

Internet Smarts
Fair Use – Beg, Borrow or Steal?
Teachers Guide

Intro

Students and teachers have traditionally had some of the greatest leeway in legally copying copyrighted materials as long as they can show that the copying is done for an educational purpose, is within limits, and will not be used for profit in any way. In a school setting, this is what Fair Use exception to the copyright law is all about.

Enter digital media. Now copying text, graphics, video, and audio has become ridiculously easy. It literally is child's play to copy large quantities of someone else's work and liberally insert it in a school project. Obviously there are rules for making fair use of these new kinds of media, but they are not always clear, especially for students. What and how much students and teachers can borrow of all kinds of media have only in the last few years become better defined. And the consequences for any student for not following those rules, such as the recent lawsuits filed against children for illegally downloading music off the Internet, are only beginning to emerge.

The problem with Fair Use is that it is a tricky concept. Universities and university systems (see the links in the Additional Resources section) have devoted pages and pages on their web sites to the issue and you should review these sites before you start this lesson. (See the site Copyright and Fair Use Guidelines for Teachers at <http://www.mediafestival.org/copyrightchart.html> for an overview.) Millions of dollars have been spent on court cases over fair use - even the singing of the traditional happy birthday song - so don't feel alone if you can't recite all the tenets of Fair Use law. Congress has deliberately made the Fair Use statute vague to help protect free speech. Can you imagine how hard it would be to review someone's work if you couldn't quote what he or she wrote?

At this point in time the most important thing about fair use is to raise your students' awareness that there are rules for using all kinds of copyrighted media in both their schoolwork and for their own personal use. Bottom line, they must remember to cite any material that they directly copy from any source in a bibliography or source list. This kind of source acknowledgement should be required to accompany any kind of student project you assign where outside sources are going to be consulted.

It is also good to remind students that, just like when in doubt about any aspect of an assignment or project, they should ask you how to handle copyrighted materials they want to include. In addition, students should become aware that copying anything that is not solely original student work to use in a school project that is going to be distributed to a wider audience - no matter how good the cause (like financing a school trip or for entering a contest) - may not be covered by the fair use exception. If there is the slightest hint that copyrighted material is going to be used for any kind of profit, prize, or

entertainment rather than education, then the rights to use it are forfeited unless prior permission to use it has been obtained.

Issues over what constitutes fair use of copyrighted materials are only beginning to surface in our society. Your students may wonder why you are bringing it up, for certainly there are no "cyber" police looking over their shoulders as they create school projects. But the issue of intellectual property is looming large. Corporations are being sued over using what they thought (without taking time to check) was open source (free) software off the Internet and even rap stars were recently enjoined by the courts to stop weaving even short refrains from classic rock and other styles of music into their songs. As this trend continues it will be important for your students to understand their fair use rights.

Additional Resources

Fair Use is a very complex issue and is only briefly outlined in this teacher's guide and lesson. Here are some annotated links to help answer your and your student's questions about Fair Use.

Copyright and Fair Use in the Classroom, on the Internet, and the World Wide Web
<http://www.umuc.edu/library/copy.html>

Written for college students and staff at the University of Maryland, this Q. and A. on copyright and Fair Use is straightforward and jargon free. A good site to use to get an overall picture of the issues.

When Copying Is Okay: The "Fair Use" Rule
<http://www.nolo.com/lawcenter/ency/article.cfm/objectID/C3E49F67-1AA3-4293-9312FE5C119B5806>

If you're trying to understand why Fair Use is a concept that everyone, not just writers, must understand the examples in this article can help. Be sure to take a look at the Five Basic Rules of Fair Use.

Fair Use of Copyrighted Materials
<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>

The University of Texas has come up with its own Rules of Thumb for Fair Use for students and teachers. Also check out their Copyright Crash Course.

Copyright and Fair Use Guidelines for Teachers
<http://www.mediafestival.org/copyrightchart.html>

Need to find the relevant guidelines for the materials you want to make use of fast? Try this chart.

Copyright and Fair Use Guidelines for School Projects
http://www.kathyschrock.net/pdf/copyright_schrock.pdf

This is a quick guide to the most often asked questions by students about the materials they want to use in school projects

The Fair Use Site at Stanford University
<http://fairuse.stanford.edu/>

Stanford University has devoted a whole portion of their library site to Fair Use and copyright as well as other related issues and is constantly updating the material. This link directs you to the general site but just look at the listings for more specific information on particular issues.

Knowledge Held Hostage
<http://www.knowledgehostage.org/>

This site is a record of a June 18, 2004 conference held by the Annenberg Public Policy Center and Rice University in association with Public Knowledge and the Center for Public Domain. The conference examined scholarly versus corporate rights in the digital age.

Digital Rights Management
<http://www.eff.org/IP/DRM/>

Like to whistle tunes when you walk? Quote The Simpsons in emails? Cut funny cartoons out of a magazine and post them? You can thank Fair Use for the right to do that. Find out why it is so important to know and protect your fair use rights by looking at a different side of the issue on the Electronic Freedom Foundation site.

Discussion Guide

1. Before your students do the online lesson on Fair Use, you may want to review the meaning of copyright. Ask them for their definitions of copyright and try to get a consensus definition going. Their definition should include basics such as copyright is the legal protection given to the creator of an artwork, a piece of literature, a song or any work that conveys information or ideas. Copyright also extends to audio, video, images, and text on the Internet. In addition, copyright gives the creator the right to control how a work is used. You also should remind them that they are all copyright holders whether they know it or not. Once they have created something - a paper, a song, a movie, a work of art - they own the copyright on it and can decide who can use it and who can't. Also let them know that ideas, information and function cannot be copyrighted, only the expression of these ideas, information and function.
2. Now ask them if they have ever used someone else's text or a picture in a school project. Did they ask about copyright? Do they know why they as students have the

right to use short passages of text or a picture in a school project as long as they cite it in a bibliography? They probably won't come up with the concept of Fair Use. If they don't, ask them to go right to the lesson and see if they can come up with the answer through what they read and see. If they do, tell them this lesson is all about their Fair Use rights, and you'll discuss those more fully after they have read the case study.

3. Give students about 15 minutes to go through the online lesson. Encourage those who finish early to go back and look at some of the charts that explain the Fair Use guidelines for school projects (slide 8 of 14 in the Read the Case Study section).
4. After they're finished, ask students to give a brief summary of the case study. Inquire if anything like that has ever happened to any of them. Ask them to come up with a definition of Fair Use. Their definition should include that they as students have the right to make limited use of copyrighted materials for school projects. Discuss with them some of the limitations. You may want to go back with them and look at the links that outline the Fair Use guidelines while you are doing this.
5. Ask them to move on to the Fair Use Quiz section (which flows directly after the end of the case study story) and to review the different scenarios that are presented. After each one, stop and discuss the explanations with your students. Did they find any of those surprising? Why or why not?
6. Discuss the importance of a bibliography or source page at the end of a project. Make sure they know where to find your school's guidelines on citation.
7. Give them a hypothetical situation such as wanting to include a popular song in its entirety in a school project. Where could they find out who held the copyright of the song? (Probably on the CD cover or they could find out what record company has the contract for that artist from the artist's web site.) What kind of information would they need to include in their letter to ask for permission? (Their name and address, what they need the permission for and why they hope they can get it, how soon they need the permission, and their thanks for considering the request.)
8. Make sure that your students understand that there are often special cases and circumstances when it comes to Fair Use. For example the person who created a song may no longer own the copyright. Michael Jackson, for example, owns the copyright to a number of Beatle's songs. A copyright holder might be dead putting his or her work in the public domain unless someone else expressly owns the copyright or his or her work is in a copyrighted collection. (Milne's Winnie the Pooh stories are a good example of that). Fair Use can be very confusing and students need to also understand that. If they have a Fair Use question, students should know that they may have to do some research to find the answer.
9. Finish the lesson by asking students if they think present Fair Use guidelines for students and school projects are "fair"? Can they think of any ways the guidelines could be simplified?