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## **COPYRIGHT AND REMIX ATTITUDES IN DIGITAL SPACES: HOW DO THEY DIFFER WITH AGE, EXPERIENCE AND KIND OF USE?**

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### **Panel Description**

How do the affordances of digital technology to copy and share information facilitate change in attitudes toward the creative process and copyright? How do custom and law affect use, and how does technology-afforded use affect custom and law? How does education about law and custom change behavior and attitudes? Despite commonly held misconceptions about stark generational and digital divides in attitudes about copyright and cultural appropriation, and contrary to widespread and reductionist claims about piracy and plagiarism, recent communication research reveals that cultural approaches to copyright's most contentious arena – copying and reuse of copyrighted material – are nuanced, evolving and, at times, conflicting.

This panel showcases current research on behavior both of consumers and creators, looking at how age, experience, social location and use behavior play a role in copyright attitudes. Research of the various panelists considers the interaction between users and the mediating technologies that provide them digital access, and how this interaction conditions their attitudes and actions.

Research showcased on this panel draws from analysis of behavior of demographically complex groups over time, both as creators and as consumers. Specifically, one study examines the creative decisions and gatekeeper interactions that involve copyrighted material of documentary filmmakers over the decade 2004-2014, as seen through both survey and qualitative data. Another compares two surveys, from 2009 and 2014, of communication scholars on scholarly research decision-making before and after

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creating a best practices code to clarify fair use for the field. A third analyzes creative decisions of visual arts professionals in four fields—art production, art scholarship, scholarly book and journal production, and museum exhibition creation—around use of copyrighted material. The fourth study analyzes attitudes of users of streaming media, building on ethnographic data about audience usage of streaming and interviews with industry leaders, drawing links between experience with streaming media early in life and copyright attitudes. Variables include age, experience, type of digital media creation and use, and familiarity with the law. Results from the different studies demonstrate the importance of basing generalizations on specific fields of practice and types of experience.

These presentations demonstrate the value of close analysis of behavior and attitudes to demystify a highly politicized public debate plagued by moral panic, and they also provide a baseline for future research. The research results have implications for copyright policy, for education, and for future research on the relationship between copyright policy and creative practice.

## **Paper Abstracts**

- 1. From Fear to Fair: Knowledge-Grounded Change in Documentary Practice regarding Copyright**  
**Patricia Aufderheide, American University, presenter**  
**Aram Sinnreich, American University**

This study asks: Is it easier for individual creators to make a decision to exercise expressive rights if they believe their decisions are within the expectations of their peer group? Does increased awareness of group expectations change the way the law is used, and thus the utility of the law? Conclusions are based on a survey of 489 filmmakers working in the U.S. in 2014. Survey results are compared with a qualitative study, grounded in 45 longform interviews with filmmakers, done in 2004.

As copyright policy has become increasingly tilted toward the rights of existing rights holders, the function of fair use in creative practice has been much debated. Some scholars such as William Fisher, Lawrence Lessig and Siva Vaidhyanathan have argued that, particularly in a digital era, fair use is a frail and difficult-to-use balancing feature of the law and it has been characterized as “notoriously difficult to predict in a given case” (Lange & Powell, 2009, p. 48). Other scholars, including Aufderheide & Jaszi, Jason Mazzone, and Neil Netanel have celebrated its utility and flexibility with changing opportunities for expression and argued that where used robustly—for instance in journalism and scholarship—it has great vitality.

Scholars generally agree that fair use is central the functioning of copyright within the U.S. Constitution. Without such limitations on monopoly as fair use, copyright would enable private censorship and the cartelization of knowledge. “Fair use is a great solution in the United States,” wrote Kembrew McLeod, a scholar who studies the creative process in popular music, “but for it to have any real impact in our culture we

need to vigorously and confidently (though not carelessly) employ this legal doctrine in daily life” (McLeod, 2005, p. 147).

Fair use demonstrates that law takes on its social meaning not only by legislation and case law but also by custom and practice. Indeed, as legal scholar Michael Madison has shown (Madison, 2004), judges find themselves referring, implicitly or explicitly, to custom and practice in any particular area when ruling on fair use. In the last decade, some creative and productive communities, from documentary filmmakers to academic scholars to journalists, have formally articulated their best practices, including documentary filmmakers, in 2005.

Creative options for filmmakers concerning use of third-party material have dramatically improved with changes in norms after the issuing of the Statement. This has happened at a moment of rising importance of the digital environment for creation, distribution and engagement. Attitudes about fair use are strongly associated with free expression and creative opportunity, and vary with experience. Where filmmakers have changed work because of copyright concerns, they themselves rather than any gatekeeper have made the decision to do so. Where change is associated with fair use, risk is a common concern. Newer filmmakers are more likely to support use of copyrighted material to make new work, but less likely to know about fair use, and also more likely to have experienced takedowns online. Both education about and experience with fair use appear to have an effect on practice. Filmmakers continue to lack reliable information on the actual risk landscape, and about fair use on digital platforms.

Almost all filmmakers, we found, have heard of fair use, although only slightly more than half are familiar with the Documentary Filmmakers’ Statement of Best Practices in Fair Use, and only 28% have used it specifically to make fair use decisions. Most of them understand fair use accurately, and for many of them, their accurate knowledge is grounded in industry practice and information, suggesting internalization and practice of the Statement’s principles. Documentary filmmakers overwhelmingly see fair use as a tool that expands freedom of expression.

When asked about remixes and mashups, 93% of respondents thought that some or all of the uses were acceptable fair use, and only slightly fewer (89%) thought that the law should accommodate some or all forms of creative appropriation on digital platforms.

Almost universally, filmmakers find that broadcasters and insurers accept their fair use claims, if supported by a lawyer’s letter. Almost two-thirds (59%) have recently used fair use (within their most recent three productions), with the most common reason for not employing fair use being simply that they did not have any eligible third-party material. Although documentarians routinely license portions of their older works, they say that they have not lost money from the widespread employment of fair use, either.

Documentarians have often sought out other ways to avoid licensing. Three-quarters (74%) have actively searched for public domain material or material made available via an open-source license such as Creative Commons. Public domain material is historically important to documentarians, even though the body of public domain

material for contemporary issues is very small. A quarter (26%) of documentarians have made their own work available through Creative Commons.

Documentarians are less comfortable navigating the legalities of fair use under the Digital Millennium Copyright Act (DMCA), a fact that impairs their ability to take advantage of the digital environment. Nearly three-quarters (72%) of filmmakers do not know they have the right under law to break encryption to access copyrighted material on a DVD, and most (67%) have not done so either, even though it is technologically easy. Almost a quarter (23%) have seen their own videos taken down from the internet following DMCA infringement claims. Among those people, 60% were confident in their fair uses of copyrighted material, yet only half of those whose work was taken down contested it.

Four out of five (78%) have changed the final versions of their work because of copyright considerations (most often stemming from their own concerns, rather than those of third parties). Thus, it seems documentarians have often internalized potential complaints, pre-emptively deciding to ask permission rather than employ fair use in situations where they believe they should not have to.

At the same time, almost two-thirds of respondents (62%) have in mind projects they could do if copyright concerns were not an issue at all. Often these projects have to do with mining archives, and providing historical context and interpretation. Many uses mentioned, including mining archives for curated work, compilations and collage work, are enabled under current fair use law in some form.

Differences between early-career and later-career filmmakers suggest an education gap in fair use knowledge, and a difference in cultural formation. The newer filmmakers appear to have the same desire and use for accessible materials as more established filmmakers, but they are more likely to emphasize the structural problems of copyright, and to employ workarounds, such as Creative Commons, that lie in the hands of the maker. While they are more likely to use technological affordances such as Internet distribution and decryption, they are less likely to know how to employ fair use with them. Meanwhile, those more experienced in the field both know more about fair use and value it more highly, although they are less likely to have employed open licenses and similar “copyright-light” options either as users or makers.

## References

Lange, D., & Powell, J. (2009). *No law : intellectual property in the image of an absolute First Amendment*. Stanford, Calif.: Stanford Law Books.

McLeod, K. (2005). *Freedom of expression : overzealous copyright bozos and other enemies of creativity* (1st ed.): Doubleday.

- 2. Fair Use and Academic Freedom: Copyright Attitudes and Practices Among Communication Scholars in a Digital Environment**  
**Aram Sinnreich, American University, Presenter**  
**Patricia Aufderheide, American University**

Fair use, a copyright doctrine that permits unauthorized copying in some circumstances, plays an important role in scholarship. Communication scholars are increasingly functioning in a digital-first or even digital-only environment, and one in which digital humanities options and big-data social science research are opening up dramatically. All of these options require a sound grasp of fair use rights in order to take advantage of digital affordances.

This study analyzes empirical data based on a survey of 350 communication scholars from around the world, examining the role that fair use plays in this community's work, and the degree to which awareness and employment of the doctrine serve as boons or impediments to the production of knowledge. It compares results with a 2009 survey, completed before communication scholars created a Code of Best Practices in Fair Use for Communication Research in 2010.

U.S. copyright policy is designed to stimulate the production of new culture, both by offering creators a limited monopoly over the expression of their ideas and also by limiting that monopoly sufficiently to permit new culture to be generated on the platform of existing culture, as has been discussed among others by Benjamin Kaplan, Lewis Hyde and L. Ray Patterson. More than a century of industry pressure to extend copyright has resulted in monopolies that are longer and stronger than ever before; mounting evidence shows that creative choice that has been limited by extending these monopolies, as scholars such as scholars such as James Boyle, Aram Sinnreich, and Rebecca Tushnet among others have argued.

In the U.S., the fair use doctrine exerts a check on cultural monopolization. It is difficult, however, for many creators and scholars to understand when fair use applies best to their activities, and when they and their institutions may face unacceptable levels of risk.

Communication scholars, among others, have documented the cost of such confusion and inability to do reliable risk assessment (Ad Hoc Committee on Fair Use and Academic Freedom, 2010). This is why several creative communities in the U.S. have crafted their own codes of best practices, through deliberative processes overseen by legal advisors. Communication scholars created such a code in 2010, through their professional association the International Communication Association; the code was then endorsed by another large professional association, the National Communication Association, and is available on both associations' websites.

Communication scholars across the range of experience and age widely recognize fair use and value it highly. Their lack of expertise in applying it is hurting them, because too often they are not comfortable in asserting their rights or are not able to engage gatekeepers such as librarians, general counsels, editors, publishers and funders whose policies do not accommodate existing law. Thus, they both decide not to undertake some kinds of projects (although they can imagine them) and change others to accord with their insecurity or concern.

Newer faculty especially are more likely to use copyright-light and open-access options, especially among newer faculty. However, we did not see improvement in the frustrations communication scholars experience within their institutional relationships, or

their ability to apply fair use. Thus, some positive changes occurred, but they lack the ecological effects that a consensus document like the code of best practices they created is intended to have.

Scholars consciously employ fair use (59% say so, and almost all probably do so without knowing). They value fair use in principle; on a seven-point Likert scale, the overall mean is 2.03, squarely at “very useful.” Scholars associate fair use with one of their core purposes, to educate.

But nearly two-thirds of communication scholars (64%) would do something different in their scholarly or teaching practices—sharing, quoting, remixing, archiving—if copyright were not a concern. This is true *irrespective of career phase or expertise*. What they would largely do what is actually permitted under today’s law, and much is actually being done, if not within the communication field. For instance, respondents described wanting to do remixes and mashups, multimedia projects, e-books with multiple media, excerpting video for teaching, illustrations in scholarly texts, student assignments in media production, and expanding curricula.

More than half (53%) of all respondents have changed a course or publication because of copyright restrictions against their use of others’ work. Additionally, some 40% of communication scholars say they have sought permission to use copyrighted material despite believing that they had fair use rights to the work. In general, the longer a scholar has been in the field, the more likely he or she is to have altered work unnecessarily for copyright concerns, which may simply be an artifact of having more opportunities to do so. The figure for students and newer scholars is higher than that of scholars in the 5-10 year zone, perhaps reflecting the greater degree of caution that students and newer scholars exhibit in their initial efforts, or the lower degree of latitude afforded to students institutionally. Scholars who changed their work due to copyright concerns were most likely to have done so preemptively, on their own initiative. Students were far more likely than faculty to take preemptive action. In any case, spending a greater amount of one’s lives in a digital environment does not seem to lessen a tendency to self-censor.

The most common examples given of changed work were in publications, where images, graphics and charts were most commonly left out. Scholars also reported truncating quoted text. In teaching, faculty reported changing assignments, finding different readings, choosing different films, and not electronically posting their lectures. The most common reason why they have made changes was not pressure from institutions or rights holders; rather, it was their own initiative, born of risk aversion.

Scholars are more aware of both copyright issues and fair use within this population than there was half a decade earlier. In 1999, 43% of respondents said they had employed fair use in their work. The figure grew to 59% in 2014. In 2009, 51% of respondents said they would likely or definitely undertake new research if they were free of copyright concerns. Today, 65% say they would change their scholarly or teaching practices absent copyright concerns. In 2009, 30% of respondents had had to pay or get permission to use copyrighted material in a publication, despite believing they had fair use rights to it. That figure is larger today, at 40%. Today, more than twice as many

scholars say they have broken encryption, as is currently their legal right: 28%, compared to only 12% in 2009. This clearly reflects the fact that savvy scholars have taken advantages of recent policy wins in favor of digital fair use.

Despite growing awareness of copyright's role in scholarship and the opportunities afforded by fair use, however, scholars consistently complained about the same problems from 2009 to 2014, including intransigent publishers, problems accessing and displaying material for teaching, and frustrations with encrypted material. The impediments to making digital affordances work for communication research can be addressed with education, including about the Code of Best Practices in Fair Use for Communication Scholars.

## References

Ad Hoc Committee on Fair Use and Academic Freedom, I. C. A. (2010). Clipping our own wings (pp. 17). Washington, DC: International Communication Association.

### **3. The role of copyright in structuring the digital imaginary in the visual arts Tijana Milosevic, Postdoctoral researcher, Children and Media Studies, University of Oslo**

While digital affordances are creating new possibilities in the field of visual arts—to produce multimedia art and digital scholarship, publish online, and hold online museum exhibitions—the collective imaginary of the arts community is polluted with misunderstanding of copyright. The digital transformation has highlighted longstanding problems that U.S.-based visual arts professionals have in managing their work responsibilities in relation to expectations that all copyrighted material will be used with permission—what is known as ‘permissions culture’ (Bielstein, 2006; Whalen, 2009). As the field has faced the opportunities of a digital era (digital museum displays; digital access to collections; digital multimedia art; scholarship that both discusses multimedia and uses multimedia to present results), the needs to access copyrighted material have increased.

In a field where getting permissions is routine, a national survey of 2,828 visual arts professionals conducted by the College Art Association, along with 100 in-depth interviews of visual arts practitioners throughout the United States, explored how visual arts professionals have been using the US copyright doctrine of fair use. Regression analysis was used to determine how length of experience in the field, specific profession within visual arts, copyright education and self-reported copyright understanding influence the community's ability to shape the digital imaginary in the visual arts.

Results show confusion, or misinformation about visual arts professionals' copyright options to use unlicensed materials. Statistical analysis and in-depth interviews reveal exaggerated risk, failure to execute a wide variety of work in the way they regard as best, censorship, and self-censorship. Creative use of digital technologies is particularly affected. Results of regression analysis show that the strongest predictor of chilling effects was the particular profession within visual arts, followed by self-reported copyright understanding. Non-artist professions--academics, editors, publishers and

museum professionals were particularly affected. Interestingly enough, the higher the self-reported copyright understanding the greater the likelihood of avoiding or abandoning a project, and authors provide context for such findings. As a consequence of learning the cost of failing to employ the available resource of fair use, members of the College Art Association created a Code of Best Practices in Fair Use for the Visual Arts.

## References

- Bielstein SM (2006) *Permissions, a Survival Guide: Blunt Talk about Art as Intellectual Property*. Chicago, IL: The University of Chicago Press.
- Whalen M (2009) What's wrong with this picture? An examination of art historians' attitudes about electronic publishing opportunities and the consequences of their continuing love affair with print. *Art Documentation: Bulletin of the Art Libraries Society of North America* 28(2): 13–22.

### 4. Streaming Tactics: Copyright Attitudes, Consumption, and Digital Imaginaries Benjamin Burroughs, University of Iowa

Streaming has become a ubiquitous mode of media consumption. Streaming is conceptualized as both a technological innovation and as a cultural practice that co-configures audience and industry. This research, drawing from a larger ethnography of audience usage of streaming and interviews with industry leaders, argues that attitudes about copyright from a consumer perspective can be understood concomitantly with the rise of streaming media.

A combination of age and experience can explain consumer orientation towards ownership, ethics, and copyright as the networked individual becomes the focal point of streaming and participates in the re-articulation of media industries, media content and consumption/distribution. This shift in attitude has implications not only for audiences and media industries but also for policy debates and digital rights struggles. In this way streaming as a digital imaginary, a space of perceived endless consumption without owning or downloading, has an impact on public policy debates. This paper also suggests that research on digitally grounded communication practices should continue to include a sociotechnical component, focused not only on audiences but also on the inter-animation of audiences with the affordances of media.

While it is difficult to firmly establish how prevalent 'illegal' streaming has become (the industry doesn't want the numbers widely known and the sites themselves don't want to be targeted), MarkMonitor, an Internet research and security firm, estimates that the top three websites engaged in "digital piracy" receive 'more than 21 billion visits per year' (MarkMonitor, 2011) and "traffic to illegal download sites has more than sextupled since 2009" (Pogue, 2012). Streaming as a technological process is nominally defined as multimedia that is continually delivered to a user (Larsen, 2007). Streaming is increasingly imperative to the smooth functioning of the Internet because it allows the user to view, listen, or experience mediated content without downloading all of the files or information before usage. In this way streaming can be understood as a mobile media both in its form of distribution and in the mobility afforded to audiences to traverse the lexicon of popular culture. With increased network bandwidth in the early



2000's, streaming has become integral to not only business practices but to how we encounter mediated culture. The technological capacities and affordances of streaming; networkable, compressible, dense, and malleable, differentiate the discontinuous data of digitality from analogue media (Miller, 2011) and broadcasting. We are in the midst of a re-calibration between audiences and industry where the flow of content becomes increasingly channeled through the networked individual. This movement is not exempt from the challenges, pitfalls, and anxieties of shifting media landscapes.

Reducing this cultural practice to nothing more than 'streaming theft' (a category the MPAA created in an attempt to brand streaming since 2011) fails to deal with the complexity of this emergent form of media consumption. If we suspend this judgment, we might think of streaming as a tactic. De Certeau's (1984) strategies and tactics are a useful conceptual framework for understanding streaming as a cultural practice, a style or poetics that tactically challenges the '*propre*' strategies of mass consumer and television culture. Streaming is wandering through the strategic 'place' of copyright and broadcast rights. Streaming is the prerogative of the in-between and deterritorialized poaching. Streamers are "travellers; they move across lands belonging to someone else, like nomads poaching across fields they did not write" (p. 174). Just as there is a 'rhetoric of walking' we might think of a 'style of use' for streamers traversing the geographies of nation-states and the global lands of copyright and license holders throughout the Internet.

This cultural practice is theorized through Certeau's distinction between strategies and tactics. Strategy is defined as the "calculus of force-relationships" where the possessor of power exercises the "will and power" over an environment to assume a place that is sanctioned as proper. Fiske (1988) succinctly explains place as the "mastery over time, allowing one to hold on to acquired advantages, to prepare future expansions and to control historical changes to one's own advantage" (p. 288). Tactics have no sustained place of their own but construct a space within the place of the powerful.

This is 'making do' as streaming within the logics of a Western capitalist system of copyright and ownership. Sites for streaming are constantly in flux. Streamers are negotiating pop-ups, dead links, and the seizing of possibilities to find ephemeral moment of watching a particular program. These sites are not built to last and takedowns are often the order of the day so the fleeting pleasure in the pursuit and momentary, ephemeral viewing are part of the spirit of streaming. However, these consumers differ from BitTorrent users or niche communities within the dark and deepnet, which require more technical knowledge and access. The ubiquity and everydayness of streaming poses a challenge as audience expectations surrounding consumption begin to shift. This isn't a kind of 'pirate politics' but an interstitial part of everyday consumption, which constitutes a risk to copyright holders. The labeling of these audiences as 'cord-cutters' and 'cord-nevers' exemplifies the growing consternation among traditional media industries.

There is a desire in the audience produced in conjunction with the rise of streaming technologies to engage in more 'long-form' viewing of television shows and seasons (without the fear of cancellation of an entire season in week one). This should be understood as a 'reading' tactic, colloquially known as bingeing (often called marathoning

amongst executives), which only becomes demarcated as a mode of consumption in conjunction with the rise of streaming. Just as DVDs became ways for audiences to re-animate old television series and play within them in new ways that promoted a complex reading of culture (Mittell 2010), streaming performs the same cultural function only now the navigation moves beyond the materiality of the box set. Portability in a streaming culture is another kind of disruption to the existing media infrastructure. Audiences now are not confined to television's 'place' in the home as the unique site for consumption, de-centering broadcast logics and scheduling as the dominant mode of experiencing media artifacts.

Goldsmith and Wu (2005) end their analysis at the onset of Bittorrent and communities of Internet users who are able to circumvent state control but according to the authors are too isolated to form any kind of larger cultural impact. Streaming of unsanctioned content has become a much wider cultural practice, an everyday practice, which is perceived by consumers as beyond the control of states and territorial government. This perception, a digital imaginary, provides a space to rethink the gaps in copyright that accompany new technologies and possibilities.

## References

De Certeau, M. (1984). *Arts de faire* (Vol. 1). University of California Press.

Fiske, J. (1988). *Television culture*. Taylor & Francis US.

Goldsmith, J. L., & Wu, T. (2006). *Who controls the Internet?: illusions of a borderless world* (Vol. 89). New York: Oxford University Press.

MarkMonitor. (2011, January). Retrieved from <https://www.markmonitor.com/>

Miller, V. (2011). *Understanding digital culture*. SAGE Publications Limited.

Mittell, J. (2011). TiVoing childhood. Time-shifting a Generation's concept of television'. *Flow TV: Television in the age of media convergence*. New York: Routledge, 46-54.

Pogue, D. (2012, August 21). How Hollywood is encouraging online piracy. *Scientific American*. Retrieved from <http://www.scientificamerican.com/>