The Good News **About Library** Fair Use

Libraries Need Fair Use



mission is to enable teaching, learning, and research. Increasingly this requires copying (especially digitizing), distributing, and displaying library materials. Library materials are mostly under copyright.

An academic and research library's



Current duration of copyright



Average number of volumes in ARL

library collection



Academic librarians who expect online use of library materials to increase over next five years



70-80% of a typical research library

collection is likely under copyright.



would be off-limits for

of in-copyright materials in library

collections will be "orphan works" (i.e. author/owner is unknown or unlocatable).



next-generation library uses.

Without fair use, much of this material

mission in the digital age. Guidelines vs. Best Practices

flexible doctrine that will

Fair use is the broad,

allow libraries to meet



THE OLD GUIDELINES **BEST PRACTICES** HAVE FAILED* RULE!

> purport to describe 'minimum safe harbors' but are inevitably treated as 'outer limits' by practitioners and rightsholders

BECAUSE THEY:

- > were negotiated with rightsholders from a position of fear and intimidation > take no account of legitimate library
- > have no legal force, despite appearances and pretense to the contrary

practice or mission

language and intent" of fair use

understandings of fair use > include arbitrary numeric limitations

> are promoted and distributed by groups

hostile to libraries and our rights

> do not reflect current legal or scholarly

* The most frequently cited of the old guidelines, which give arbitrary numerical limits (1 chapter, 1,000 words, etc.) that supposedly define the outer bounds of fair use, are the 1976 Classroom Guidelines. A federal court recently

characterized these as "impractical and unnecessary" limits that "undermine the teaching objective favored by [fair use]" and are "not compatible with the

comfortable middle > are developed by practice communities

BECAUSE THEY:

> describe centrist, moderate practices that

are neither the bare minimum nor the

absolute maximum of fair use, but a

- themselves, without intimidation from hostile outside groups > are grounded in library mission and
- > are based on solid research into how courts decide fair use cases > are informed by the latest scholarly and judicial opinions about fair use

practice

> do not impose arbitrary and absurd limitations

> are endorsed by leading library and

ARLIS/NA, CAA, CCUMC, MLA, VRA

educational groups: ALA, ACRL,

The Code of Best Practices in Fair Use

How it was Made (Three Phases) Legal experts reviewed the draft and

gave it a **thumbs up** as representing a reasonable application of fair use to library practice

Consensus of groups was distilled to 8 principles w/ limitations and enhancements

Team spoke with 90 librarians, from 64 libraries, in nine sessions, 4 hours each, to deliberate about best practices

for Academic & Research Libraries

Team Interviewed 65 academic and research librarians in **confidential phone conversations** to learn how copyright was affecting their work

What's In It

Principles, limitations, and enhancements describe a reasonable consensus about what's fair in these

eight common situations.

Next generation data-mining and

7

"non-consumptive"

research (e.g. digital humanities research)

Collecting and

preserving material

from the Internet

Principles Managing repositories

Providing course

content to students

digitally (e.g., course

sites and e-reserves

Creating physical

and digital exhibits

Digitizing for

preservation/format

(e.g. VHS tapes)

Digitizing archives and special collections

Making library accessible for disabled users (e.g. hathitrust.org)

Use it to guide

Replace old guidelines as a go-to resource for basic information

Access the full code and other resources at www.arl.org/fairuse

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How You Can Use It

project planning

