Code of Best Practices in Fair Use in the Visual Arts
Association of Registrars and Collections Specialists
Vancouver Conference
November 3, 2018
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Executive Director

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WHY IT MATTERS: 2014 CAA ISSUES REPORT

70% of respondents say they use copyrighted material in doing their own work
Code of Best Practices in Fair Use for the Visual Arts

- Writing about art
- Teaching about art
- Museum uses
- Making art
- Organizing documentation
“I found a suitable image online to illustrate my article. Do I still need a license?”
Can I use some photos I took of an artist’s work on my online course site?"
“Can I use installation shots from our exhibition in museum publications?”
“Can we put our archival collection online?”
more than one-third of art historians have avoided or abandoned work in their field because of copyright concerns

- one-fifth of artists
- More than one-half of editors and publishers

TOTAL

One-third of the visual arts community has avoided or abandoned work in their field because of copyright concerns.
PERCEIVED RISK:

- Legal trouble
- Lost relationships
- Bad publicity
THE BIGGEST OBSTICALES

1. Restrictive publishing contracts
2. High licensing fees
3. Difficulty of obtaining clearances
4. Self-censorship
DEVELOPING CAA’S CODE

- Nationwide fact-finding
- 10 discussion sessions in 5 cities: building consensus
- Drafting preliminary principles and limitations
- Input from CAA Fair Use Task Force
- Review by Legal Advisory Committee
SITUATIONS

- Writing about art
- Teaching about art
- Museum uses
- Making art
- Archives online
Focus of US Courts

- Did the user “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?
When the Code Applies:

To members of the visual arts community

In furtherance of professional goals

For copyrighted materials

The use begins in the US
When the Code Does NOT Apply:

- To works of art in the public domain
- When permission to use is granted
- The use did not begin in the US
Code of Best Practices
in Fair Use for the Visual Arts

FOR EACH SITUATION IN THE CODE:

Description
Principle
Limitations
Yale University Press now accepts fair use defenses in their monographic publications.

Rauschenberg Foundation announced fair use policy that provides free access to images of the artist’s work.

Association of Art Museum Directors has written new fair use guidelines in accordance with CAA’s Code.

Practitioners in libraries, museums, publishers, and universities refer to CAA’s Code to analyze fair use cases and more accurately assess their risks. Many rely on fair use on a case by case basis.

CAA’s author contracts for the Art Bulletin and Art Journal now support reliance on fair use. Indemnification is no longer required when asserting fair use. CAA’s journals will now indicate “Artwork published under fair use” in its captions.
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