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# Letter from the Guest Editors

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At the 2024 VRA Annual Conference in Minneapolis, Lael Ensor-Bennett (Curator, Visual Resources Collection, Johns Hopkins University), Allan Kohl (Librarian for Visual Resources, Reference, and Library Instruction, Minneapolis College of Art and Design), Sara Schumacher (Architecture Image Librarian, Texas Tech University), and Nancy Sims (Director of Copyright & Scholarly Communication, University of Minnesota Libraries) held the session “Factor In or Factor Out: The Changing Landscape of Fair Use and the VRA Fair Use Statement.”<sup>1</sup> The original concept for the session was a consideration of the current legal and technological landscape of fair use with images (Figure 1) through the lens of the [\*VRA Statement on the Fair Use of Images for Teaching, Research, and Study \(Statement\)\*](#). The presenters sought to answer these questions: What circumstances led to the *Statement’s* creation and how does it complement or diverge from other best practice documents, notably the CAA’s [\*Code of Best Practices in Fair Use for the Visual Arts \(Code\)\*](#)? What gaps have developed in the last decade? Where does it meet or fail to meet practitioner and user needs?

For librarians, curators, and rights managers, the question we often face every day from faculty, researchers, and students is “Can I use this image?” Often, we say, “There’s no one right answer, but you can look at x resource and y resource.” However, those long-trusted resources focus on traditional print publication or web usage as was common a decade or more ago--as the *Code* turns 10 this year, so does the *Statement* turn 13, ages in our era of fast changing technology. While patrons may still be publishing in print, many are shifting to the myriad types of online “publications” and web-based course or research platforms. How do we answer questions when an image will appear on a public course exhibition website, on a digital flier, or on an open access website? When is it a question of fair use? Where and how do permissions and licensing come in, or not, in each unique scenario?

Moreover, not only must we read our existing resources through the lens of new use cases, the answer to the question “can I use this image?” is not often just a technical answer. The answer is about risk aversion; maintaining relationships with other institutions, publishers, and artists; as well as assessing ethical aspects. Unfortunately, the *Statement* and the *Code* do not address ethical and moral concerns. During the summer of 2024 the presenters of the session sent out a poll<sup>2</sup> to gauge similar feelings among practitioners, as well as held a live poll during the session.<sup>3</sup> The results<sup>4</sup> reinforced that folks are concerned about potential legal action and

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<sup>1</sup> During the 2024 session, while Kohl spoke about the legal and academic landscape that led to creation of the VRA Statement, as well as the situation on the ground before the statement and the eventual creation of the CAA Code, Schumacher addressed alternate solutions beyond a *Statement* revision and questions of scope and purpose. Sims discussed the kinds of issues professionals see regularly who educate people about fair use. Ensor-Bennett reported from the “trenches,” attempting to answer the question, “How are practitioners handling shifting needs from our patrons?”

<sup>2</sup> The “2024 Fair Use Statement/Code VRA Survey” was sent to the VRA listserv with a deadline of 7/22/24. The survey received 16 responses which verified that many of us have more questions than answers for patrons, as well as showing that none of the respondents regularly refer to the *Statement*.

<sup>3</sup> The live “Factor in or Factor out, VRA 2024, Poll” had 49 responses. The live poll yielded similar data about usage of the *Statement* with 71.4% never consulting the resource, as well as showing that only 43.7% of respondents frequently or occasionally consult the *Code*, with 46.9% never doing so.

<sup>4</sup> When asked in the live poll, “When you consult with patrons and teach about fair use and copyright, you may hear “Can I use this image?” When you hear this question, what are you and/or your patrons most worried about? Check all that apply.” 30 respondents selected “legal action,” 17 selected “donor relations,” 11 selected “relationships with other GLAMs,” 29 selected “using images online,” 30 selected “using images in print publications,” 14 selected “using images in DH projects,” 22 selected “how to request permissions,” and 18 selected “how to find free images.”

1994	<a href="#"><i>Campbell v. Acuff-Rose Music, Inc.</i></a> <sup>5</sup>
1998	The Conference on Fair Use, <a href="#">Final Report to the Commissioner on the Conclusion of the Conference on Fair Use</a> (CONFU)
1998	<a href="#"><i>Bridgeman Art Library, Ltd. v. Corel Corp.</i></a> <sup>6</sup>
1999	<a href="#"><i>Academic Image Co-operative</i></a>
2001	<a href="#"><i>VRA Image Collection Guidelines</i></a> (original title: Standards of Good Practice)
2006	<a href="#"><i>Digital Image Rights Computator (DIRC)</i></a> <sup>7</sup>
2008	<a href="#">Center for Media &amp; Social Impact</a> under the guidance of <a href="#">Peter Jazsi</a> begins promoting the formulation of fair use guidelines by various user communities. <sup>8</sup>
2012	<a href="#"><i>VRA Statement on the Fair Use of Images for Teaching, Research, and Study</i></a> ; published in <a href="#"><i>VRA Bulletin</i></a> [Volume 38, Issue 1]
2014	“ <a href="#">Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report</a> ” released at the 2014 College Art Association Conference in Chicago
2015	CAA’s <a href="#"><i>Code of Best Practices in Fair Use for the Visual Arts</i></a> published
2018	<a href="#"><i>Fair Use In the Visual Arts: Lesson Plans for Librarians</i></a>
2023	<a href="#"><i>Goldsmith v. Warhol Foundation</i></a> <sup>9</sup>

Figure 1: Selected Court Cases and Documents on Copyright/Fair Use and Images. Adapted with reference to Kohl’s 2024 session presentation.

damaging relationships with other GLAMR institutions and donors.<sup>10</sup> More and more practitioners are asking ourselves, not only whether an image might be considered legally fair use but whether it is ethical to use in the requested context. Anecdotally, it appears that these ethical

<sup>5</sup> For a discussion of this case, see the Copyright Office’s [Summary](#).

<sup>6</sup> For a discussion of the meaning of this case, see Katherine L. Kelley, “The Complications of *Bridgeman* and Copyright (Mis)use.” *Art Documentation: Journal of the Art Libraries Society of North America* 30, no. 2 (Fall 2011): 38-42, <https://doi.org/10.1086/adx.30.2.41244063>, accessed 10/21/25

<sup>7</sup> The DIRC evolved from another tool called the Copy Photography Computator. The CPC was distributed on the VRA website, under IPR Committee resources, until it was superseded by the DIRC in 2006.

<sup>8</sup> These documents are now published by the Center for Media & Social Impact: <http://cmsimpact.org/codes-of-best-practices/>

<sup>9</sup> For a discussion of the meaning of this case, see the Copyright Office’s [Summary](#), as well as “Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith.” *Harvard Law Review* 137, no. 1 (November 2023). Accessed on 10/21/25 at <https://harvardlawreview.org/print/vol-137/andy-warhol-foundation-for-visual-arts-inc-v-goldsmith/>

<sup>10</sup>Also in 2024, the Risk Management Working Group of the CC Open Culture Platform sent out a survey about risk management in open access to digital collections. See <https://oa2ch.gitbook.io/risk-management#background> for more information on this effort which led to the creation of the Group’s “Risk Management Toolkit: Risk Mitigation in Open Access to Digital Cultural Heritage Collection,” accessed on 11/7/25

considerations and decisions are happening more frequently at the collection level. We are left with many concerns, but few guidelines.<sup>11</sup>

While the session initially intended its primary focus to be on the *Statement* and fair use, the deeper the presenters delved into the questions at hand, the more it became simply important to better understand these questions: How did we get here? Where are we going now? How can librarians, curators, and rights managers support their patrons today, as well as tomorrow?

Following the conference session, VRA members met to discuss next steps. After much thorough conversation it was decided not to advocate for an update of the *Statement* but to have VRA's Intellectual Property Rights Committee (IPRC) sponsor a *VRAB* special issue on copyright. This would allow the IPRC and others to address some of the questions that came up during and after the conference session, as well as providing an opportunity for multiple voices within the GLAMR community to share their views on fair use and the questions that go beyond copyright such as ethics, traditional knowledge, and maintaining relationships with donors, institutions and communities.

With this special issue sponsored by the IPRC, we also welcome the committee's two new co-chairs Cynthia "Cindy" Mackey, (Associate Registrar for Rights and Reproductions, Peabody Museum of Archaeology and Ethnology, Harvard University) and Bonnie Rosenberg (Director of Imaging, The Art Institute of Chicago). The IPRC provides a forum for VRA members working with image and rights management tasks, or those interested in the topic, to ask questions and share resources. The committee is always open to anyone interested in this topic. Perhaps after reading this special issue you would be interested in joining the committee as a VRA member.

The following articles in this issue cover a range of topics from a brief historical survey of copyright, to fair use and licensing, traditional knowledge rights management, and educational resources for all of us in the image management field. We are thankful to all of those who contributed. Each article provides a unique perspective on a particular topic based on the author's institutional role and their experience within the image management field.

For instance, Kyle K. Courtney's (Director of Copyright & Information Policy, Harvard University) article "Does Fair Use Survive the License? Fair Use in the Licensed Landscape: Rights, Risks, and Realities" addresses whether fair use and statutory user rights continue to coexist in a licensing environment. This is important for all of us as we help students and our colleagues navigate licensing agreements and as GLAMR communities continue to use licensing or terms of conditions to manage use of their public domain materials.

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<sup>11</sup>Museums, archives, and universities alike are in need of resources to address these questions. While we argue that there is substantial room for publications in this area, we continue to recommend Young, Anne M. (ed.), *Rights & Reproductions: The Handbook for Cultural Institutions*, 2nd ed., Lanham, MD: Rowman and Littlefield, 2019. We also draw your attention to a new guide that was released just last month: "Publishing with Images," with JoAnn Campbell, Bridget Madden, Christine Mehring, Alyssa Padilla-Drexler, Allie Scholten, and Kirsten Vallee. Visual Resources Center, 2025. <https://doi.org/10.6082/UCHICAGO.16398>. If your institution doesn't already have an Intellectual Property Policy that addresses this, we recommend the resource "Developing Intellectual Property Policies: A How-To Guide for Museums." Diane M. Zorich. Canadian Heritage Information Network, 2019. <https://www.canada.ca/en/heritage-information-network/services/intellectual-property-copyright/guide-developing-intellectual-property-policies.html>



included in this issue, were wide ranging although there were a few themes recurring throughout. We appreciate everyone who took the time to respond and share their thoughts.

Finally, we have also included an Appendix (“Recent VRA Copyright & Fair Use Work”) which documents the recent VRA copyright and fair use efforts since 2019 to get a better sense of where we are and where we are going in the field, as well as to provide additional resources for our readers.

We hope this special issue, which resulted from the 2024 VRA session “Factor In or Factor Out: The Changing Landscape of Fair Use and the VRA Fair Use Statement,” provides guidance, or at minimum useful resources, for future fair use questions, including that nagging one: “Can I use this image?” (Figure 2) Has this issue helped or is the answer still “it depends”? We look forward to hearing from you and furthering the conversations about copyright, fair use, and rights management.

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