. 10%, one chapter)

• “maybe,” “probably”
Teaching collections

• Delay and deferral
• Partial inclusion
• Accept underground use
RESEARCH

• Digitizing collections
• Managing access
• ILL
Digitizing Collections

- Prioritize public domain and the obscure
- Create partial collections
- Stalled projects
Managing access

- Defer to licenses that limit legitimate research
- Require form for access to collections
- Limit access to on-site
• Mysterious “rule of five”
PRESERVATION:
Limits of 108

• Format-shifting delayed
• Public domain and the obscure prioritized
• Deferred decisions
EXHIBITS

• Delay and deferral

• Limited on-line access

• Restricted content (variable by media)
DISABILITY

• Limited access

• Librarians sidelined in policy making

• Delay

• Unnecessary duplication of effort
Overall...

- Insecurity and hesitation = staff costs, mission deformed
- Fair use would help, but is under-used
- Risk management substituted for fair use analysis
HOW TO STRENGTHEN ACCESS TO FAIR USE?
BEST PRACTICES CODES
COMMUNITIES INTERPRET FAIR USE:

- Documentary filmmakers
- Scholars
- Media literacy teachers
- Online video
- Dance collections
- OpenCourseWare
STORIES UNTOLD:

Creative consequences of the rights clearance culture for documentary filmmakers
DOCUMENTARY FILMMAKERS' STATEMENT OF BEST PRACTICES IN FAIR USE

Association of Independent Video and Filmmakers
Independent Feature Project
International Documentary Association
National Alliance for Media Arts and Culture
Women in Film and Video, Washington, D.C., Chapter
RESULTS:

• TV programmers air films
• New kinds of films
• All insurers of errors and omissions insurance now accept fair use claims
• Lawyers use the Statement to build their practices
Statement of Best Practices in Fair Use in Teaching for Film & Media Educators

Society for Cinema and Media Studies Statement of Best Practices in Fair Use in Teaching for Film & Media Educators

Best Practices For Fair Use in Teaching
(Direct inquiries to the SCMS Public Policy Committee c/o office@scms.org)

Next >
Code of Best Practices in Fair Use for OpenCourseWare

centerforsocialmedia.org/ocw

Funded by the WILLIAM AND FLORA HEWLETT FOUNDATION
with additional funding from the FORD FOUNDATION
A Research Librarians’ Code ... and You
Process:

- So far: report released Jan. 11, quiet meetings held, code being drafted
- Code released c. Jan 2012
- Implement and educate, 2012-2013
FAIR USE:

Practice Makes Practice
MORE INFORMATION
New Report "Fair Use Challenges in Academic and Research Libraries" Now Available

For immediate release:
December 30, 2010

For more information, contact:
Brandon Butler
Association of Research Libraries
202-296-1296
brand_on@arl.org

New Report "Fair Use Challenges in Academic and Research Libraries" Now Available

Washington, DC—The Association of Research Libraries (ARL) is pleased to announce the release of Fair Use Challenges in Academic and Research Libraries, a report that summarizes research into the current application of fair use and other copyright exemptions to meet the missions of U.S. academic and research libraries.

The research was conducted in partnership with the Center for Social Media and the Program on Information Justice and Intellectual Property at American University. In dozens of interviews with veteran research and academic librarians, the researchers learned how copyright law comes into play as interviewees performed core library functions, including:

- Facilitating student access to learning materials on e-reserves and course websites
Centerforsocialmedia.org/fair-use

09/30/09
RECLAIMING FAIR USE
How to Put Balance Back in Copyright
PATRICIA AUDELHEIDE AND PETER JAZZI
Please feel free to share this presentation in its entirety. For excerpting, kindly employ the principles of fair use.
THANK YOU!

Andrew W. Mellon Foundation

Research librarians everywhere
CONTACT INFO

Pat Aufderheide
paufdert@american.edu

Brandon Butler
brandon@arl.org

Peter Jaszi
pjaszi@wcl.american.edu