

Fair Use

Fair use is a part of the law that belongs to everyone—especially to working educators. Educators know best what they need to use of existing copyrighted culture to construct their own lessons and materials. (Code, p 15)

—Code of Best Practices in Fair Use for Media Literacy Education

Overview

Regarding the scenario of using supplemental enrichment materials for teaching a sixth-grade social studies unit, (Tiene & Ingram, 2001) there are several associated copyright issues to consider. I defer to the Code of Best Practices in Fair Use for Media Literacy Education to help me navigate what they describe as the four main factors; 1) the nature of the use, 2) the nature of the work used, 3) the extent of the use, and 4) its economic effect. (Code, p 6)

Below I detail the factor, the question it implies, and the answer as it pertains to this scenario:

- **Nature of the use** - intended purpose
Q: How is the material being used?
A: The material is being used purely for educational purposes- for teaching a sixth grade social studies class a unit on Africa. The instructional goal is to learn about Africa on many levels. The supplemental materials are intended to be (more) current, relevant, and engage the students in learning.
- **Nature of the work used** - media description, characteristics, attributes, etc.
Q: Exactly what is being used to supplement the lesson?
A: Segments of a major motion picture film, Educational video programming, Fact based historical films, *Public Broadcasting Station* (PBS) programming, Low resolution copies of 1930's photographs from *National Geographic Magazine*. While there is original and creative work in the selections, it is within reason if only segments are shown.
- **The extent of the use** - portion and significance of material being used
Q: How much material in terms of percentage and creative content was used for the lesson?
A: Because several different sources were used for a unit with a limited time frame, approximately 10%-20% of several of the selected videos, and assuming up to 50%-75% of the PBS special program. If the videos were shown in their entirety or if the most creatively significant portions were, there could be an issue. But the actual selection portion and sections seemed reasonable especially given the students age and the fact that the material was used to compel learning and interest not to be re-purposed.
- **The economic effect** - material or monetary impact of use on the market
Q: To what extent might the use of the materials impact the creators/authors material/monetary gain/loss?
A: The schools contract with the PBS and the general rules found on the PBS website should cover the use of if especially if it is determined we are within the one year period of its original airing. There may also be contractual limitations of use of licensed materials involved. Ultimately the inclusion of this material is the most questionable of them all and its permissible use needs clarified.

Two questions remain:

Was the selection of media reasonable and appropriate and within the realm of Fair Use laws? Yes. Reason was applied for each decision made with the understanding that Fair Use is situational and this learning scenario demanded supplemental resources. (See *Additional Thoughts* for possible exceptions.)

Was it successful in its original intention? Yes. It sparked and held interest in the unit. The assessment indicated that learning about Africa occurred. Simply stated. There was more benefit to the students vs. detriment to the creators of the media.

Additional Thoughts

I think most importantly we must understand what Fair Use means. After researching this topic, I have come to realize that Fair use is not just a set of laws designed to protect teachers from law suits over misuse of media, but that it is a unique statute that creates opportunities for teachers to use enriching, and relevant content of their own personal selection for the purposes of educating. There seems to be confusion and lack of clarity about what Fair Use is and how it is used. Scholar Kenneth Crews states that many materials provided to teachers are misleading and overstate the risk copyright infringement. He says that they interfere with genuine understanding of the purpose of copyright—to promote the advancement of knowledge through balancing the rights of owners and users. (Crews, 2001)

While there are some subjective qualities within the legal definition, I believe most school districts must work harder to clarify the definition of reasonable use. Clarification will benefit the creators of the media, the administrators, in the teachers at our schools, and most importantly the students in our classrooms. The last thing we need is a hostile environment surrounding media usage especially since Tiene and Ingram point out that media specialists and school librarians do not have the authority to enforce standards of Fair Use. (Tiene & Ingram p 186)

Back to the scenario— I would argue that for the most part, all of the media described above and used for the lesson constitutes Fair Use. While some stretch the edges of the limitation a bit, they seem to be within the realm of reasonable and acceptable use. I would mention that in most cases percentage of use is irrelevant if the usage was considered reasonable. In this particular scenario the selection of materials was complimentary and positive to the learning objective. I cannot find legal reason that would inhibit the use of sharing photos, especially from a paid subscription to a magazine involving photos from 1930, and distributed as low res copies. I can imagine the photographer might be thrilled that they have been chosen for a classroom learning environment.

The one factor that I have some moral/ethical concern about in this scenario is the use of that PBS program from 1 year ago. If in fact it premiered more than a year ago, it would fall outside of the Fair Use law, according permission requirements on the to the PBS website. Also, as educators if we value the fantastic programming offered by sources such as PBS, it is in everyone's best interest that they be compensated accordingly so that they can continue to provide excellent resources. Video programming (now abundantly available via the internet) provides a rich resource for education and we want teachers to be "freely" use a variety of media to inspire further learning especially when text books and other standard classroom materials lack current and relevant events and information. A good teacher should seek out real, current, relevant, interesting information to compel students to learn more. Of course, in all cases of use of media there would be verbal and written attribution and citation of the sources for students, parents, other teachers and administrators. The code of Best Practices and PBS website stress the importance of "keep(ing) intact all proprietary and copyright notices on the content.

I would defend the teachers clear and legal right to decide what is reasonable and appropriate for their lesson plans in their classrooms as indicated in the *Code of Best Practices in Fair Use for Media Literacy Education*. I would also ask that the school give a professional development session that highlights the 2008 *Code of Best Practices in Fair Use for Media Literacy Education*. Believing strongly in this cause, I would offer to organize and or lead this session. In addition to the PD session(s), I would request that a copy of the Best Practices document be readily available and accessible in the library/media area, so that the librarian does not feel the need to police the materials and policies.

Fair Use, by nature of its definition,...*a balancing of the rights of owners and users* (Crews, 2001) ensures that some aspects will continue to be debated. Materials deemed appropriate by a teacher for enhancing learning objectives should be free from restrictions and enjoy continued protection and encouragement under the Fair Use laws. Given our teachers are making reasonable decisions with respect to authorship, what we stand to benefit far outweighs what the creators of the materials stand to lose. Ultimately we can hope that the advancement of knowledge will, in most instances, win the case.

References:

Tiene, D., & Ingram, A. (2001). Exploring current issues in educational technology. Dubuque, IA: McGraw-Hill. (p 193-195)

Code of best practices in fair use for media literacy education. (2008). Washington, D.C.: [Center for Social Media]. Retrieved from http://mediaeducationlab.com/sites/mediaeducationlab.com/files/CodeofBestPracticesinFairUse_0.pdf

Crews, K. D. (2001). Law of Fair Use and the Illusion of Fair-Use Guidelines, *The Ohio St. LJ*, 62, (p 602-700)

Learn About Public Rights and Permission Requirements: I want to Screen a PBS program, (2013). Retrieved from <http://www.pbs.org/about/faq/public-rights/screening/>