

June 22, 2015

Dear CAA Leadership,

The Art Libraries Society of North America (ARLIS/NA) Executive Board endorses the College Art Association's Code of Best Practices in Fair Use for the Visual Arts, an important document that will advance visual arts scholarship and creative practice in this digital age. The Code is a strong step away from a permissions culture that hinders many members of the larger community.

Art information professionals have been leaders in Copyright and Fair Use, serving as first-line resources for information, advice, and teaching on these issues. Librarians and archivists are both partners and practitioners in areas covered by the Code and will no doubt be consulting it extensively. To enhance the utility of the Code in libraries, archives and other sites of visual arts scholarship, we offer the following considerations for its future development.

- Enhance Fair Use arguments by specifying the value of open access in publishing as a model for increasing access to, and scholarly impact of, analytical writing.
- Fair Use rights should be recognized as valid in the creation of digital art history projects, as scholarship that uses copyrighted content, along with mapping, timelines, or visualized networks, to make points or create resources that may not fall under the rubric of "analytic writing."
- The Code characterizes "Museum Uses" of information that we recognize as identical to library, archival and gallery activities: curating exhibits, publishing catalogues, using the collection in promotional activities. ARLIS/NA encourages the CAA to apply the same principles to similar activities in all types of cultural memory institutions.
- Art librarians and archivists often work outside of large research libraries, for instance as art historians and museum professionals. While we are pleased to see that individual librarians were involved in the consultations, we would recommend future collaboration between the CAA and ARLIS/NA in establishing and promoting Fair Use rights to our constituencies.

We hope that you will find our response constructive and look forward to working with you in the future.

Sincerely,



Kristen Regina
ARLIS/NA President



Carole Ann Fabian
ARLIS/NA Past-President

ARLIS/NA Response to the Code of Best Practices in Fair Use for the Visual Arts

Analytic Writing

ARLIS/NA finds the first principle to be incredibly important to prevent self-censorship in art scholarship. The principle takes a broad view and considers all analytic writing as capable of being a transformative use of images. This principle is key to libraries' archiving of scholarly articles, dissertations, and other works in institutional repositories. It will also be important for the increasing trend of publications sponsored or hosted by libraries. ARLIS/NA thinks there is also the potential to catalyze open access art scholarship. Peter Suber, one of the founders of open access, said 'open access will come last to art history' because of image rights. The Code has the potential to change that dynamic dramatically. ARLIS/NA finds that the Code could be improved by specifically spelling out that open access publishing strengthens Fair Use arguments. The principle is also lacking in guidance on digital art history. Although this principle specifically mentions born digital analytic writing, many new art history projects are markedly different from scholarly essays. They may use copyrighted content in conjunction with mapping, timelines, or visualized networks, among other digital tools, to make points or create resources that may not fall under the rubric of "analytic writing." ARLIS/NA believes these types of uses are not only valid scholarship but also fall under Fair Use.

Teaching About Art

While ARLIS/NA agrees with the aims of this principle the society finds some of the limitations inhibit institutional sharing. The principle states, "Those who maintain such files generally agree that they would prefer to share them more broadly, with peers or related institutions, to create more powerful teaching resources." The current situation of closed and redundant institutional collections duplicates work and prevents wider sharing of important teaching resources. This also prevents the creation of next-generation tools that can leverage increased breadth. The limitations on this principle seem to preclude such collaboration. ARLIS/NA does not think that access to institutional image reference collections necessarily should be limited to persons affiliated with the institution and its partner institutions, as long as sharing is advancing a pedagogical purpose. Instead, wider and more collaborative networks should be the goal. ARLIS/NA prefers the principles advanced in the Visual Resources Association's Statement on the Fair Use of Images (vraweb.org/wp-content/uploads/2011/01/VRA_FairUse_Statement_Pages_Links.pdf), particularly point five, which cogently argues that the institutional sharing of images for teaching is Fair Use.

Museum Uses

While ARLIS/NA agrees with this principle, it finds the terminology of "museum" is too narrow. Instead, "museum" should be understood as shorthand for a variety of activities most often carried out by museums. Libraries, archives, galleries, and other cultural memory institutions often carry out these

same activities. They curate exhibits, publish catalogs, use their collection in promotional activities, all in furtherance of their core missions. In light of this, ARLIS/NA thinks that this principle should be interpreted broadly to include these same activities carried out in a field of institutions expanded beyond just museums.

Missed Opportunities

Art information professionals have been leaders in Copyright and Fair Use. In many institutions art information professionals are first-line resources for information, advice, and teaching on these issues. Librarians have their own code of best practices for fair use, created by the Association of Research Libraries. This Code, however, is primarily targeted at the activities of large research libraries. Art librarians and archivists are often working outside of this type of setting, for instance as art historians and museum professionals. Librarians and archivists are both partners and practitioners in areas covered by the Code and will no doubt be consulting it extensively. Art information professionals could have provided unique perspectives for the CAA Code. Individual art librarians did take part in several of the phases of the project, but it seems that the participation waned during the latter half of the process. However, this concern does not diminish the importance of the document nor our enthusiasm for its potential. We suggest that this rather be a starting point for improved collaboration between CAA and ARLIS/NA.

Prepared by the ARLIS/NA Public Policy Committee

Endorsed by the ARLIS/NA Executive Board

June 18, 2015