

Kinolab Statement on Fair Use and the Digital Millennium Copyright Act

Each clip in Kinolab's collection has been enriched with metadata by users to highlight its distinctive use of film language. This analytical process transforms the motion picture clips that are our source material and enables users to view them in new, unanticipated ways. This is how Kinolab educates film and media students and stimulates new research among film and media studies faculty. The project's nonprofit, educational mission and its transformative repurposing of motion picture clips represent a fair use of copyrighted work under Section 107 of the Copyright Act of 1976.

Under Section 107, four factors are to be taken into consideration when determining whether the use made of a copyrighted work – in Kinolab's case, motion pictures – is fair. These are 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work. Fair use experts suggest that these four factors can be condensed into two key questions: 1) "Did the use 'transform' the copyrighted material by using it for a purpose significantly different from that of the original, or did it do no more than provide consumers with a 'substitute' for the original?" and 2) "Was the material taken appropriate in kind and amount, considering both the nature of the copyrighted work and the use?" (see "Code of Best Practices in Fair Use for the Visual Arts," p. 17 and "Society for Cinema and Media Studies Statement of Fair Use Best Practices for Media Studies Publishing," p. 181). As the discussion below shows, in the case of Kinolab the answer to both of these questions is yes.

The moving image clips contained in Kinolab's collection have been extracted from the films and series in which they originally appeared and repurposed to illustrate key concepts relating to film language, especially cinematography, *mise-en-scène* (a category that includes actors, lighting, décor, props, and costume), editing, and sound. For instance, "Slo-Mo Hotel" is a Kinolab clip from Christopher Nolan's 2010 film *Inception* that film-student curators tagged as an example of parallel editing (an editing technique that alternates between two or more strands of action in separate locations, often presented as occurring simultaneously). Kinolab invites users to study this brief excerpt from *Inception* in light of the formal techniques highlighted in its metadata. A user interested in learning more about parallel editing could then pursue this line of inquiry further by clicking on the parallel editing tag and viewing other clips in the collection associated with it, from D.W. Griffith's *Birth of a Nation* (1916), which pioneered the technique, to Italian filmmaker Paolo Sorrentino's *Il divo* (2008), which uses it to evoke the pervasive power of Italian politician Giulio Andreotti. While the original purpose of the films from which these clips were extracted was to entertain, the clips' purpose in Kinolab is to educate and stimulate further discussion of the formal film techniques that they exemplify. Likewise, the audience and market for the original films and the repurposed clips are different, consisting on the one hand of filmgoers who are consumers and, on the other hand, of media studies students and scholars who want to learn about film language.

Kinolab's clips are digital-format reproductions of born-digital works (DVDs and/or digitally transmitted video). Clips in the collection present distinctive examples of the film language users are studying and are therefore reproduced in their original format without modifications to aspect ratio or the original work. The project is subject to the provisions of the Digital Millennium Copyright Act (DMCA), which amended U.S. copyright law in 1998 and originally prohibited the circumvention of technological protective measures on DVDs whether or not there was an infringement of copyright itself. Recent exemptions to the DMCA permit the circumvention of these controls by university faculty and students for the purpose of criticism, comment, teaching, or scholarship: precisely Kinolab's users. DMCA exemptions also prescribe that only short portions of copyrighted works be used for purposes of criticism or comment, a rule that Kinolab respects by limiting the portion of any whole copyrighted motion picture represented in its clips to scenes that represent distinctive examples of film language. Contrary to common assumptions, fair use does not specify a maximum allowable amount of material to be taken from a copyrighted work (see "Society for Cinema and Media Studies Statement of Fair Use Best Practices for Media Studies Publishing," p. 181-182). Instead, that amount depends upon how much is needed to illustrate a point or stimulate discussion among one's target audience.

Finally, Kinolab restricts access to its collection to faculty and students and controls that access with password protection. Users are informed when applying for access to the site that its materials are available for educational use only.

This affirmative statement of Kinolab's compliance with fair use and the provisions of the DMCA was made by taking into consideration shared professional understandings among film and media scholars as articulated by the various organizations that represent us. These include key publications from the Society for Cinema and Media Studies (SCMS), the College Art Association (CAA), and the Center for Social Media in the School of Communication at American University. Their publications are, respectively, the "[Society for Cinema and Media Studies Statement of Fair Use Best Practices for Media Studies Publishing](#)" (2010), the "[Code of Best Practices in Fair Use for the Visual Arts](#)" (CAA, 2015), and the "[Code of Best Practices in Fair Use for Online Video](#)" (the Center for Social Media, 2008). We have also examined the applicable section of U.S. Copyright Law, [Title 17 of the U.S. Code](#), especially [Section 1201](#), which contains the evolving provisions of the DMCA that are [updated triennially](#) in rulemaking proceedings administered by the Register of Copyrights.

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