

FAIR USE AND FREE INQUIRY

copyright law and the new media

John Shelton Lawrence
Bernard Timberg
editors

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EDITORS' FOREWORD

This book is concerned with uses of the new mass media of the twentieth century—motion pictures, radio, comics, music recordings, and television—in teaching and in published scholarship.

Contemporary legal systems have developed a “fair use” principle to mediate between the exclusive rights of control granted to copyright owners and society’s need to reexhibit, analyze, and criticize copyrighted creations. Fair use and its underlying philosophy is therefore the point of departure for almost every essay. Foreign legal scholars provide international perspective as they explain the working of the equivalent notions “fair dealing” (British Commonwealth), *l’usage loyal* (France), *Zitierfreiheit* (Germany), “fair practice” (Japan).

The United States Congress, in passing the Copyright Act of 1976, accorded “fair use” statutory recognition for the first time in American history. Congress understood, in fact purposely endorsed, the lack of precision in this “rule of reason.” Its ambiguities are particularly troublesome in applications to the new media. Because of the unique problems presented by such applications, this volume largely excludes print-related issues, concentrating instead on the legal status of visual, audiovisual, and audio images.

In preparing this volume, we found several representatives of major trade associations and corporate litigators reluctant to write on acceptable interpretations of fair use. We also encountered hesitancy among a number of important “fair users” to participate. One book

editor with a strong reputation for fair use publication of images responded to our invitation with these words:

I honestly don't believe that I would want to make a public statement. It's not cowardice so much as a belief that if no one says anything about these matters, we can continue to proceed unimpeded for an indefinite period of time.

Other persons who are assembling new media archives of various kinds were similarly unwilling to call attention to their activities—even though they regarded their actions as lawful. There is then a lack of candor in both camps that hinders the development of a better-defined public policy of fair use.

We believe that this book, as a frank confrontation of some unique problems in copyright law and practice, helps to compensate for an unsatisfactory public silence. Although obviously oriented toward problems perceived by scholars and teachers, we believe that it does achieve a significant balance in expressing the contentions of differing factions. We also think that this volume will provide interested parties with a better understanding of fair use issues, if not of the workable resolutions for them. In some instances, these essays point toward significant changes in the law and its interpretation for the years ahead.

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