

## Lux Best Practices for Fair Use

The following document was prepared using best practices from *Code of Best Practices in Fair Use for Academic and Research Libraries* (January, 2012) compiled by the Association of Research Libraries; the American Musicological Society's (AMS) *Best Practices in the Fair Use of Copyrighted Materials in Music Scholarship* (March, 2010); and the Visual Resources Association's (VRA) *Statement on the Fair Use of Images for Teaching, Research and Study* (March 20, 2012.)

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There is a provision in Article I, Section 8 of the United States Constitution that addresses copyright:

“The Congress shall have Power To ... promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...”

Copyright law (U.S. Code, Title 17) protects the rights holder and ensures that eventually all works will pass into the public domain. But the law also contains fair use provisions that allow “new research and culture” and promotion of “intellectual exchange.” (ACRL *Code of Best Practices*)

What is fair use? This fair use provides scholar, artists and others opportunity to use copyrighted material without permission under certain circumstances. “Fair use is a user’s right.” (ACRL *Code of Best Practices*) Even though there is no certain way to determine whether the use of copyright protected material is in violation of copyright law, there are four factors that are taken into consideration when deciding whether a particular use of copyrighted material can be considered fair use:

- the purpose and character of your use
- the nature of the copyrighted work
- the amount and substantiality of the portion taken, and
- the effect of the use upon the potential market.

These factors can be combined into essentially two questions. Positive answers to these questions generally support the determination of fair use:

1. Was the work “transformed,” that is, used in a manner different from the original intent?

The original purpose of a work of music, a film or a work of visual art is aesthetic, either as entertainment or artistic expression; the inclusion of images, music or film as an integral part of scholarly works is “inherently transformative.” (VRA *Statement on the Fair Use of Images*) This means the work itself need not be modified or revised; the fact that a copyright protected work is recontextualized or repurposed in itself can exhibit transformation.

Example favoring fair use: the blaxploitation film *Foxy Brown* is used to demonstrate attitudes toward and depictions of black women in the 1970s.

Example opposing fair use: a copyright-protected image is used as cover art for a thesis

2. Was an appropriate amount of the copyright protected work used to advance the scholarly purpose?

Example favoring fair use: the subject of a thesis is a careful analysis of a song. In this context, reproduction of the score of the entire song would constitute fair use, provided the author makes certain “every part of the reproduction is necessary to the analysis.” (AMS *Best Practices in the Fair Use*)

Example opposing fair use: an entire artist’s book is reproduced in a thesis although the author is discussing only one page.

“Use of quotations, still frames, illustrative excerpts, and the like is common practice in scholarly writing, and is at the heart of fair use.” (ACRL *Code of Best Practices*)

It is in this spirit that contributors are encouraged to deposit their work into Lux in an unredacted form, including copyright protected materials, with these provisos:

- 1) The contributor has acted in good faith in using the copyright protected work (applying the two analytical questions above)
- 2) The contributor has properly attributed the copyright protected material. “Given the educational community’s longstanding traditions of providing citations (where known), especially in print materials, attributions may be one means of demonstrating both the scholarly and educational context in which the images are being used, as well as the good faith of the user.” (VRA *Statement on the Fair Use of Images*)

#### Sources consulted

American Musicological Society. *Best Practices in the Fair Use of Copyrighted Materials Music Scholarship* (2010)

Internet resource: [http://www.ams-net.org/AMS\\_Fair\\_Use\\_Statement.pdf](http://www.ams-net.org/AMS_Fair_Use_Statement.pdf) ;

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Association of Research Libraries. *Code of Best Practices in Fair Use for Academic and Research Libraries* (January, 2012)

Internet resource: <http://www.arl.org/bm~doc/code-of-best-practices-fair-use.pdf> ;

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Visual Resources Association. *Statement on the Fair Use of Images for Teaching, Research and Study* (March 20, 2012)

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resource: <http://www.vraweb.org/organization/pdf/VRAFairUseGuidelinesFinal.pdf> ;

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