



Code of Best Practices in Fair Use for the Visual Arts

You be the Judge!

Fair Use and the Visual Arts

The Academic Illustration

Stephanie has just had an academic article accepted; it's a comparison of the work of two major later twentieth-century painters. She's been able to find acceptable-quality reproductions of the work that she compares for the article, but the journal has a policy that requires the author to get permissions for all illustrations. Does she need to get permissions?

Stephanie can consult the *Code of Best Practices in Fair Use for the Visual Arts* to see if her uses are within the best practices of her field. Her peers find that she “may invoke fair use to quote, excerpt, or reproduce copyrighted works,” with some limitations. She can look carefully at those limitations, which include (among others) a clear reason linked to her analysis for showing the images, a decision linked to that reason for the size and other characteristics of the reproduction, and of course attribution. Then she can be confident in her own decision, and share this information with the editors of the journal. While many publishers have long had a default position of requiring permissions, in practice decisions are often made in relation to the purpose and kind of the use.

Hot-Topic Art

Dieter is working on an installation that will feature, among other things, a display featuring current websites of top news sources in different countries. He's also got a loop playing below it of headline news from the week before. Does he need to ask permission from anyone to build this material into his art?

Dieter can consult the *Code of Best Practices in Fair Use for the Visual Arts* to see if his uses are within the best practices of his field. He will find that his peers believe that he “may invoke fair use to incorporate copyrighted material into new artworks in any medium,” with some limitations. Those limitations include (among others) the importance of being able to say what he's doing artistically with the copyrighted material, and avoiding the implication that he is the author of the quoted material. Consulting those limitations will allow him to make a confident fair use call.

The Lecture

Wei is teaching the intro art history class this year, and has gotten some great donations of slides from fellow profs. She's also drawing on her own photographs from museums, monuments, books, and websites. Can she put relevant slides and slideshows on her class's passworded website, for prep and postlecture study, as well as showing in class? She hasn't gotten permission for any of this material, and at least half of it is probably copyrighted.

Wei can consult the *Code of Best Practices in Fair Use for the Visual Arts* to see if her uses are within the best practices of her field. Her peers find that teachers “may invoke fair use in using copyrighted works of various kinds to support formal instruction in a range of settings, as well as for uses that extend such teaching and for reference collections that support it,” given certain limitations. She can consult those limitations, which include (among others) linking her teaching objective to use of the work, choosing size and other characteristics appropriate to the teaching objective, limiting access to the people being taught, and, of course, assigning attribution. Then she can make her own decision about her fair uses for teaching. If she needs permission from the librarian or other school officials, she can explain that reasoning to them, too.

Cutting-Edge Exhibit

Prasanth is part of the team putting together an exhibition on art emerging from twenty-first-century protest movements, with a web component and an interactive, online catalogue. Some of this art is born-digital, some is ephemeral, some of it was created anonymously. He has access to much of it already, but does he also need to seek permissions?

Prasanth can consult the *Code of Best Practices in Fair Use for the Visual Arts* to see if his uses are within the best practices of his field. He will find that his peers believe that he “may invoke fair use in using copyrighted works, including images and text as well as time-based and born-digital material, in furtherance of their core missions,” with certain limitations. He can check to see how his museum’s uses align with the limitations, which include (among others) a clear link between the selected materials and the purpose of the exhibition or related activity, an appropriate choice of reproductive quality, and of, course, attribution where possible.

The Archive

Felishia is part of the team in a special collections unit of a university library working on the recently acquired personal archive of a regional artist. The team would like to make digitally available the correspondence between the author and various collectors and institutions. The archive came with a donor’s agreement allowing digital display, but there are many items in the archive that are copyrighted to others. Felishia is in charge of researching the question: Can the team employ fair use? If so, how?

Felishia can consult the *Code of Best Practices in Fair Use for the Visual Arts* to see if her uses are within the best practices of her field. Her peers find that she “may invoke fair use to create digital preservation copies and to enable digital access to copyrighted materials in their collections, and to make those collections available online,” with certain limitations. They include (among others) providing search tools for the digital display, doing due diligence to avoid violations of privacy or other noncopyright rights of others, making the digital display size appropriate to the use, and giving users a contact for feedback.

The Book

Jean-Claude has found an acceptable-quality copy of the public-domain painting he needs to illustrate a point he is making in his new book. The same image is available from a museum, but the museum would charge him a permissions fee. Can he use the copy he found?

Jean-Claude does not need to pay a permissions fee, which is not a copyright charge; there is no copyright, courts have found, in a simple photographic reproduction of a flat item. And the work he wants to use for illustration has no copyright at all, since it’s public domain. He already has access to the image, as well. If he couldn’t otherwise get access to the image, he would have to pay the fees the museum asks if he wanted it.

The Exhibition

Shira is mounting an exhibition that involves art that features reproductions of many corporate logos. Does she have to license those logos? Does she have to blur them out on the images representing the exhibition on the website?

Shira doesn’t have to worry about logos at all from a copyright viewpoint. Logos are protected by trademark law, which is concerned with protecting the commercial value of a mark from competitors. Her exhibition doesn’t confuse the public about who owns the logos or suggest an endorsement by the owner of the mark.