

Isn't Everything We Do Here Educational?

A New Approach to Fair Use at the Michael C. Carlos Museum

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ORY

An Ancient Art Museum...

MICHAEL C.
CARLOS
MUSEUM



...With Prints, Drawings, and Photographs...

MICHAEL C.
GABRIEL
MUSEUM



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...Sometimes Side by Side

MICHAEL C.
CARLOS
MUSEUM



Photos get used



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MICHAEL C.
CARLOS
MUSEUM

Insert Image When Rights are Obtained

Come See Our Exhibit

MICHAEL C.
CARLOS
MUSEUM

Code of Best Practices in Fair Use for the Visual Arts

COLLEGE ART ASSOCIATION

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CAA Code of Best Practices

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MUSEUM

- ❖ Did the use “transform” the copyrighted material by using it for a purpose significantly different from that of the original, or did it do no more than provide consumers with a “substitute” for the original?
- ❖ Was the material taken appropriate in kind and amount, considering the nature of both the copyrighted work and the use?

Key Questions



Director's Response

MICHAEL C.
CARLOS
MUSEUM



Counsel's Response



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CARLOS

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Product Disclaimer

JCPenney is unable to provide customers complete assurance that the Royal Velvet® Egyptian Cotton Towels or the Royal Velvet® Egyptian Cotton Damask Stripe Comforter Set were made using 100% Egyptian fibers. The products are still expected to provide long-lasting durability and performance.

35Fr

44Th

And Now for our Disclaimer

Fair use can be a very useful tool, but it isn't always the best choice for the job



Counsel's Advice

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❖ Fair use is notoriously vague



Counsel's Advice

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- ❖ Permissions fees may be less costly than fair use in the end



Counsel's Advice

- ❖ We have interests on both sides of the issue as both IP consumer and creator



Counsel's Advice

CARLOS
MUSEUM

❖ We may be an attractive litigation target

- ❖ Private universities are seen as goldmines for lawsuits.
- ❖ Sovereign immunity is only available to government institutions.
- ❖ Even fraudulent infringement claims carry litigation costs.
- ❖ Damage to reputation may occur regardless of legal outcome.



Counsel's Advice

❖ How much of an image is too much?



Counsel's Advice

- ❖ Post disclaimers early and often when we claim fair use.



Counsel's Advice



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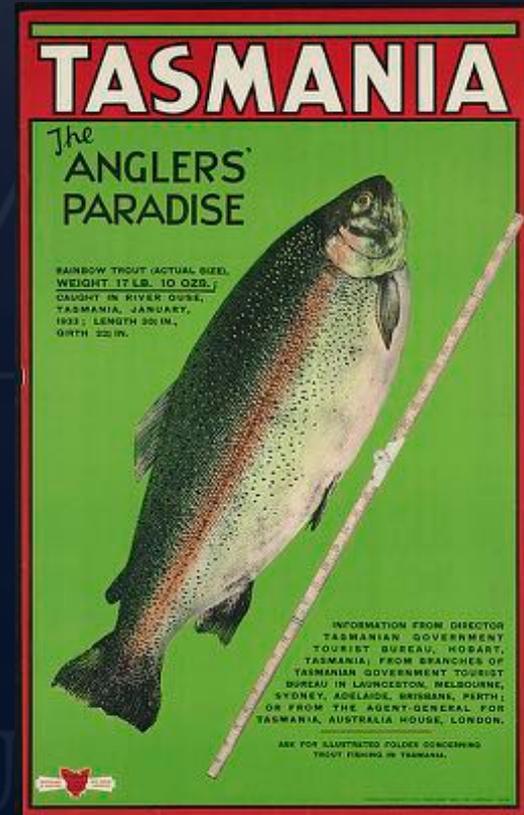
Risk Assessment: Hold the Ethics Please

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CARLOS
MUSEUM

❖ Promotion

- ❖ Promotion tends to be viewed as a commercial activity, regardless of whether the event is of an educational nature.
- ❖ The precise format of the promotional use (be it website, event invitations, social media posts, or print advertisements) does not change its nature.

Counsel's Risk Assessments:
High-Risk



❖ Didactic Use In Printed or Digital Publications

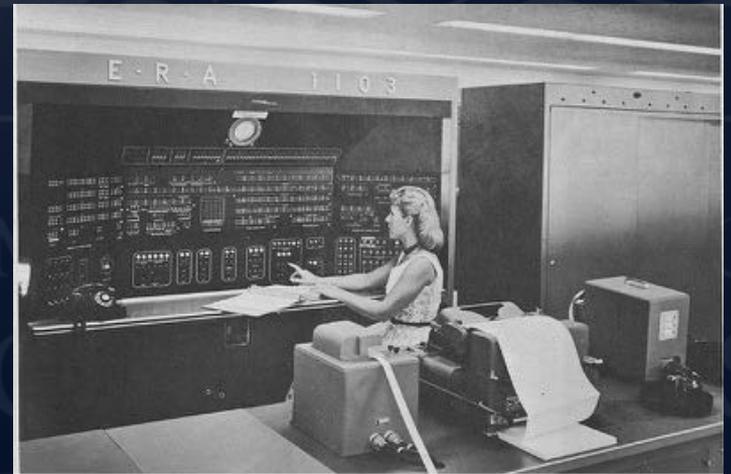
- ❖ Didactic use in catalogues, virtual exhibitions, apps, etc. is medium risk so long as . . .
 - ❖ The context and relationship of the works being reproduced is obvious and clear.
 - ❖ The size and resolution of the reproduction is no larger than necessary.
 - ❖ Uses in digital formats should be the minimum resolution needed to reproduce the publication in print at the same physical size.

Counsel's Risk
Assessments:
Medium Risk



- ❖ Use in Online Databases so long as. . .
 - ❖ Include a copyright notice and a statement that images are provided for personal reference only and that users must contact rights holders for other uses.
 - ❖ Include attribution information and rich metadata.
 - ❖ Require user authentication for high-resolution downloads.
 - ❖ Include a “Contact Us” link.

Counsel’s Risk
Assessments: *Medium
Risk*



❖ What happens in the building. . .

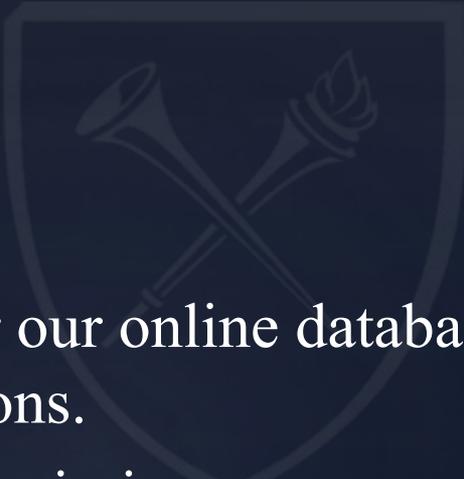
- ❖ Didactic uses in exhibitions and programs available within the museum's four walls only, so long as. . .
 - ❖ The context and relationship of the works being reproduced is obvious and clear.
 - ❖ The size and resolution of the reproduction is no larger than necessary.

Counsel's Risk
Assessment: *Low
Risk*



- ❖ Paying licensing fees may win valuable points.
- ❖ You can always claim fair use later if a rights holder raises fees.
- ❖ You might choose to pay fees for some uses but choose not to pay for “fairer” ones.
- ❖ Sometimes any fee is worth it to avoid bad press.
- ❖ The rights-holder may be the only source for a high-quality image.

Sometimes You Just Have to Pay



❖ We now have a fair use policy!

- ❖ We are no longer seeking permissions for our online database, virtual exhibitions, or scholarly publications.
- ❖ If it happens inside our museum only, permissions are now optional.
- ❖ Fair use is considered case by case alongside paying permissions fees.

Changes to Our Policy

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A Call to Action

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