Best Practices Help End Copyright Confusion

When English and film professor Peter DeCherney co-hosted the annual Mashup Contest at Weigle Information Commons at the University of Pennsylvania last year, he used a mashup activity as a powerful tool for teaching and learning. A mashup consists of a combination of multiple sources of media integrated into a new creative work. Students from across the university were invited to compose a new visual message by using excerpts and clips of existing copyrighted materials. For example, one student re-edited film clips from The Titanic into a movie trailer designed to portray Jack as a serial killer who is stalking Rose.

Of course, artists have always created new ideas by using, reworking, and manipulating pre-existing materials that are culturally familiar and relevant. Similarly, educators have always encouraged learners to copy, modify, and transform classic texts to make them relevant to contemporary contexts.

As DeCherney explained, “When students create mashup videos, they learn how to view films and how to analyze them. Thinking about editing, thinking about sound, thinking about narrative structure, visual framing and composition—all these things help us to become more critical viewers and citizens.”

For those teaching literacy using the pedagogy of media literacy education in the context of 21st century learning skills, interest in this kind of work has increased in recent years.

Unfortunately, some English teachers may discourage creative assignments like this because they are uncomfortable with the copyright questions that such work may generate. Many educators—at all levels—lack information or are misinformed about copyright and fair use.

Some teachers think they are breaking the law when they use copyrighted materials in the classroom, even though Section 110 of the Copyright Act expressly permits this. Some educators think that the educational use guidelines are the ultimate definition of the doctrine of fair use, when they certainly are not. In fact, some of the books, videos, and resources available for educators about copyright only create more confusion. Educators’ fear, uncertainty, and doubt (combined with a lack of interest and knowledge) about copyright and fair use actually interfere with implementing innovative instructional practices, as we found in our research, The Cost of Copyright Confusion for Media Literacy.

The Internet and other digital technologies have made it easier than ever to share, use, copy, excerpt from, quote from, modify, repurpose and distribute language, still and moving images, and sounds that are the intellectual property of others. These same technological innovations have made intellectual property owners keenly aware of the economic value of media content.
To protect that value, owners have lobbied for changes in copyright law in their favor and forcefully asserted their rights to restrict, limit, and/or charge high fees for the use of their works. Some even use scare tactics that critics claim may not be entirely legal themselves, misrepresenting users’ rights under the law.

Fortunately, the doctrine of fair use, part of the Copyright Act of 1976, states that people have a right to use copyrighted materials freely without payment or permission, for purposes such as criticism, comment, news reporting, teaching, scholarship, and research. In essence, fair use gives people a right to use copyrighted material when the cost to the copyright holder is less than the social benefit of the use of the copyrighted work.

To determine if fair use applies, individuals must assess the specific context and situation of the use of a copyrighted work. Hard-and-fast rules are inappropriate since the doctrine of fair use requires that people use reasoning and judgment.

In recent years, courts have recognized that transformative uses are fair uses. Specifically, when a user of copyrighted materials adds value to, or repurposes materials for a use different from that for which it was originally intended, it will likely be considered fair use. The doctrine of fair use generally supports the modification of existing media content if it is placed in new context. As Martine Rife has explained, such transformative use is at the heart of English education, where teachers and students use copyrighted materials, including works of literature, mass media, popular culture and digital media, in the process of developing literacy, composition, and 21st century learning skills.

To clarify educators’ confusion about copyright, I worked with Peter Jaszi of Washington College of Law at American University and Patricia Aufderheide at the Center for Social Media to create the Code of Best Practices for Fair Use in Media Literacy Education with more than 150 educators from around the country.

The Code was adopted as an official NCTE policy on fair use in November 2008. The Code is a tool for education and advocacy, created by educators ourselves. It simply and clearly articulates how copyright and fair use applies to our work.

By helping educators better understand copyright and fair use, the Code helps counteract much of the misunderstanding that has grown up around this topic over the past few years. The Code helps to increase confidence among educators who incorporate the use of copyrighted materials into a variety of innovative teaching and learning practices, including practices that make use of remix and other approaches that rely on the transformative use of copyrighted works. The Code was rigorously reviewed by a team of legal experts and the work was supported by the John D. and Catherine T. MacArthur Foundation with additional support from the Ford Foundation.

The Code of Best Practices in Fair Use for Media Literacy Education identifies five principles, each with limitations, representing educators’ own current consensus about acceptable practices for the fair use of copyrighted materials.

Video Clip: “Erasing Copyright Confusion Forever”


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The doctrine of fair use is designed to enable many uses of copyrighted materials without payment or permissions.

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You Can Use Copyrighted Materials!

The NCTE Web Seminar **You Can Use Copyrighted Materials: Conquering Copyright Confusion** features Renee Hobbs, is available for purchase now from the NCTE On Demand web page. The seminar addresses questions such as:

- Why is there so much misunderstanding about copyright and fair use?
- How can I use reasoning and critical thinking to determine whether or not a specific use of copyrighted materials is a fair use?
- What is the Code of Best Practice for Fair Use in Media Literacy Education and how can it help me?

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