‘What’s Fair is Foul?’: Understanding Fair Use in the Classroom

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July IP Report: “What’s Fair is Foul?”: Understanding Fair Use in the Classroom

You may not employ the term “fair use” very often but, if you are a communication, English, or writing teacher, you probably engage or enable it on a regular basis. Never before have copyright and Intellectual Property laws been so much a part of our classrooms and the writing lives of our students. And no wonder. When copyright terms go up 11 times in 40 years – without any real movement forward in our understanding of “authorship” and how technology affects it – we have a difficult problem to address: infinite possibilities to create, but seemingly limited permission to do so.

Turning to the words of existing copyright law brings no real comfort. In fact, if you read the most recent iteration of the Copyright Office’s definition of “Fair Use,” you may be tempted to claim that fair is foul:

The distinction between fair use and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.

[http://www.copyright.gov/fls/fl102.html]

Is it precisely this kind of language that can hinder the kind of creative remix that helps us to be generators of knowledge rather than passive consumers of information. Lawrence Lessig has called this the battle between “read-write” culture and “read only” culture, and it is a battle fought daily in our classrooms. As educators, and as creators of knowledge through writing, we need to find a way to “hover through the fog and filthy air” of copyright law and understand fair use in a way that catalyzes creativity and “promotes the progress of science and useful arts,” which is precisely what the creation of copyright was designed to do.

But the purpose of this month’s IP report is not to bemoan the state of what Lessig calls “federal culture policy” and call for its deregulation. Instead it is a place to find resources and current research on “fair use” that will help you as educators and scholars. What follows here is a short list of current resources that will help you better understand and use (instead of being used by) “Fair Use.” We hope you will find them useful.

- Renee Hobbs’ article “Best Practices Help End Copyright Confusion” [http://www.ncte.org/library/NCTEFiles/Resources/Magazine/CC0183_Best%20Practice.pdf] in the March 2009 Council Chronicle is what inspired this IP report. In it, she highlights the vast amount of research she has done on copyright and media literacy and, most importantly, she shows how we can use the research she has done to better “unleash the creative power of digital media for teaching and learning.”

- The Code of Best Practices in Fair Use for Media Literacy Education [http://www.ncte.org/positions/statements/fairusemedialiteracy] was adopted by the NCTE Executive Committee in November of 2008 and was created by The National Association for Media Literacy Education (NAMLE), The Student Television Network (STN), The Media Commission of NCTE, The Action Coalition for Media Education (ACME) and the Visual Communication Division of the International Communication Association (ICA). The Code provides comprehensive information without creating confusion and addresses the more complex pedagogical and philosophical questions of fair use in very practical terms. As Renee Hobbs notes in “Best Practices”, “the Code helps educators to gain the confidence needed to make their own careful assessments of fair use. [This, in turn, can help] students make such determinations for themselves when they use copyrighted materials in their own creative work.”

- Want to take a break from reading for a while? Check out the archived NCTE Web Seminar You Can Use Copyrighted Materials: Conquering Copyright Confusion [http://www1.ncte.org/store/webseminars/130477.htm] which is available for purchase from the NCTE On Demand webpage. This seminar addresses key questions about copyright by highlighting ways to use The Code of Best Practices for Fair Use in Media Literacy Education.
Don’t let this single link fool you. You are only one click away from a treasure trove of resources, courtesy of The Center for Social Media in the School of Communication at American University. You can listen to the director, Pat Aufderheide, discuss the issues surrounding fair use; you can browse the linked publications (which includes a link to The Code of Best Practices for Media Literacy Education); you can check out the “Fair Use Classroom Tools” section for some ideas about how to incorporate fair use scenarios into your classroom or how to include fair use language in your course syllabi; and, if that isn’t enough, you can choose from a variety of additional resources for more information, including a wide variety of videos. An amazing one-stop-shop for fair use queries.

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Intellectual Property Reports Main Page

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