We gratefully acknowledge Patricia Aufderheide and Peter Jaszi for pioneering the codes of best practices in fair use and for generously providing some of the language we adapted for use in this guide. See Patricia Aufderheide & Peter Jaszi, Reclaiming Fair Use: How to Put Balance Back in Copyright (University of Chicago Press 2011). The second edition of Reclaiming Fair Use will be released in 2018.

1. When using third party materials, authors should also consider other legal issues, such as contractual restrictions, privacy rights, and defamation; and community norms, like rules against academic plagiarism, in addition to copyright. This guide does not address these issues.

2. See infra note 8.

Dance Related Materials; Statement on the Digital Transmission of Audio Reserves; and the Statement on the Fair Use of Images for Teaching, Research and Study. To read these guides, please visit the Center for Media & Social Impact’s website, http://cmsimpact.org/codes-of-best-practices/.


5. Supra note 3.

6. Brandon Butler & Peter Jaszi, Fair Use and Sound Recordings: Lessons from Community Practice, available at http://cmsimpact.org/code/fair-use-sound-recordings/ (stating “From a corpus that now encompasses more than a dozen statements and codes, trend lines are becoming clear and a kind of meta-consensus across various fields is emerging.”).

7. The Berne Convention, the primary international copyright treaty, requires all members of the Berne Union to have an exception for fair quotation. In addition, several other countries, including Canada, Israel, and Korea, provide for fair use or fair dealing in their national laws.


9. Because transformative uses are generally non-substitutional, they do not represent the kind of market harm to which the
fourth fair use factor relates. See *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605 (2d Cir. 2006).


11. E.g., Code of Best Practices in Fair Use for Online Video (One: Commenting on or critiquing of copyrighted material); Code of Best Practices in Fair Use for Open CourseWare (Two: Critique and Analysis); Code of Best Practices in Fair Use for Poetry (Four: Criticism, comment, illustration); Code of Best Practices in Fair Use for Scholarly Research in Communication (One: Analysis, criticism, and commentary about copyrighted materials); Code of Best Practices in Fair Use for the Visual Arts (One: Analytic Writing); Documentary Filmmakers’ Statement of Best Practices in Fair Use (One: Employing copyrighted material as the object of social, political, or cultural critique); Set of Principles in Fair Use for Journalism (Two: Use of copyrighted material as proof or substantiation in news reporting or analysis; Three: When copyrighted material is used in cultural reporting and criticism).

12. E.g., Code of Best Practices in Fair Use for Open CourseWare (“[t]he extent of the use should be no more than is reasonably needed for the critical purpose”); Code of Best Practices in Fair Use for Poetry (“the extent of quotation should be appropriate to the purpose of the use”); Code of Best Practices in Fair Use for Scholarly Research in Communication (“[t]he scholar should not employ more than is needed for the scholarly objective”); Code of Best Practices in Fair Use for the Visual Arts (“[t]he amount and kind of material used and (where images are concerned) the size and resolution of the published reproduction should not exceed that appropriate to the analytic objective”); Set of Principles in Fair Use for Journalism (“[t]he journalist should take as much as is reasonably appropriate to enable the news consumer to assess validity of a journalist’s assertions and interpretations” and “[t]he journalist should take as much is reasonably appro-
priate to enable the news consumer to understand the point being made”.

13. E.g., Code of Best Practices in Fair Use for Open CourseWare (“the purposes for which the copyrighted material has been incorporated should be reasonably clear, and to the extent possible, the commentary should be integrated with the copyrighted material”); Code of Best Practices in Fair Use for Poetry (critics, commentators, and artists should “have an articulable rationale for the relevance of their chosen quotations to their own work”); Code of Best Practices in Fair Use for the Visual Arts (“[t]he writer’s use of the work, whether in part or in whole, should be justified by the analytic objective, and the user should be prepared to articulate that justification”); Set of Principles in Fair Use for Journalism (“[t]he journalist should contextualize the material to make clear its relevance to the current work” and “should make the connection between the cultural criticism or commentary and the selection of copyrighted material clear to the news consumer, by means of text references, captions, voice-overs, or other signaling”).

14. E.g., Code of Best Practices in Fair Use for Open CourseWare (“[c]opyrighted material used pursuant to fair use should be attributed where reasonably possible”); Code of Best Practices in Fair Use for Poetry (“[c]ritics, commentators, and artists should provide conventional attribution for their chosen quotations”); Code of Best Practices in Fair Use for Scholarly Research in Communication (“[s]cholars should provide citations in a form and manner typically used in communication scholarship for the material used in any publication of shared results of the study”); Code of Best Practices in Fair Use for the Visual Arts (“[t]he writing should provide attribution of the original work as is customary in the field, to the extent possible”); Set of Principles
in Fair Use for Journalism (“[t]he journalist should attribute the material in a reasonable manner”).

15. Though not recognized under U.S. copyright law, many countries grant authors a right of attribution separate from their copyright rights. Such so-called “moral rights” differ from country to country. Further, proper attribution is a prerequisite to relying on copyright limitations in many countries outside of the United States, and some countries can be very specific about who needs to receive such attribution. If your work is being published outside the United States, you may need to consult an attorney about what type of attribution may be required.


18. E.g., Code of Best Practices in Fair Use for Online Video (Two: Using copyrighted material for illustration or example); Code of Best Practices in Fair Use for Open CourseWare (Three: Copyrighted Material Used for Illustration); Code of Best Practices in Fair Use for Poetry (Four: Criticism, comment, illustration); Code of Best Practices in Fair Use for Scholarly Research in Communication (Two: Quoting copyrighted material for illustration); Code of Best Practices in Fair Use for the Visual Arts (One: Analytic Writing); Documentary Filmmakers’ Statement of Best Practices in Fair Use (Two: Quoting copyrighted works of popular culture to illustrate an argument or point); Set of Principles in Fair Use for Journalism (Four: When copyrighted material is used as illustration in news reporting or analysis); Society for Cinema and Media Studies’ Statement of Fair Use Best Practices for Media Studies Publishing (One: Use of copyrighted material to illustrate historical, theoretical, or aesthetic arguments).

20. E.g., Code of Best Practices in Fair Use for Online Video (“each quotation (however many may be employed to create an overall pattern of illustrations) should be no longer than is necessary to achieve the intended effect”); Code of Best Practices in Fair Use for Open CourseWare (“[t]he extent of the use should be no more than is reasonably needed for the illustrative purpose”); Code of Best Practices in Fair Use for Poetry (“the extent of quotation should be appropriate to the purpose of the use”); Code of Best Practices in Fair Use for Scholarly Research in Communication (“[a] scholar should determine the extent of use (both as to the number of illustrations employed and the amount excerpted from each) based on the scholar’s illustrative objective”); Code of Best Practices in Fair Use for the Visual Arts (“[t]he amount and kind of material used and (where images are concerned) the size and resolution of the published reproduction should not exceed that appropriate to the analytic objective”); Documentary Filmmakers’ Statement of Best Practices in Fair Use (“each quotation (however many may be employed to create an overall pattern of illustrations) is no longer than is necessary to achieve the intended effect”); Set of Principles in Fair Use for Journalism (“[t]he amount employed should be reasonably appropriate to the illustrative purpose”); Society for Cinema and Media Studies’ Statement of Fair Use Best Practices for Media Studies Publishing (“[m]edia scholars should only employ as much of the copyrighted work as necessary to illustrate the point or argument”).

22. E.g., Code of Best Practices in Fair Use for Open CourseWare ("[c]opyrighted material that serves primarily to add entertainment value to the course should be avoided, as should merely duplicative illustrations that do not add materially to students’ understanding"); Code of Best Practices in Fair Use for Poetry (critics, commentators, and artists “should also have an articulable rationale for the relevance of their chosen quotations to their own work” and “[u]ses that are solely ‘decorative’ or ‘entertaining’ should be avoided”); Code of Best Practices in Fair Use for Scholarly Research in Communication ("merely decorative or entertaining uses of copyrighted material, under the guise of illustration, are inappropriate"); Code of Best Practices in Fair Use for the Visual Arts ("[t]he writer’s use of the work, whether in part or in whole, should be justified by the analytic objective, and the user should be prepared to articulate that justification” and the “analytic objective should predominate over that of merely representing the work or works used”); Set of Principles in Fair Use for Journalism ("[t]he illustration should add meaningfully to the audience’s understanding of the facts or issues"); Society for Cinema and Media Studies’ Statement of Fair Use Best Practices for Media Studies Publishing ("[i]t should be clear in the body of the text or the caption why this work has been chosen").

23. E.g., Code of Best Practices in Fair Use for Online Video ("[p]roperly attributing material, whether in the body of the text, in credits, or in associated material will often reduce the likelihood of complaints or legal action and may bolster a maker’s fair use claim"); Code of Best Practices in Fair Use for Open CourseWare ("[w]here possible with reasonable effort, the source of the illustration should be attributed”); Code of Best Practices in Fair Use for Poetry ("[c]ritics, commentators, and artists should provide conventional attribution for
their chosen quotations”); Code of Best Practices in Fair Use for Scholarly Research in Communication (“[s]cholars should provide citations in a form and manner typically used in communication scholarship for the material used in any publication of shared results of the study”); Code of Best Practices in Fair Use for the Visual Arts (“[t]he writing should provide attribution of the original work as is customary in the field, to the extent possible”); Documentary Filmmakers’ Statement of Best Practices in Fair Use (“documentarians will be best positioned to assert fair use claims if... the material is properly attributed”); Set of Principles in Fair Use for Journalism (“[t]he journalist should attribute the material in a reasonable manner”).

30. Id. Another limitation expressed in the Code of Best Practices in Fair Use for Academic and Research Libraries is that search access to database materials should be limited to portions appropriate to the non-consumptive research purpose.
31. For an excellent analysis of how courts have treated many of the issues raised in this section, as well as other considerations, see Donaldson, supra note 19 at 505-23.


36. While similar, copyright infringement and plagiarism are different transgressions. Copyright infringement is when one or more of the copyright holder’s exclusive rights are infringed (such as the right to reproduce a work). Plagiarism is when someone takes an author’s work and presents it as her own.

37. Transfers of exclusive rights are not valid unless they are in writing and signed by the copyright owner who is conveying the rights.

38. See Creative Commons, *Licensing Types*, [https://creativecommons.org/share-your-work/licensing-types-examples/](https://creativecommons.org/share-your-work/licensing-types-examples/) (last visited Apr. 25, 2017).

40. For more information about open licensing, see the Authors Alliance guide to Understanding Open Access: When, Why, & How to Make Your Work Openly Accessible at https://www.authorsalliance.org/resources/open-access-portal/.


43. 17 U.S.C. §105. A “work of the United States government” is a work prepared by an officer or employee of the United States government as a part of that person’s official duties.

44. See Creative Commons, CCo “No Rights Reserved”, https://creativecommons.org/share-your-work/public-domain/cc0/ (last visited Apr. 25, 2017).

45. For more details about these statements and how they are developed, see http://cmsimpact.org/codes-of-best-practices/.