

# Fair Use Without Fear in the Academy

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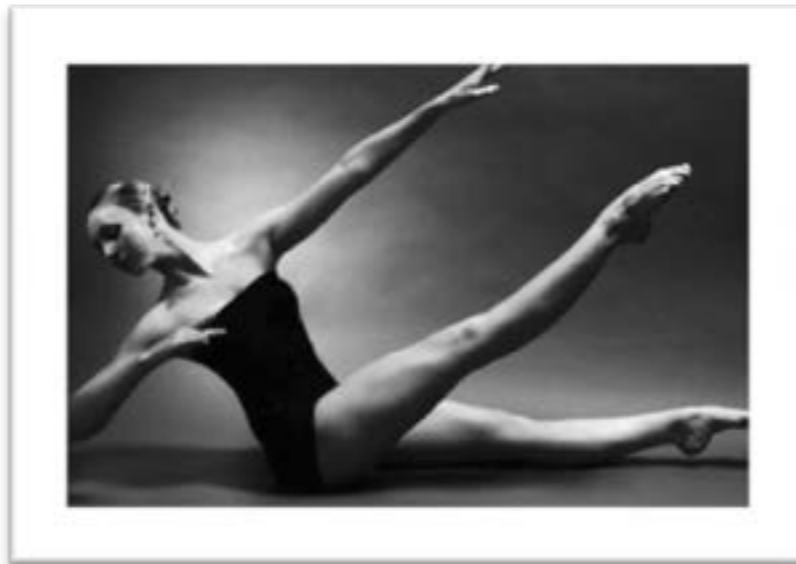
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# OVERVIEW

- Copyright and Fair Use
- The Best Practices Approach
- Litigation and Legislation

# 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

# BIGGEST BALANCING FEATURE:

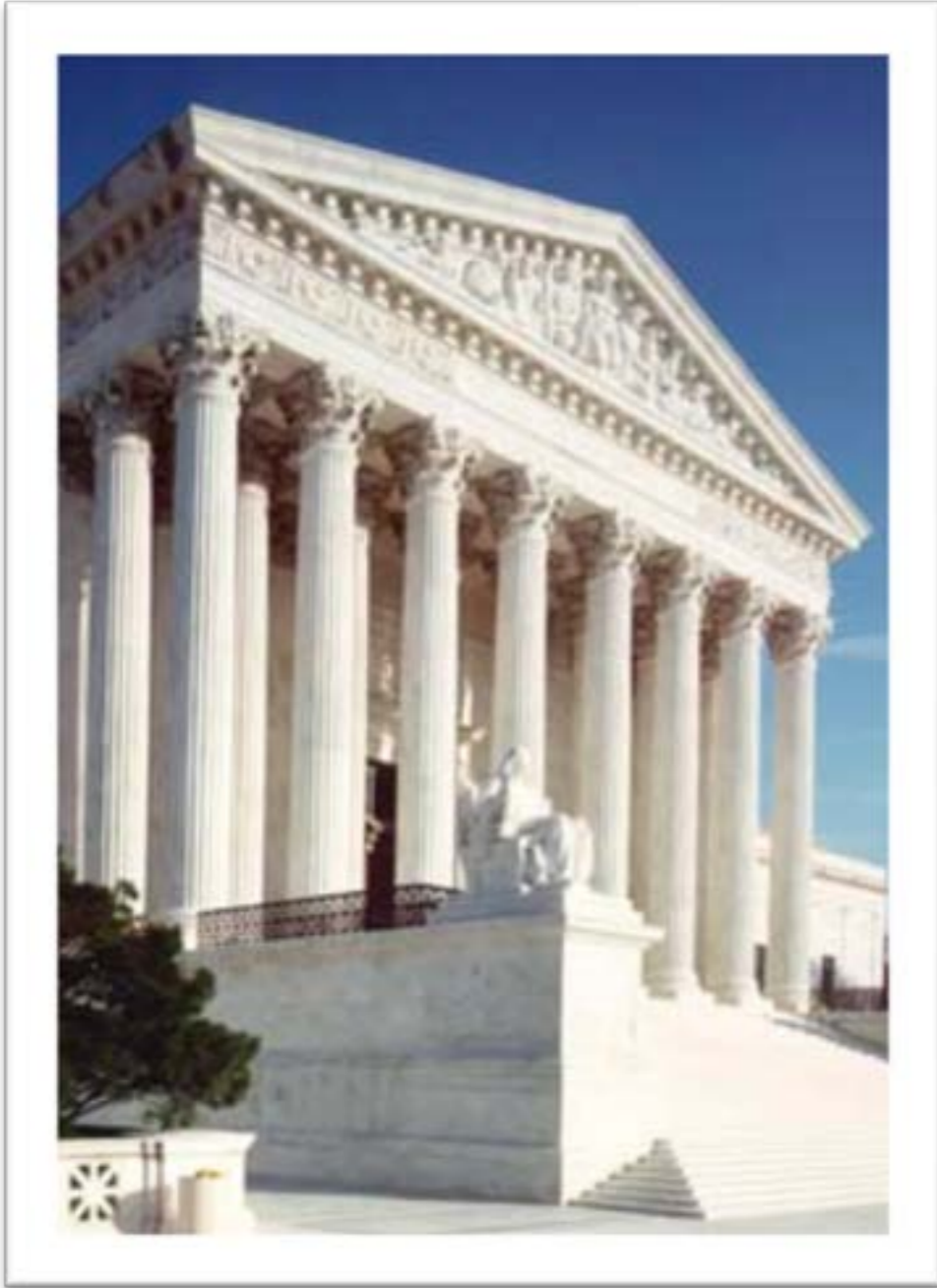
## FAIR USE

legal, unauthorized use of  
copyrighted material—under  
some circumstances

# “FOUR FACTORS”

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

# GOOD NEWS...



- Judges love balancing features
- Supreme Court: fair use protects free speech
- Fair use judicial interpretation shifts greatly since 1990



# JUDGES ASK:

- Is your use “transformative”? (i.e., use for new purpose, context, audience, insight)
- Did you use the appropriate amount to satisfy the transformative use?



# “TRANSFORM?”

- E.g., use of works for scholarly study
- Use of works for teaching
- Use for exhibits
- Etc.



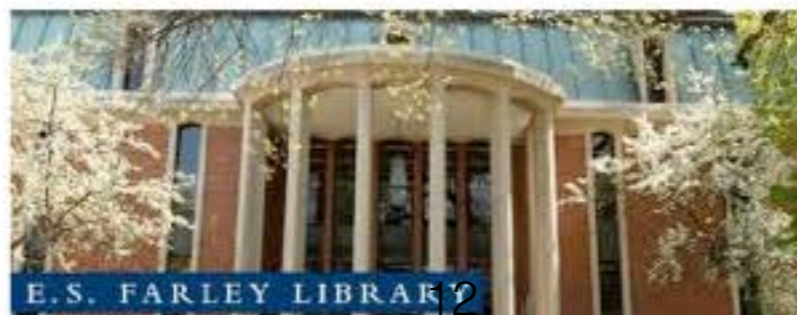
home library

library books

library building

beautiful libraries

famous libraries





# PLUS...

Custom and practice of individual creative communities...

...especially when well-documented

# BEST PRACTICES CODES

# COMMUNITIES INTERPRET FAIR USE:

Communications Scholars

Poets and Poetry Scholars

Dance collections

OpenCourseWare

Academic and Research Libraries

# All Codes Are Online at:

Best Practices |

www.cmsimpact.org/fair-use/best-practices

# CMSI

CENTER FOR MEDIA & SOCIAL IMPACT

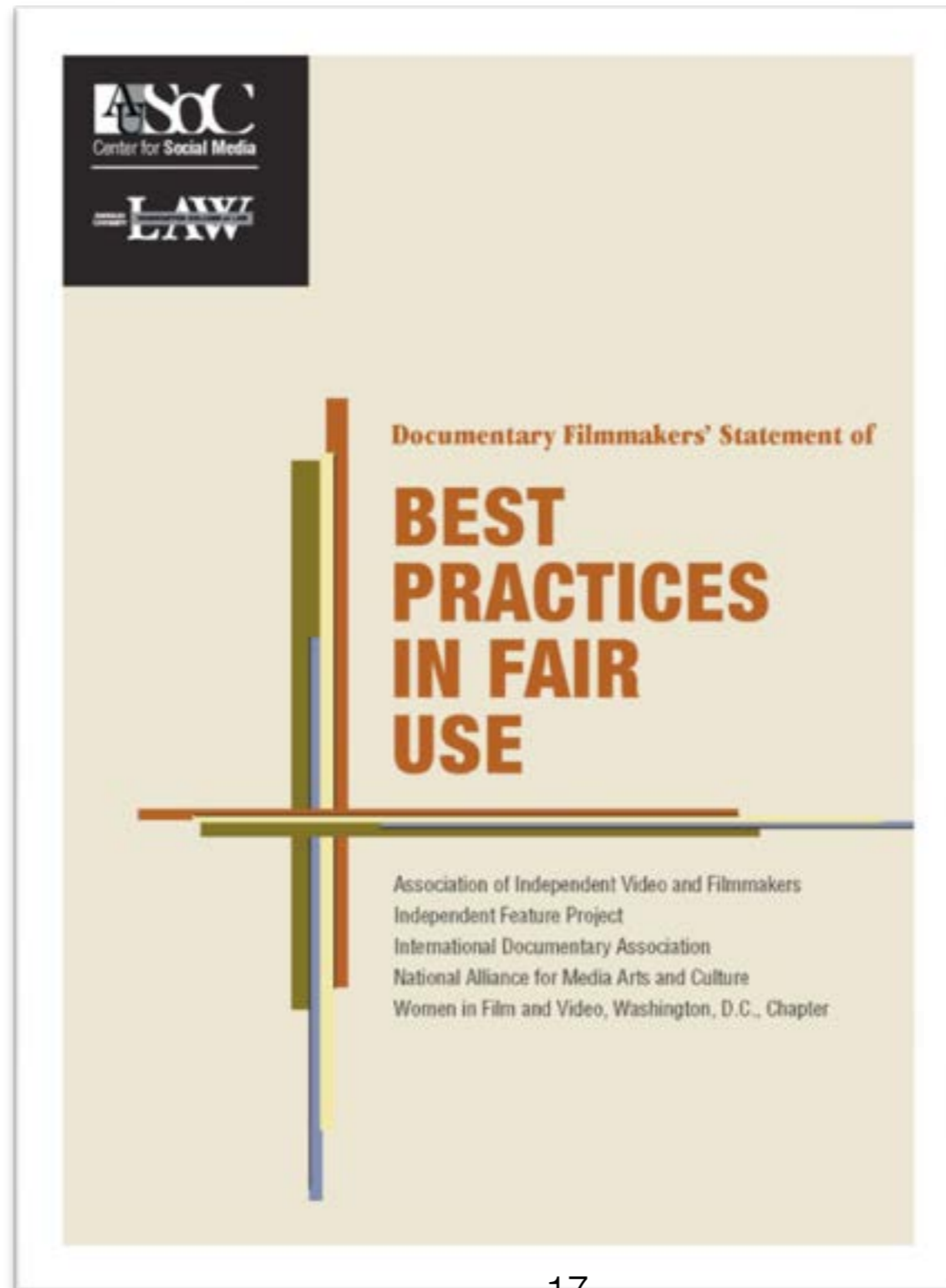
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[Home](#) >> [Fair Use](#) >> [Best Practices](#)

## Best Practices



# DOCUMENTARY CODE



# 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

# BEST PRACTICES, NOT GUIDELINES

Principles, not rules

Limitations, not bans

Reasoning, not rote

TRY THIS AT HOME

# NEW INPUT FOR RISK MANAGEMENT

Put legal risks into perspective, “mission risk”

Consider views of librarians

Grounding for solidarity

# REFERENCE FOR FRONT LINE STAFF

Replacement for Classroom Guidelines

Guidance for smaller projects

Addresses common scenarios

# SOURCE OF RHETORIC AND ARGUMENTS

- Front matter
- Intro paragraphs for each principle
- Supporting materials online

# Courts Weigh In

GSU: Course reserves

Different rationale, but largely congruent

Authors Guild v. HathiTrust, Google Books

Mass digitization for preservation,  
accessibility, non-consumptive use is fair

Ratifies Principles 3, 5, and 7

# What's Next?

- Cases on appeal
- Legislation/Agency Action



# Is Video Different?

- Fair use is media neutral
- OpenCourseWare and Library Code approaches
- The UCLA Case as Fair Use Sketch

# MOOCs as a Fair Use Testing Ground

- OpenCourseWare as proto-MOOC
- Music sampling as cautionary tale
- Assert your rights **clearly**, and **early**

RECLAIMING

# FAIR USE



*How to Put Balance Back in Copyright*

PATRICIA AUFDERHEIDE *and* PETER JASZI

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