

Fair Use Without Fear in the Academy

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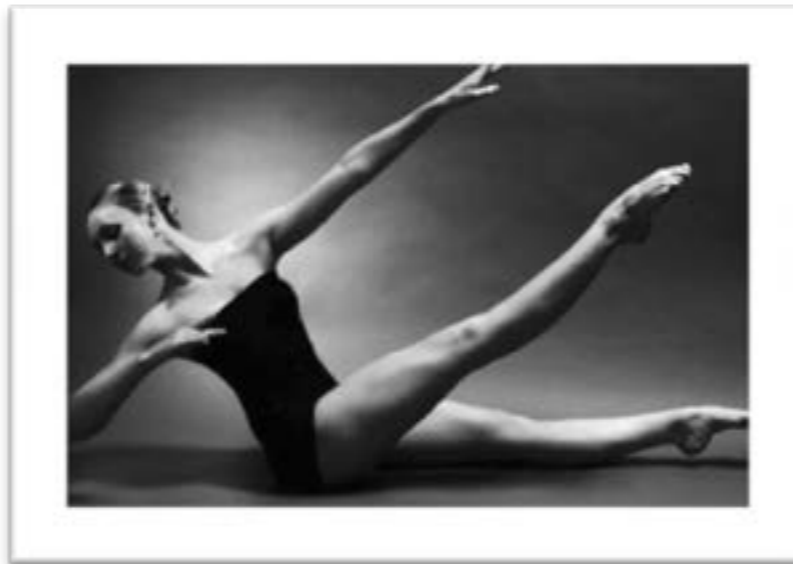
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OVERVIEW

- 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:

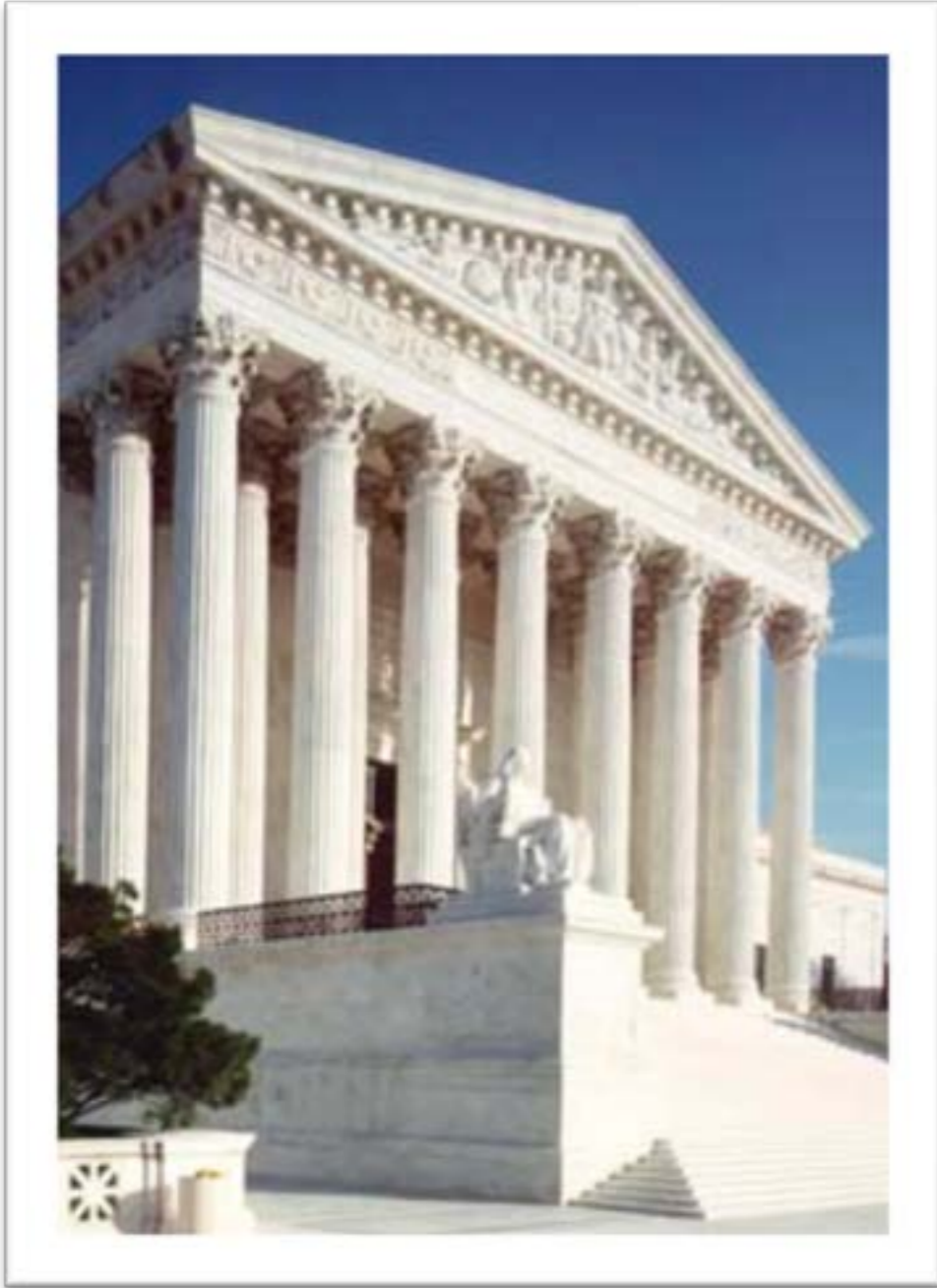
FAIR USE

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.

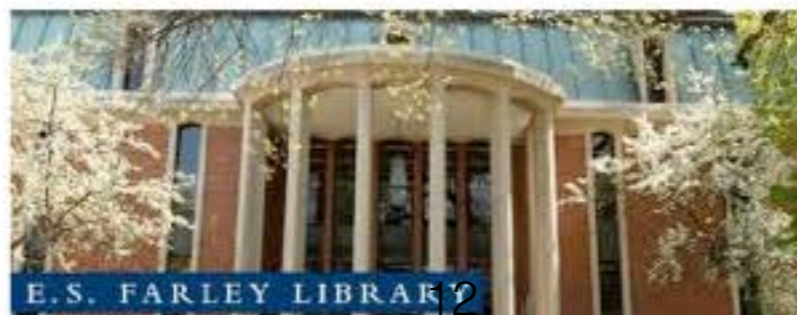
home library

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

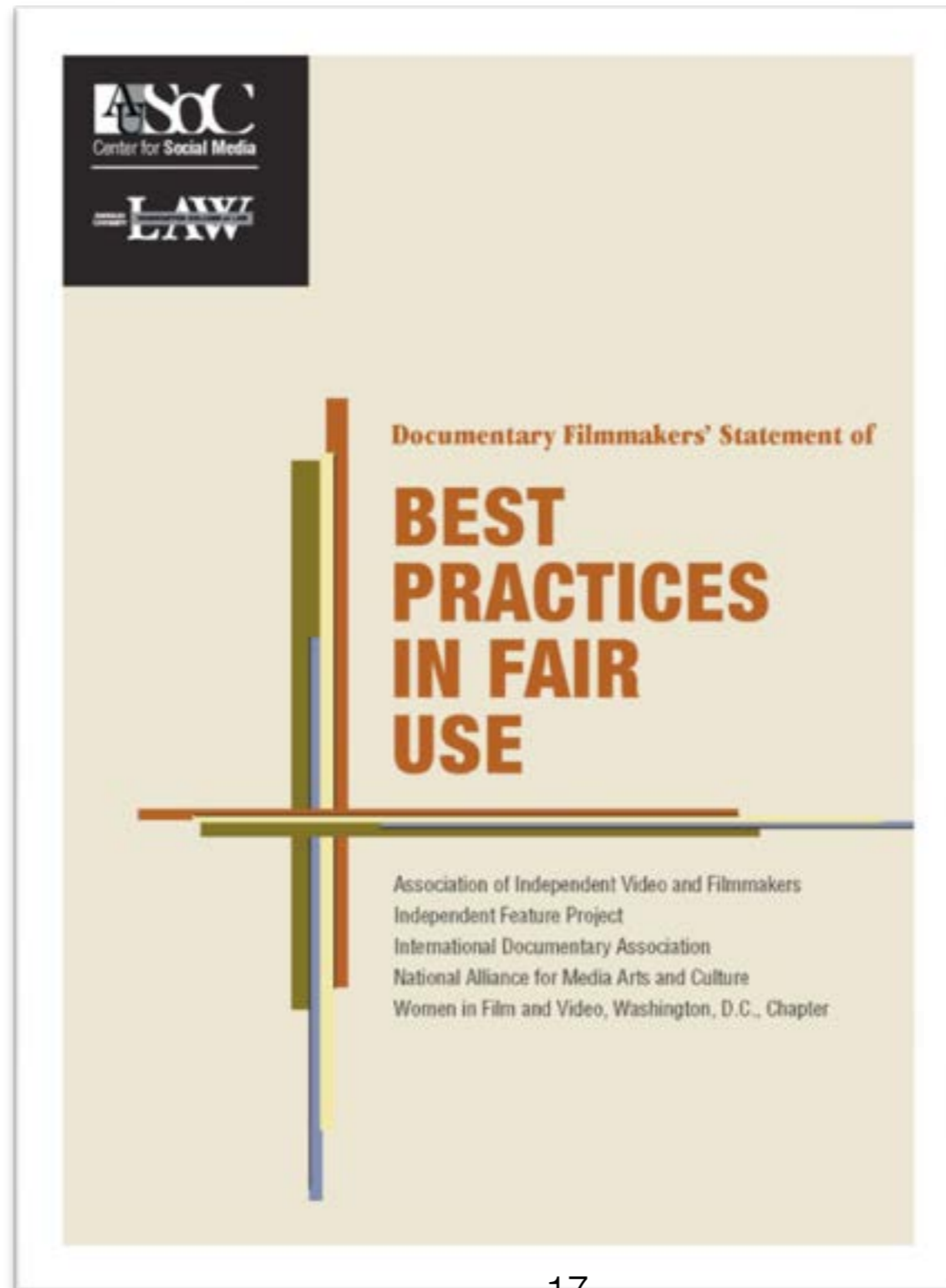
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Best Practices

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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