

Intellectual Property Rights and The Classroom: What Teachers Can Do.

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Abstract

Intellectual property rights restrict teachers and student's ability to freely explore the intellectual realms of the classroom. Copyright laws protect the author and their work but disable other intellectuals from investigating probable learning environments. This paper will look at key issues where educational institutions are conflicting with intellectual property rights. Also included will be guidelines for teachers and fair use for their classroom in the *Best Practices in Fair Use* and the *Code of Best Practices in Fair Use for Media Literacy Education*. And finally, this paper will take the stance of the unrestricted freedom to use copyrighted materials for educational purposes.

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Intellectual property rights fringe on the intellectual domain and space of teachers and students in the classroom. This paper will look at several factors which copyright and fair use affect classrooms and what teachers can do to assist their students in using intellectual property righted material. Key issues in copyrighted conflicts will also be discussed in recent developments between copyright authors and educational institutions. Also included will be a fair policy guideline to assist educators in media classrooms who use multimedia components in their classroom. And finally, this paper will argue for the “free” in copyrighted materials and for the opposition of intellectual property right ideals and laws. To begin, we shall look at recent activities in copyright conflicts and the impact on educational institutions.

Recent developments in the intellectual property rights have left educational institutions scratching their brain. Intellectual property rights, better known as copyright, and fair use guidelines are very confusing to most education institutions. Here, we will define some terms in order to establish a common ground of what we mean by intellectual property rights, fair use, and educational institutions. First, educational institutions which come to mind are those universities, public and private schools which have the right to use copyrighted material. Second, intellectual property rights, also known as copyright, gives authors the right to the property which may consist of art, music, and writings (Newsome, 1997; Bartom, 2009; Flynn, 2009; “Copyright”, 2010). Copyright is “a form of protection provided by the government to the authors of ‘original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works’” (“Copyright Basics”, 2010, ¶ 3). Third, fair use is the establishment of the United States to allow educational institutions to use copyrighted material for educational purpose without having to seek copyright permission (Newsome, 1997; Bartom,

2009; Flynn, 2009; Howard, 2010). Fair use is “the right to use copyrighted material without permission or payment when the benefit to society outweighs the cost to the copyright owner” (“Copyright 101”, 2008, ¶ 2). Now we will look at the conflicts which have resulted in disagreements between the copyrighted individuals and the education institutions.

Conflicts over copyrighted material between the individuals with those rights and those educational institutions infringing on those rights, have a long history and it does not seem to be over anytime soon. Recently the Walt Disney Company made a move to re-copyright the colorful characters in their movies (Sprigman, 2002). “Rather than allow Mickey and friends to enter the public domain, Disney and *its* friends....told Congress that they wanted an extension bill passed” (Sprigman, 2002, ¶ 4). As seen in this case, copyright individuals continue to pursue their blockade against the public domain. Here, the prevention of public domain prevents teachers and students to use those characters in videos and documentaries. Another case involving Georgina State University (GSU) and their fair use of copyrighted material was brought about by claims of the copyrighted individuals that the university was using unauthorized copying and distribution of their material (Howard, 2010). GSU argued for fair use and that the professors explained that they didn’t do it (Howard, 2010). A Duke professor explained how the judgment in this case should have professors and students very concerned (Howard, 2010). UCLA recently dropped their use of copyrighted videos for their course web sites (Laster, 2010). The university lawyers in the case felt that the Teach Act protected the professors using the copyrighted videos, but the university pulled the videos (Laster, 2010). In another case copyright authors went after a teacher who copied eleven out of twenty pages of a book. Teachers in a Philadelphia school district began fearing using digital media after copyright musicians won a case against a mother which reportedly had to pay \$220,000 for

sharing twenty four songs online (Hobbs, 2008). Copyright and fair use is very confusing for most educators. The following guidelines should provide some guidance for fair use and copyright laws.

Fair use policy is based on four standards to determine the exemption. Teachers can use these as guidelines to determine whether they need to seek out copyright permission or not. The first standard is that of purpose of use. Using copyrighted work is permissible and fair use if the “the copies are made spontaneously, are used temporarily, and are not part of anthology” (Newsome, 1997; see also “Code of Best Practices”, 2010; “Fair Use”, 2010). Second, the nature of the work becomes in question. Copying paragraphs and chapters may be in question (Newsome, 1997). Third, proportion of the material used is viewed. Fair use applies if the proportion of the material being copyrighted is not of a significantly large portion (Newsome, 1997). And finally, the fourth standard in determining fair use is the effect of the marketability. If the copyrighted individual does not lose any money, fair use may apply (Newsome, 1997).

Some restrictions of the fair use policy may apply to teachers. First, is the expression of the author used? If the author’s views are expressed then they may not use the material even if it means just photocopying (Newsome, 1997). Second, is the expression copyrighted? The work may be used if it is in public domain, but if the answer to the question is yes, then it cannot be used (Newsome, 1997). And finally, the third question must be answered to consider fair use or not. Will the usage go beyond fair use? If the question is yes, then the material may not be used (Newsome, 1997). However, more restrictions exist. The percentage of the entire work must be strictly watched. Also, the time between the use of the material and the requesting of material must be close together where there was not sufficient time to get copyright permission (Newsome, 1997). We will now look at fair use examples for teachers.

Teachers have many stipulations for fair use if they are strictly for educational purposes and face-to-face teaching (Newsome, 1997). They may copy a chapter from a book, newspaper articles, short stories, essays, web articles, poems, artwork, charts, graphs, drawings, cartoons, sheet music, songs, lyrics, and broadcast programs. In face-to-face teaching, a single copy for the teacher may provide copies of one chapter from a book for students. In a short story, teachers may copy up to ten percent of the work for students. For poems, the same applies for short stories as well. In artwork, the class can only copy up to five images and no more than ten percent of the total images in a program. For film and videotape, a copy may be made of up to three minutes and spontaneity is required. Music may be a single copy not comprising of no more than ten percent of a song. Broadcast programs may be copied if forty five days have not expired since the taping. Illegal usage of copyrighted material must also be explained. Teachers must also familiarize themselves with the illegal usage of copyrighted material. Most of the illegal use of copyrighted material comes from the usage of copied material time after time without permission. Also, copying material in order to prevent the purchase of a book is also illegal. Now we will take a personal look at intellectual property rights.

Intellectual property rights should not exist. These types of rights prevent intellectuals in the educational fields to pursue undiscovered horizons. They restrict teachers and students from all educational institutions from the usage of materials to enhance teaching and learning. The Library of Congress is digitizing books to allow millions of people to access them is very honorable (“Library of Congress”, 2007). The University of Michigan is also pairing up with Google in order for them to digitize their millions of volumes of books as well. As Chris Anderson mentions how “free” allows us all to grow intellectually. Free materials, in the realm

of educational freedom to attain intellectual food for the advancement of humanity, are what the world should be striving for.

In conclusion, intellectual property rights and fair use is a very confusing arena. With the copyrighted individuals seeking out lawsuits against universities and teachers, it has left us all in the middle of fear. However, with the fair use guidelines, we can take advantage of these opportunities to encourage our colleagues and students to use copyrighted materials in their advancement of teaching and learning. Further guidelines can be provided by the *Best Practices in Fair Use* (2007) and the *Code of Best Practices in Fair Use for Media Literacy Education* (2006).

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