Fair Use and Sound Recordings: Lessons from Community Practice

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Feb. 28, 2015
Road Map

• Where this comes from: The NRPB, the ARSC Handbook and Fair Use Appendix

• Fair Use in Contemporary Context

• The Best Practices Movement

• The ARSC Community Practice Document
The National Recording Preservation Board

- Created by the National Recording Preservation Act of 2000


- tl;dr version: UH OH.
The National Recording Preservation Board

- National Recording Preservation Plan - 2012

- Among other recommendations: a fair use best practices statement

- **tl;dr version:** Access access access.
The ARSC Handbook

- Funding from CLIR / the NRPB
- A physical book, to be published late April
- Chapter on legal issues
- Fair Use Document as Online Appendix
Copyright and Sound Recordings: A Scary Swordsman

- Layers and divisions of rights
- State and federal law - the pre-72 problem
- Orphan works squared
- Fair use as Indiana Jones
Fair Use in Contemporary Context

- Judge made law with long history
- Codified in 1976 Copyright Act, with four factors
- Guidelines, market failure, other unfortunate detours of the 1970s-80s
Fair Use in Contemporary Context (cont’d)

• Leval, transformative use, and *Campbell*

• *Eldred, Golan* and the First Amendment

• Transformative use triumphant and the two-factor test
The Best Practices Movement

- Madison's insight
- The method: problem identification, deliberation, vetting, release
- The history of success: doc filmmakers, dance archives, libraries, and beyond
- The overlapping, reinforcing nature of the documents
The ARSC Community Practice Document

- Interviews with practicing sound collections professionals - huge thanks to MLA
- Recurring challenges identified
- Existing norms from a wide variety of best practices already show the way forward
What’s in the Document

• Lots of useful background info on fair use and sound recordings

• Pointers to case law as well as community norm docs

• Synthesis and explanation of overlaps in these norms
Recurring Challenges

• Electronic Access to Rare/Unique Materials for Off-Site Researchers/Users

• Electronic Access to Collected Materials for Affiliated Students and Instructors In Support of Teaching

• Preservation/Format-shifting

• Collecting Online Materials

• Data-Mining/Non-Consumptive Research

• Digital Exhibits and Exhibits for the Public

• Transfer of Copies to 3rd Parties in Support of Downstream Fair Uses
Indicia of Good Faith

- Attribution
- Privacy
- Feedback mechanism
- Educate users
- Put users on notice
Thank you!

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