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The Changing Landscape of Fair Use: Survey Responses

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The Changing Landscape of Fair Use: Survey Responses

Abstract

In September 2025, the Guest Editors (Cynthia Mackey and Lael J. Ensor-Bennett) sent out a survey asking GLAM/R and visual resource professionals to submit a few words on their current application of fair use to visual resources and media management. For example, has the *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith* (2023) U.S. Supreme Court case decision affected the application of fair use in their professional work? Or have their institutions issued new fair use guidelines? Are practices continuing largely unchanged? The answers received were wide ranging though there were a few themes running throughout the responses.

Keywords

Copyright, Fair Use, Intellectual Property Rights

In September 2025, the Guest Editors (Cynthia Mackey and Lael J. Ensor-Bennett) sent out a survey asking GLAM/R and visual resource professionals to submit a few words on their current application of fair use to visual resources and media management. For example, has the *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith* (2023) U.S. Supreme Court case decision affected application of fair use in their professional work? Or have their institutions issued new fair use guidelines? Are practices continuing largely unchanged?

Below are the responses we received which have been edited to conform to the *Bulletin's* style guidelines. The Editors noticed three themes occurring through the responses. How does your institution fit in?

Theme: What authority do people have to make fair use decisions/policies at their institutions?

Our application of fair use has not changed because our conservative University legal counsel is happy with our current system, which limits image use to institutional IPs, except in the case of images to which we have the rights or are in the public domain and are made available more broadly. It is easy enough to create collections solely for institutional use or for public access, less so for mixed access.

-- Anonymous

This year, The Art Institute of Chicago adopted its inaugural fair use policy. The policy presents common publishing scenarios and a rubric for assessing when those uses may be considered fair. The creation of the policy closely follows the formal addition of intellectual property strategy to my job description. The museum had, in practice, made fair use claims in the past. This marks the first time that it will make claims categorically. We are presently in the process of rolling out the policy to staff.

-- Bonnie Rosenberg, Director of Imaging, The Art Institute of Chicago

Briefly, I am not in the IP pipeline for our office of General Counsel and cannot speak to any changing application of fair use at an institutional level. In practice, however, within my department, I am called upon daily to make decisions about how images may be used. This includes copyright research of specific works, surrogate images, potential contractual restrictions, and documenting fair use arguments. My working knowledge of copyright has placed me in a role as the de facto "department expert" for all things related to usage, including classroom and online pedagogical tools, promotional materials (in-house video production), and offering regularly scheduled student training workshops. Likewise, we have revamped our in-house online image collection (30,000+) to display source information and image rights. My work with institutional donors, endowed gifts, and grant-funded project donors, requires that the unique IP concerns of individual donors and estates be reconciled and communicated effectively on public-facing platforms by making use of CC licenses and other contractual language. Increasingly, I am called upon to provide image use determinations and recommendations that impact faculty publications within the U.S. and abroad. These recommendations ultimately impact licensing decisions and licensing negotiations, two vital areas for which I am responsible.

-- Sonja Sekely-Rowland, Curator, Visual Resource Collection, Department of the History of Art, University of California, Riverside

I have always used the four factors of fair use. When I am in doubt I refer people to University Counsel. Now the libraries have a copyright email reflector, and we get questions from faculty and researchers asking about publishing images/tables/charts/ historic ads - that type of thing. Those of us on the reflector often confer as a group before we answer the question. The biggest change for me is I get to defer to my colleagues in the Libraries Open Access, Interlibrary Loan and Digital archives departments. They tend to have better understandings of Fair use, and they are on the reflector. And we always declare that we are not lawyers.

-- Anonymous

Theme: How useful are best practices?

My application of fair use has not changed much except to be more broadly applied than it was when I arrived in 2008. The *CAA Code of Best Practices for Fair Use* has been a guide for teaching, research, and publishing advice I give to faculty and students - and what I adhere to myself. Likely what has changed most is how faculty and publishers apply fair use when they are submitting their manuscripts. It's also helped faculty in other disciplines, who might have used their images as illustrations, to incorporate them into their arguments.

-- Anonymous

Since the *CAA Code* launched in 2015, it's been enormously helpful in encouraging faculty and graduate students to consider fair use in their publications, dissertations, and other projects. While appetite for fair use varies widely among publishers, the Visual Resources Center in the Department of Art History at the University of Chicago has additionally observed a gap between the expectations outlined in the author guidelines from academic presses and the *CAA Code*: faculty and students don't have examples of what it means to evaluate a project for fair use and turn it into a component they can actively manage. To help address this, the UChicago VRC authored a guide to [Publishing with Images](#), which offers practical advice across all components of working with images in publication projects, including image captions, alt text, copyright, fair use, permissions, ethical considerations, and advice on purchasing images. We also offer consultations and facilitate workshops that offer our users case studies and templates they can adapt for their own projects. These efforts helped us raise the baseline knowledge of copyright and fair use throughout our community and empower our authors to make the best decisions for themselves and their projects. It also gives us the opportunity to discuss sub-field norms and ethical considerations (including cultural patrimony laws) that the *Code* does not take up. While these interventions have been productive in our institution, an updated, expanded version of the *Code* and more widely established case studies would be more productive and transformative.

-- Bridget Madden, Associate Director, Visual Resources Center, Department of Art History, University of Chicago

Theme: Do we need to reconsider our IP practices with legal and technological changes?

The Warhol case has not significantly affected our application of fair use for University of Minnesota Libraries collections. The opinion's focus on the Conde-Nast -licensing- of the Warhol adaptation of Goldsmith's photo makes for strange reading, but the result simply does not seem particularly applicable to most of the kinds of fair use decisions we have to make about items in our collections. Our uses are always-non-profit, pretty much always scholarly or educational, and most of our collection items also have no current commercial market.

-- Nancy Sims, Director of Copyright & Scholarly Communications, University of Minnesota Libraries

The institution is considering changing our current imaging licensing from CC-BY to CC-BY-NC, this discussion was brought on by issues with bots harvesting our images and crashing the servers. A final decision has not been made.

-- Anonymous