

2010

Copying Right and Copying Wrong with Web 2.0 Tools in the Teacher Education and Communications Classrooms

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Recommended Citation

McGrail, Ewa and McGrail, J. Patrick, "Copying Right and Copying Wrong with Web 2.0 Tools in the Teacher Education and Communications Classrooms" (2010). *Middle and Secondary Education Faculty Publications*. 79.
https://scholarworks.gsu.edu/mse_facpub/79

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June 2009

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Copying Right and Copying Wrong with Web 2.0 Tools in the Teacher Education and Communications Classroom

Abstract

Understanding the tenets of copyright in general, and in particular, in online communication and publishing with Web 2.0 tools, has become an important part of literacy in today's Information Age, as well as a cornerstone of free speech and responsible citizenship for the future. Young content creators must be educated about copyright law, their own rights as content creators, and their responsibilities as producers and publishers of content derived from the intellectual property of others. As educators, we want to prepare them for responsible and ethical participation in new forms of creative expression in the Information Age. The recent integration of video and audio content, and the implementation of "Web 2.0" tools in the contemporary English language classroom has made this learning environment a particularly appropriate proving ground for the examination of current student practices with respect to intellectual property. These are challenges that communications classrooms have been facing for an even longer period of time. This paper describes an approach that we employ with English education and communications students to prepare them for such a complex subject matter.

What am I then? What have I accomplished? Everything that I have seen, heard, and observed I have collected and exploited. My works have been nourished by countless different individuals, by innocent and wise ones, people of intelligence and dunces. Childhood, maturity, and old age all have brought me their thoughts,...their perspectives on life. I have often reaped what others have sowed. My work is the work of a collective being [*Kollektivwesen*] that bears the name of Goethe.

(Goethe as cited in Woodmansee & Jaszi, 1995, p.769).

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Students today work and play in a mediated environment that they have never been fully without (Lippincott, 2005). As such, they evince an enthusiasm for, and are the heaviest consumers of, music, the still image, television and film, much of which they now view and even comment upon, on the Internet (Teen Content Creators and Consumers, 2005).

However, today's youth are not only media content consumers but also content creators. According to the Pew Internet and American Life Project (Teens and Social Media, 2007), about 64% of online teens generate content for the Internet. While 39% of online teen creators publish their own creations onto websites or blogs, such as artwork, photos, stories, audio recordings, or videos, about one in four Internet-using teens (26%) report having remixed or repurposed online material into their own creative compositions (2007).

Newly in-service and pre-service teachers share this enthusiasm, but seek ways to use it to help students create powerful, multimodal work for the classroom that incorporates these elements (Doering, Beach, O'Brien, 2007; Knobel & Lankshear, 2008). Forward-thinking educators, taking note of the fluidity and mixability that the Internet permits, have also begun to encourage students to post content online for comment by their peers in and outside the classroom (Penrod 2007; Walker 2005). Sites such as Edublogs.org feature hundreds of thousands of classroom blogs, and PBWorks.com has a great many wikis with school-based projects authored by teens.

In a recent final assignment for a class taught by our first author, for example, English pre-service teachers were asked to create multimedia compositions reflecting insights they had gained from an inquiry program into urban education. It was expected that these forthcoming teachers would absorb and pass on the skills and enthusiasm they acquired using these tools to their own students.

Our second author, on the other hand, charged his undergraduate communication students with creating a final audio/video piece with a broadly defined element of "diversity," but for a more general audience. As with their colleagues in the English language classroom, communication students' compositions blended still image, audio, video, and traditional text that were both originally produced and found on the Internet. These were published on a password-protected course management system called Blackboard and WebCT.

However, the knowledge that these two groups (students and teachers) possess about the possibly thorny copyright questions that may emerge as a result of the repurposing of pre-existing content for mass publication online, lags considerably behind

their skillfulness with their new creative tools (Aufderheide & Jaszi, 2007; Shane, 2001). In this article, we describe an approach we employ in our English education and communications classrooms to address this need.

Understanding copyright tenets in general, and in particular, copyright as it impacts online communication and publishing with Web 2.0 tools on open access networks, must, therefore, become an important part of literacy and communication education in today's Information Age. As others have suggested is necessary (Aufderheide & Jaszi, 2007), we wish to prepare our students for responsible and ethical participation in new forms of creative expression in this new age. Such preparation is a cornerstone of free speech and democratic citizenship for the future.

Educating English Teachers and Communications Students in Copyright with Web 2.0 Applications

There are several reasons why we believe English education and communications classrooms in particular are excellent venues for providing such preparation.

First, content areas in each classroom deal with critically reading texts, (broadly defined to include audio, video and the still image, along with traditional writing) as well as composing such texts for audiences within and beyond the classroom walls. While many other classrooms have been transformed by the presence of the Internet (Internet History Sourcebooks Project, NASAQuest, or Social Networking into the Classroom), communications and English education classrooms each specifically require that students compose, manipulate, and critique texts as a pedagogical exercise in itself. Notably,

students in each of these classrooms comment upon the work of, and collaborate with fellow students in such composition and manipulation. Therefore, digital technology, and the Internet in particular, facilitate both the form that these texts take, and the method and form of commentary upon those texts. The mastery of this composition, manipulation and commentary is a part of overall critical literacy (Myers, 2006), media literacy (Snyder & Bulfin, 2008), and information literacy (Swenson, Young, McGrail, Rozema, & Whitin, 2006).

Second, as a result of technological advancements, traditional texts that were prominent in “Web 1.0” environments, (roughly, the Web before 2003) such as words and static pictures, have today been augmented by dynamic audiovisual elements. These dynamic elements have become part and parcel of “fully wired” classrooms that have permitted students to expand on traditional print forms and genres (Swenson et al, 2006). These expansions have been a key element of what has been described as Web 2.0. Examples of such expanded digital texts in a Web 2.0 environment are blogs, wikis, podcasts, YouTube videos, virtual reality environments, and video games. Most or all of these forms are present to some degree in both the English education and communications classrooms. Since creating and using such digital texts involve some degree of authoring and/or borrowing of creative content, discussion of copyright law, from both the reader’s, as well as the producer’s and publisher’s perspective, is therefore only appropriate.

Third, a copyright education discussion in both the English and communications classrooms requires exploring literacy and social practices above and beyond what technology has wrought, since technology is not the sole determinant of either online

social behavior or learning. Web 2.0 has been described as a “meme” (O’Reilly, 2005). A meme is an imitable, culturally transmissive idea or practice (Blackmore, 1998). The Web 2.0 meme manifests today as a collection of behaviors that use the Web as a fungible means of cultural practice, rather than as a determinative technology.

It is crucial that student creators of textual and audio-visual content for online distribution be made aware of the rules, guidelines and laws that govern intellectual property, as well as why and how they were fashioned to do so. Ethical concerns and social behaviors, rather than merely technological considerations, ought to guide discussions of appropriating the creative emanations of others, especially when using them to transform their work to create it anew in a fresh context.

The Challenge of Copyright Education and the TEACH Act

As mentioned before, a lack of preparedness in copyright education in general has been noted by many observers. For example, Aufderheide, Jaszi, and Brown (2007) found undergraduate and graduate student online video content creators to be “universally under-informed and misinformed about [copyright] law” (, p.1), which may have resulted in the inappropriate (and illegal) use of copyrighted material in new productions. Many educators, staff, and students mistakenly think that “any use of copyrighted material for educational purposes is in compliance with copyright law and fair use policies” (Greenhow, Walker, Donnelly, & Cohen, 2008, Conclusion ¶ 1). In actuality, however, the law is far more complex.

Below, we explore how the “flexible” four-pronged provisions for copyright’s fair use have produced highly variable results in legal cases when rights holders and end users clashed. Sometimes, the clashes were as a result of educators seeking to use protected material to educate students in an online or distance education context. However, in 2002, an amendment was passed to the Copyright Act that was designed to ease education’s transition into the online world. This is the Technology, Education, and Copyright Harmonization (TEACH) Act. The TEACH Act (2002) permits certain practices with online copyrighted materials, under certain conditions and contexts.

Two things must be borne in mind with regard to this Act: 1) The act absolutely requires that access be restricted to enrolled students and the instructor only (e.g. via a password) and 2) the privileges accorded to the participants are not nearly as broad as those enjoyed by instructors and students in face-to-face classrooms (Harper, 2001). According to the Society for Cinema and Media Studies’ Statement of Best Practices for Fair Use in Teaching for Film and Media Educators (2007):

Currently, educators in the face-to-face teaching context enjoy more latitude and face fewer restrictions under the face-to-face exception than do their counterparts in the distance education context under the online distance education exception. For example, while educators in the online distance education context may only use “reasonable and limited portions” of an audiovisual work, educators in the face-to-face context face no such limitation (p.6).

In addition to its built-in limitations, the TEACH Act (2002) was conceived just before the arrival of the second incarnation of the Web, i.e. Web 2.0” (O’Reilly, 2005). The TEACH Act was created in order to satisfy certain very specific difficulties that educators faced in planning online educational platforms. The Act struck what was conceived of at the time as a balance between nervous content rights holders, who feared rampant illicit dissemination, and the legitimate concerns of universities and other educational providers, who needed to expose students to protected work for educational purposes (Manz, 2004). Hence, the limitations proscribing the display or performance of complete works were incorporated. As mentioned above, the concept of a closed online classroom was also conceived, which is usually rendered by means of password access in order to either read, or upload or download any material on the site in question.

Since that time, however, the framework of Web 2.0 applications has come to be incorporated into a variety of online software platforms, many of which are used for educational purposes (e.g. edublogs.org). However, these applications rarely require password access for reading or downloading material, although some require a password for the uploading of material. Therefore, any copyrighted material that appears on such sites may *not* rely on the TEACH Act’s provisions for protection, since persons outside of the classroom milieu may access them. Those who use these platforms must, then, rely upon the Copyright Act’s (2007) considerably murkier concepts in fair use. Oftentimes, those who use Web 2.0 tools are using them not to merely display work that may enjoy copyright protection, but to transform it in order to create something entirely new from it. Thus, transformative works, appearing, as many of them do, on open-access sites, have as their only recourse the fair use provisions of the Act (2007, Section 107).

The Problem of Transformative Use

So-called Net Gens, or young people born between 1982 and 1991, who have never known a world without the Internet, have been at the forefront of this revolution, and have originated or popularized many of these new memes, or cultural modes (Lippincott, 2005). Such modes of communication and learning may even be thought of as folkways, or practices that both define and shape this young generation. Soon, these social/cultural practices will themselves morph into new forms, as ever more powerful computers and continuously widening bandwidth “flatten” communication, creation and commerce (Friedman, 2005).

There is a problematic side to this brave new world, however. The very power to create, send, edit and transform work has meant that traditional ideas of authorship are under attack (Diakopoulos, Luther, Medynskiy, & Essa, 2007). Those who originate creative content, and make their living by creating new intellectual property, see the power and promise of the Internet in a very different light from that of end users (Zemer, 2007). They see the Internet as a juggernaut that has trampled the protections they had previously enjoyed against infringement (Diakopoulos, Luther, Medynskiy, & Essa, 2007).

Lying somewhere in between the true end user, who is a member of a work’s audience, and the original creator, are those who repurpose, remix, and re-conform content, many of whom are students. While students frequently originate material “from scratch,” they sometimes also “transform” material in a way that requires careful

copyright scrutiny. As mentioned above, this scrutiny must take place in the realm of fair use.

The following is the four-pronged “fair use” rubric from the Copyright Act (2007). The existence of a fair use of protected material may *generally* be deduced by evaluating and balancing the following four *dicta* in the use of transformed work:

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 (Copyright Act, 2007, Section 107).

As is evident even to the layperson, these guidelines are very flexible, and in the past, have been flexibly applied, given the context of each legally challenged use. Particularly today, it is with the issue of the transformative use of works that this flexibility has yielded uncertain fruit. Judge Pierre Leval (1990), in an influential paper, argued that a proposed transformative use “must be productive and must employ the quoted matter in a different manner or for a different purpose from the original” (p.1106). Many students seek to do just that, but believe, perhaps reasonably, that very short snippets of the material in question will not always suffice in the attempt to comment

upon the work, society in general, or both (The Code of Best Practices in Fair Use for Online Video, 2008).

We are reminded by Leval (1990) that fair use “protects secondary creativity as a legitimate concern of the copyright” (p. 1110). Although some of Leval’s legal reasoning was finally incorporated into the law via *dicta* of the Supreme Court in *Campbell v. Acuff-Rose* (1994), every new law case in this area is decided a bit differently. “The law states that the use of a copyrighted image is transformative based on the ordinary lay observer's sense of if the new work is different and how different it is” (Koegel, as quoted in Grant, 2009, ¶ 3). Grant (2009) has observed that in cases of imagistic infringement involving art and photography, “the overall trend of court decisions between 1989 and 2005 (and the present) is to allow greater latitude for the claim of the new artwork being transformative” (¶ 3).

There are several principles that must be applied in thinking about the transformative quality of a work based upon another. The Center for Social Media’s Code of Best Practices in Fair Use for Online Video (2008), for example, argues that those principles involve whether a work:

1. Comments on, or critiques copyright-protected material;
2. Uses protected material for “illustration or example;”
3. Uses copyrighted material either “incidentally or accidentally;”
4. Reproduces copyright-protected material in order to “memorialize, preserve, or rescue an experience, an event or a cultural phenomenon;”
5. Copies a protected work in order to “launch a discussion;”

6. Quotes certain works in order to combine them to make a new oeuvre that depends for its meaning on unique semantics or meaning between or among the elements.

The employment of these principles, when done judiciously and conservatively, preserves a condition of robust free speech, and restores the balance that copyright must share with important public policy considerations (Committee on Intellectual Property Rights in the Emerging Information Infrastructure, 2000). Perhaps the most important of these considerations is a burgeoning and free intellectual culture.

Briefly, the first and second use above privilege free commentary when brief citation is inadequate to show either one's thoughts on, pleasure in, or distaste for a work or aspects of it.

The third may well be the most commonly encountered. This is a situation in which, for example, a protected work happens to be playing in the background on a television or radio, or is otherwise apparent in the recording of the action of an extraneous event. The previously copyrighted work's removal may either mar the end work, or be excessively burdensome to remove. Its use ought to be protected, according to the Code of Best Practices in Fair Use for Online Video (2008).

The fourth principle preserves the ability to record for posterity material that may be protected but has become culturally enshrined in some way, as with, for example, the broadcast of Stephen Colbert's speech "honoring" President Bush (Speech at the White House Correspondent's Dinner, 2006).

The fifth principle is in regard to the effort to begin a cultural conversation, as with a film, advertisement or comedy performance. Consider, for example, a tobacco company's ad that may contain material that a viewer regards as untruthful or manipulative; should he/she be held liable for reproducing it so others may see and comment upon it? The fifth principle holds that he/she should not.

The sixth principle is perhaps the most creative one. If students take pre-existing elements, say a music score from one film, dialogue from another, and visual action from a third, and create a "mash-up" of these elements, they have obviously rendered a completely transformative use of these elements. What they have created at the end, while it may consist of protected material, has been transformed into an entirely new work. Such new work seems worthy of protection on its own, provided the work remixer properly cites the creators of the contributing elements.

Radical transformativeness may well be a student's best friend in these analyses, since the Supreme Court has held in *Campbell v. Acuff Rose* (1994) that, "the more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use" (§ b).

The Codes of Best Practices and the Challenges They Pose

The Code of Best Practices in Fair Use for Media Literacy Education (2008) is one of a group of related guides that has been published by the Center for Social Media at American University. These guides, which include ones for online video creators (The Code of Best Practices in Fair Use for Online Video, 2008) and documentarians

(Documentary Filmmakers' Guide to Best Practices in Fair Use, 2005), have been of great value to educators for their broad, expansive view of the importance of fair use, especially with respect to transformative uses of copyrighted material in creative work. Another work in the same spirit is The Society for Cinema and Media Studies' Statement of Best Practices for Fair Use in Teaching for Film and Media Educators (2007). These Codes urge educators to avail themselves of the protections they enjoy through both fair use and the TEACH Act (2002). For example, the Media Literacy Code maintains, "...[fair use] is an area in which educators themselves should be leaders rather than followers. Often, they can assert their own rights under fair use to make these decisions on their own, without approval" (p.8).

We agree that in many cases, traditional legal views of fair use may provide the English and communications educator and students (as well as many other educationally engaged professionals) with some protection. However, fair use is a *defense* to an allegation of illicit use by a content rights holder (McGrail & McGrail, 2009). As we have shown elsewhere (2009) powerful, wealthy rights holders, with functionally unlimited legal resources, are often a mismatch against a few educators or students who may have appropriated protected material for commentative or transformative use.

Fair use is, as the Codes note, a "flexible" concept that is supposed to evolve as use is made of it by educators and others. However, this flexibility may also work to the advantage of rights holders. While the Media Literacy Code asserts that they do not know of "any lawsuit actually brought by an American media company against an educator over the use of media in the educational process" (p.17), they gloss over the fact that so-

called take down notices have in fact been issued against students, and may have increased in volume (Lipka, 2009).

Educating Teachers and Students in Web 2.0 Copyright

So how do we educate students for such a complex subject matter, as well as make them aware of the legal implications of failing to exercise their own rights as content creators, and their responsibilities as producers and publishers of content derived from the intellectual property of others?

Initially, we make a conscious effort to infuse copyright and fair use topics into our curricula in both English education and communications. The topics appear in our course syllabi as early in the semester as possible, so that the students become familiar with basic copyright and fair use policy principles and their practical implications for the classroom. The copyright topics are then revisited on a “when the need arises” basis as students develop their own multimedia projects throughout the semester.

Our overall approach to the topic is usually a combination of a brief problem-solving activity through scenario analysis and a lecture. The purpose of these methods is threefold: a) to define and clarify the terms; b) to check students’ understanding of these terms in the context of Web 2.0 applications and their web-based dissemination; and c) to prepare them for the legal use of material accessed online in their own artistic creations with Web 2.0 tools.

We present below an analysis of two scenarios, with accompanying explanations, to illustrate our overall problem-solving approach to teaching copyright with Web 2.0 in

our classrooms. We use such scenarios to help students to work through the common misconceptions underlying some of their responses to these scenarios. We hope that other educators will find such scenario analysis helpful in their own instruction on copyright law and Web 2.0 applications.

Scenario One

A student would like to use video clips (between 1-2 minutes) found on YouTube and build them into a multimedia composition. The student would alter some clips and leave others unchanged. The final product will be published on a social networking website such as MySpace or FaceBook. None of the material being contemplated for use has any copyright marks. Questions:

1. Does the student need to seek permission from the copyright owners of the videos found on YouTube, the YouTube website provider, or both?
2. If so, what must the permission cover?
3. If no permission is required, will simply providing the attribution to the authors of the YouTube video material in the student's "Credits Page" in the remix suffice?

The first principle we help our students to understand is that no one "needs" to register their work with the US Copyright Office for it to be considered copyrighted material, as long as it is fixed in a tangible means of expression. (Registration *is* required, however, for damages to the copyright holder's work to be assessed against infringers.)

Examples of tangible means of expression are a compact disc sound recording, a hard drive, a video tape, an email message, a podcast, or even handwritten lyrics or a printout of their work.

Two myths associated with whether something has copyright protection are: 1) a completion of the copyright registration process and 2) copyright labeling on the media itself (tape, disc, web page, etc.).

Two facts: 1) The U.S. Copyright Office (cite) is a part of the Library of Congress, and is the designated repository for all copyright-registered work in the United States (Copyright.gov, circular 1, 2007). It was formerly the case that registration, by means of depositing two copies of the work with the Office was required for protection; however, that has not been true since 1978 (Megalaw.com, 2009) It is also true that registration symbols or the words “copyright” or “copr.” along with the year of registration had to be prominently displayed on all of the material in question (Copyright.gov, circular 1, 2007). Nowadays, registration provides a provenance trail for the work in the case of origin disputes and also provides the creator with the benefit of being able to sue for punitive damages (2007).

What we stress to our students is that video material from YouTube is in fact copyright-protected, irrespective of whether their authors included the copyright symbol on their work, or whether they sought registration of the work with the US Copyright Office. As Pitler (2006) notes, “...if a work is found on the Internet, it has automatically been copyrighted” (Copyright Issues in Education section, ¶ 2).

Our class discussion next turns to the second question from Scenario One: If permission is required, what must the permission cover? As our students ponder their

answer to this question, we ask them to review the Terms of Use and Privacy Policy on the YouTube website and the YouTube Community Guidelines). Students are also encouraged to review the Copyright Office Basics, to assist them in making an informed judgment about this question.

The review of these materials, and the ensuing conversation about their decision-making strategies, leads the students to an important, controlling first understanding: *One may not appropriate wholesale any video or audio material from or upload it to the YouTube website, or similar sites, without risking copyright scrutiny from the rights holders.* If students manage to acquire permission to use the works for certain activities, such permission should indicate clearly whether or not they are allowed to *alter* the material they are seeking permission to use in their own work. If they do not secure the necessary permissions, and they post material anywhere on the Web that is copyright protected, then they open themselves to the receipt of a “cease and desist” letter. These letters often threaten further legal action, unless a student pays a fee to the rights holder, sometimes in the thousands of dollars (Brubeck, 2008). We discuss the fact that they must rely on the fair use defense if they choose to fight the notice, and that their chances are immeasurably better if the work falls within the four prongs of fair use, or has been transformed in some way by them toward a new use.

Our students then share their prior experiences with securing permission of copyrighted material to use in their own work for either an assignment in a technology course or a personal website or video production. Many admit that obtaining such permissions is a difficult process, because there might be more than one copyright holder to approach for releases (e.g., a holder for the video or music recording, a script writer, or

even the video distributor) or it may be difficult to establish copyright ownership in the first place. At the end of this extensive discussion, we have found that most students in our class agree that a copyright clearance from the rightful copyright holders, in the case of using others' work, and an indication of copyright ownership, in case of using their own work, should be readily accessible to all viewers of any work being disseminated online (e.g., YouTube, personal web pages, blogs, and other). Finally, we asked the students to review a few work samples of a different kind (a video, podcast, or website) and find the ways their authors indicate copyright ownership of these works. In response to this question, the students recommended the "Credits" or "Acknowledgement" pages as appropriate venues for providing such information to online viewers.

In summary, scenario one helps our students to understand what constitutes copyrighted material and how this can be communicated to online viewers. They also become aware of the importance of establishing copyright ownership of their own creative work or of works by others.

Scenario Two

A group of students would like to use royalty-free photo images found on the Internet in their own collage, to be published on an open-access class blog. They are also planning to add a few audio clips from popular 1990s songs to the background to enhance the aesthetic appeal of the collage design. One of the students "bought out" a subscription to a popular songs library. This student will provide the project group with the pop song clips obtained from the subscription.

Since the group is using royalty-free photos and music from a paid subscription source in their collage composition, which is an educational project published on a class blog, they do not need to seek any formal permission from the copyright holders of either the images or music they intend to use in their collage. Question: Is this legally sound or not?

The above scenario illustrates well the complexity of copyright law and practice. As we help our students to deconstruct this scenario, we show them that there has been some confusion with the terms “copyright free” (with no copyright restrictions), “royalty free” (with no fee for a multiple reuse of a copyrighted work) and “free” (at no cost). In fact, we have found that many students believe that these terms mean almost the same thing. As we probe for the origin of this confusion, we discover that, in a cyberspace world, “royalty free” sometimes gets translated into “currency” free, which means that one does not have to pay a fee for a piece of work that appears online with a “royalty-free” label. In such a case, the copyright status of the work being adapted becomes of lesser importance, since the work is being distributed online at no cost, obviously with an understanding that their authors’ approval has been secured earlier. Otherwise, our students declare, they would have not been sharing their work with the providers of such websites.

This reasoning is both faulty and ungrounded. “Royalty free” means that there is no fee for a multiple reuse of a work previously purchased for a fee under special conditions and terms. The terms and conditions of the license will, however, vary from publisher to publisher and from distributor to distributor. We also remind our students

that they need to check whether the license they choose to seek for the work in hand under the royalty-free terms is limited or unlimited per use, is restricted to a certain period of time, and whether it applies to a single or to multiple users.

The students in our classes are then asked if the subscription method referenced in Scenario Two permits the access of a third party—the *group* of students—to “royalty-free” music offered with the paid subscription, if only one of the group members has purchased the subscription rights. This last point shows just how difficult abstemious adherence to copyright law can be.

In summary, scenario two helps our students to learn to examine carefully the sources that provide them with access to copyrighted material. It also teaches them to pay attention to fine print in the terms and conditions for access to copyrighted material as they apply to various users (e.g., single or multi users; personal or institutional; restricted or unrestricted to a third party).

Fair Use

After immersion in these scenarios, our students are then introduced to the fair use guidelines to further enable them to make decisions about copyright-protected work. A common assumption students (and teachers) make about copyright is that as long as the work is being created for an ostensibly “educational” purpose, using copyright-protected material is OK (Greenhow, Walker, Donnelly, & Cohen, 2008, Conclusion section, ¶ 1).

The four-pronged fair use guideline that was elucidated upon earlier in this article helps students in our college classrooms establish that the collage creation, mentioned in

Scenario Two, has a non-commercial educational purpose, and is thus unlikely to have a negative impact on the market value of the copyrighted material used in it. Students need to be aware that, for those who sell or make music to earn a living, the commercial impact of unauthorized use of their music is the most important factor affecting whether and when they will take legal action (Howe-Steiger & Donohue, 2002).

As professors, we regularly employ the services of a password-protected, closed-access site to permit students to place work there. For this purpose, we have variously used WebCT, Blackboard and Angel. The Technology, Education, and Copyright Harmonization (TEACH) Act (2002) provides protection against legal action regarding copyrighted work found there. However, once students take their material and seek a wider Internet audience for it, we are quick to point out that a variety of legal issues then emerge. These issues will then primarily concern the potential fair use of copyrighted material.

In the second scenario, the students sought to use copyright-protected, and well-known songs to be used as background for their collage. It is clear that, once the students take this work and “go public” with it, anywhere on the Internet, they open themselves up to the scrutiny of rights holders, who may not be as sanguine as the students about the necessity of having appropriated their work to make a point. Once again, the students would then need to examine the fair use guidelines and come to a decision as to whether they thought the work in question passed muster *in re* fair use. Through a thorough analysis of this scenario, our students gain an understanding that having some idea of their legal status vis-à-vis these issues can be a very practically beneficial thing.

Fair use examination also explodes the myth that there is some “thirty second rule” that tells them exactly how much of copyrighted music, still image, or video can actually be safely used (such as eight bars, 5 images, 30 seconds, respectively) without seeking permission from copyright holders. The truth is that fair use of a portion of a protected work depends on all four above factors, and that an acceptable usage fraction is both variable and dependent upon an individual situation and context, and even the existing culture within a specific discipline (The Code of Best Practices in Fair Use for Media Literacy Education, 2008). According to this Code, the underlying principle in making the determination of the fairness of a use is a “*rule of proportionality*,” which is “whether the user took more than was needed to accomplish his or her legitimate purpose” (p.10).

Applying the four fair use guidelines to Scenario Two becomes even more complex when our students are asked to consider the audience and the venue for the collage composition. As the scenario indicates, the collage is to be published on a class blog, which means that potentially, it is going to be available to everyone who has access to the Internet. Fair use guidelines, however, were developed before the advent of the Web 2.0 technologies for online communication and publishing. Hence, the thrust of the TEACH Act (2002) was intended for “performance by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction” (Copyright Act, 2002, Section 1).

While our students and we are willing to agree that publishing of the collage on a password-protected school website, accessible only to students and the teacher, counts as a “place devoted to instruction” (Copyright Act, 2002, Section 1), now the students

realize that posting of the same collage on a universally accessible class blog is more problematic. The TEACH Act (2002), as mentioned above, likely proscribes this activity.

Above, we note that apparently the legal climate of transformative uses of protected works has recently been more favorable to defendants (Grant, 2009). However, until sufficient cases have been adjudicated that offer more precise *dicta*, or until the copyright law is amended to be clearer, we recommend that students stay on the conservative side and restrain their own use of copyrighted material for multimedia productions on the venues supported by Web 2.0 tools, until fair use policy is unambiguously on their side. It should be noted that we (and, reportedly, many of our students) are not fully satisfied with this approach, i.e. that of pursuing the most conflict-avoiding path to creation. We see it as compromising the potential of Web 2.0 tools use in the classroom. Such considerations lead us to discuss alternatives to the use of copyright-protected material.

Alternative One: Create Your Own Material

The first and best choice that we offer to our students is to create their own material. This gives them the opportunity to write and record their own music, create and edit their own videos, and compose in their own genres (e.g., stories, reports, essays, poems, fiction or non-fiction writing) for their multimedia creations. The reasons for offering this alternative are manifold.

First, creating original work “from scratch” will often fit better into the overall intent of a given compositional design. Choosing this option can make student work more

powerful than if it is comprised of the works of others, works that were created for other than the students' purposes, and likely for different audiences as well.

Second, creating original work allows young authors to learn a great deal about the materials and the technologies in hand, their compositional and rhetorical strengths and limitations, and how to mold them to obtain certain styles, genres, or effects that might be called for. Thus, creating a new piece of work from the bottom up enhances the process of understanding one's craft and of persistently refining it.

Third, we emphasize the value and peace of mind in remaining "street legal." When students use only their own creative work, there is virtually no risk of a lawsuit, and this has the additional benefit of keeping them free of accusations of plagiarism.

Fourth, we tell our students that their own creation will fill them with a sense of pride, likely greater than when one composes from default or pre-existing elements. This is not to say that using others' material or tools is always inappropriate. We want our students to understand that there are times when remixes composed from others' work can be original and creative but that they still need to have "*Kunst*" (German: skill, art) to make their new creations great.

Our students have sometimes hesitated to create new music, artwork or video, reasonably claiming a lack of expertise in these areas. However, new technologies have emerged that considerably ease this sticking point. GarageBand, for example, includes MIDI (a digital composing protocol) and audio clips that may be combined or used on their own, completely free of obligation to whoever created them. This freedom is specifically stated in the instructions to the program. Other programs, such as Ableton Live, Reason, Fruity Loops and others, with a few hours of practice, can allow students

great flexibility in the use of audio material that they create. At a somewhat slower pace, video programs such as Windows MovieMaker, iMovie, and others, have cropped up that allow non-experts to cut, meld and paste video clips to create new (and completely legal) works. Some of the above programs are distributed free with purchased computers and are thus accessible to the impecunious student.

Although it is not *per se* a requirement of copyright law, when students create their own audio and video work, we urge them to secure releases when their work includes the image or likeness of other people. The states of New York, California and especially Indiana have particularly stringent requirements in this regard [(California Civil Code, Section 3344-3346 (n.d.), Indiana State Law, 32-36 (2002) and New York Right of Privacy Law (2000)].

Alternative Two: Use Others' Work Judiciously

Another alternative that we offer our students is to use others' creative work judiciously. They are urged to acknowledge the authors whose work they are using in their own compositions and to secure releases and licenses from these authors, even if they may think they do not need them. When students cannot establish the authorship of a work in hand, they are advised not to use it. Fortunately, a powerful resource exists that permits students to freely use pre-existing work that has been created specifically to facilitate this secondary use. It is called Creative Commons.

Creative Commons is the godchild of Stanford law professor and noted media thinker Lawrence Lessig. Lessig and his colleagues sought to create an area where intellectual property might be created and where some, but not all, rights would be reserved. This would permit re-users in varying disciplines to have access to important creative building blocks without having to be encumbered by burdensome licensing processes. The Creative Commons license categories are illustrative of this point. Each license under the Creative Commons specifies the terms and conditions of use for a specific work. Some licenses allow only for copying, distributing, displaying, and performing works created by others, as in the Attribution License. This license forbids creating derivative work based on original work. Others let new creators build upon original work but only for non-commercial purposes, as in its Attribution Non-Commercial License.

Students are also asked to acknowledge the authors of the original work in ways specified by each license. This means that they need to learn to pay attention to the fine print on the Terms and Conditions as well as Permission or Releases pages on the provider home page and anywhere near the work itself, for such places often share additional important information that may apply to select works and not necessarily to all works posted on the entire website.

Students are also warned against making generalizations. One common one is that if a student has permission to use a single work from one of the many sites under the umbrella of the Creative Commons, such as Flickr, the Free Sound Project, or Open Source Movies, that he or she may use any other one. Such is not the case. All have different policies for the use and reuse of the individual media found there.

Additionally, we advise our students to be willing to negotiate copyright holders' royalty fees in good faith and to always have a "plan B" in case their negotiations fail. Another suggestion that we have for our students is to consider using others' work as inspiration only without necessarily using the original work in their new productions. Proper attribution to the source of such inspiration will be necessary. The latter approach is representative of the way artists, painters, or novelists in the past used the works of influential artists, painters, or novelists to inform their new creations.

Final Thoughts

Teaching copyright and fair use principles, particularly in the context of Web 2.0 tools for communication and information dissemination, is not only a necessity but also a way of preparing our students for creative expression in the information and digital technology age. Copyright education requires making subtle distinctions and difficult choices. As we educate pre-service and in-service English teachers as well as communications students, we must insist that they communicate these fine distinctions to their own students and peers. We are aware that teachers may believe that other issues (e.g., standardized assessment) have priority. Nevertheless, the ubiquitous communication and content-generation applications that the Internet provides to today's youth requires that they make careful and creative choices about the use of intellectual property. This knowledge will prepare them for responsible and ethical citizenship and effective participation in the emerging global economy for the future.

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