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Author

Folk-Farber, Kyra

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Engaging undergraduates in copyright and fair use fundamentals

Kyra Folk-Farber

ABSTRACT

Undergraduate students have a limited knowledge of copyright basics. In order to fill this knowledge gap, I seek to engage undergraduates by providing them with an understanding of the ethics around copyright law, of their rights over their own contributions to their scholarly communities, of the availability of Creative Commons-licensed materials, and of how to exercise their fair use rights. Basic knowledge of these concepts is not only an integral part of understanding and engaging with information, but it also has the potential to motivate informed attitudes and behaviors around copyright. With this in mind, I designed an undergraduate class on copyright and fair use fundamentals that can be incorporated into any introductory college or university library instruction course or can be treated as a stand-alone session.

Who cares about copyright?

Who cares enough about copyright to educate themselves and develop informed practices? Scholars. Artists. Why? Because scholars and artists are acutely aware of contributing creative material to a larger body of work. On one hand, they are protective of their rights over their own creative work; on the other, they want to share their work with the world. Awareness of their own contributions makes them aware of the rights of others.

Undergraduate students are members of the academic community. As educators, we prepare them to contribute to scholarship. The moment that students understand their place in the community is the moment that they begin to care about copyright, and the moment that they care is the moment that they want to become more informed. It is also the moment that they begin to develop communities of informed practice, and those communities of practice will extend beyond graduation, no matter what career paths those students take. The Association of College and Research Libraries' Framework for Information Literacy for Higher Education supports student engagement and empowerment by emphasizing "student participation and creativity, highlighting the importance of these contributions" (2016).

Focus groups that I conducted in 2015 support the hypothesis that students' knowledge of copyright law is often limited and that there exists an attitude of apathy toward copyright law. Apathy around the topic might stem from a pervasive culture of media sharing. The Framework notes that "[t]he novice learner may struggle to understand the diverse values of information in an environment where 'free' information and related services are plentiful" (ACRL 2016). There are two separate but conflated issues here: Not only do students have limited knowledge about copyright, but they also feel that it is not important to know about copyright.

Investigation students' knowledge, behaviors, and attitudes regarding copyright law

Music students have particular copyright literacy needs, and filling those needs will not only assist them in their education, it will also prepare them to participate in a professional community of practice after they graduate. With this in mind, I have, since 2012, been researching musicians' perceptions of copyright law. Initial research examined the phenomenon of copyright's function in relation to professional musicians' needs for printed music. Results from this study drove development of a second inquiry employing Research Ethics Board (REB)-approved focus groups to identify graduate music students' knowledge, behaviors, and attitudes regarding copyright law concerning printed music.

The graduate student focus groups that I conducted in 2015 supported the theory that many graduate music students are uncertain about copyright law, including their fair use rights. I also learned

that students express worry, guilt, and apathy about infringing copyright. Their attitudes showed that there is room for educating them about the law and empowering them to exercise their fair use rights as they move into the professional world.

Research to Praxis

By demonstrating that copyright literacy needs are largely overlooked in college and graduate-level music education, I deduced that there are likely copyright literacy needs among general undergraduate and graduate students. It was practical to make use of my qualitative data by designing various instruction modules to satisfy those needs across levels and disciplines, thereby making a greater impact on the campus community. This column will focus on the curriculum of one module that resulted from those data: Copyright & Fair Use Fundamentals, a fifty-minute session that I incorporated into Introduction to Library Research, or INT 1, a for credit undergraduate elective taught at the University of California, Santa Barbara, that is open to any major.

INT 1 is designed to help undergraduate students find resources, understand the nature of information, and engage with information critically. An understanding of their rights over their own work and of their place in the academic community not only empowers students to engage with scholarship, it also motivates their attitudes and behaviors within that community.

Approach

Many undergraduate students are accustomed to hearing about copyright concepts in a punitive context. The ACRL Framework for Information Literacy for Higher Education explains that “the concept of intellectual property is first encountered through rules of citation or warnings of plagiarism and copyright law” (2016). Students might well tune out when the topic of copyright is introduced. The key to engaging students with this topic is to bring them and their own rights to the center of the conversation. Students own everything that they produce while they train to contribute professional-level work.

I have two goals for Copyright & Fair Use Fundamentals. One goal is for students to develop an understanding of basic concepts relating to copyright. While I do not think it is possible to teach undergraduates how to approach complex copyright questions in a period of fifty minutes, I do believe that an understanding of basic concepts will give students the confidence to ask questions in order to find out more information about copyright issues that might come up. As Graveline suggests in his article *Launching a Successful Copyright Education Program* (2011), I don’t want to overload the students with information but instead focus on a few central concepts through a written exercise and an assignment.

My second but equally important goal is for students to understand why these concepts are relevant to them as undergraduates. This can only be accomplished by placing the students and their rights and contributions at the center of the conversation.

Copyright & fair use fundamentals curriculum

In keeping with this approach, I schedule Copyright & Fair Use Fundamentals strategically so that the students have recently completed a creative assignment. In the spring of 2016, I taught a class on primary sources for which the assignment was to draw their own satirical cartoons to reflect the current political climate in the United States. I started the Copyright & Fair Use Fundamentals session by showing the students a few of the political cartoons that they had completed for their primary sources assignment and discussing their cartoons’ meanings or messages as a class.

Ethics in the academic community

As an introduction to Copyright & Fair Use Fundamentals, I speak briefly about ethics, including what it means to be part of an academic community, academic values such as honesty, respect, and fairness, and why maintaining these values is essential for creation of knowledge.

Defining terms

By the end of this session, students should understand the following concepts: plagiarism, copyright, public domain, Creative Commons, and fair use. I start by asking if anyone can define the terms one by one.

Plagiarism

Students are generally already familiar with the concept of plagiarism from high school or from college orientation. I explain that rules against plagiarism are part of institutional policy, whereas copyright is a body of law; however, the rules of plagiarism and copyright law often overlap.

Copyright

Students are asked to name some materials that fall under copyright. I write their ideas on a whiteboard. A student usually calls out “books” or “paintings,” and that gets the rest of the students thinking about other types of work. For prompts, I ask them about materials that are part of their daily lives: the cartoons that they did for their assignments, things that they find on the Internet, their professors’ lectures, their own photos that they post on Instagram.

The next part of the discussion covers those things that are not copyrightable. I start by asking whether an idea for a time machine can be copyrighted. Students always disagree on this, which inspires interest and lively discussion. The answer, of course, is no; ideas can’t be copyrighted because they’re not tangible or fixed. Next I ask about recipes; I explain that factual lists are not considered creative works but that accompanying creative elements like stories, pictures, or videos can be copyrighted.

Public domain and creative commons

There are often one or two students who know what the public domain is, but very rarely are students familiar with Creative Commons licenses. I show slides while explaining Creative Commons licenses in hopes that the students will recognize CC icons in the future. It is extremely important for students to know about the availability of Creative Commons-licensed materials so that they can have the opportunity to participate in the culture of scholarly sharing by building upon others’ work legally.

Exceptions, especially fair use

In pursuit of empowering students to make informed decisions about their copyright-related practices, it is crucial to delve into fair use and its significance in scholarship. I explain to the students that they have certain rights to use other scholars’ copyrighted works under certain conditions. I describe the four fair use factors (purpose, nature, amount, and effect on the market), and ask if anyone can think of an example where fair use is employed. A student might mention “education,” but for the most part, there is silence. I prompt them with images of Andy Warhol’s Campbell’s Soup I and of the Mickey Mouse Copyleft Logo—images that the students recognize but have been used in a transformative way. I do quick fair use analyses of these images, weighing all four factors, to demonstrate why the images fall under fair use. Written in-class exercise: Defining terms The students are asked to get into groups of two and define the aforementioned terms in their own words. This is a very quick exercise, as there are already dictionary definitions of the terms on their worksheet—they are simply being asked to reword the terms.

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In-class fair use activity: Scary Mary

The students watch the one-and-a-half-minute video *Scary Mary*, a fake movie trailer that splices and reorders very short clips of *Mary Poppins* and uses suspenseful, scary music as background, transforming *Mary Poppins* into a trailer for a horror film. The students are asked to get into groups of three or four and decide whether the video falls under fair use. I leave the four fair use factors up for the students to see and ask them to weigh all four factors against each other. Each group must choose a representative to explain whether or not the video falls under fair use, and to defend the group's decision using evidence. This idea originated with a teaching video from Common Sense Media (n.d.).

The activity that ensues is rousing and dynamic to the point where I have to keep my eye on the time so that we end class punctually. I go around to different groups while they are in discussion to answer questions and get a sense of their progress. The group representatives' short presentations never fail to provide opportunity for class discussion. During these presentations and discussions, when students use vocabulary that has been taught that day, I try to point this out by repeating their words and phrases back to them. If no group brings up the concept of parody, I will do so and explain that parody, criticism, and commentary often fall under fair use, citing *Saturday Night Live* and *Weird Al Yankovic* as examples.

Assignment: Driving home the concepts

For their take-home assignment, students must define the same terms as they did in their in-class written exercises, but for their assignments they do not have dictionary definitions for reference. (I remind the students that, ironically, using a definition from the Internet would be plagiarism.) This assignment is exactly as it appears: an attempt to drive home the concepts, in keeping with the simple goal that students will be able to use these terms confidently when seeking out information about copyright issues that might come up. They are then presented with two images: *Puppies*, a photo by Art Rogers from 1985, and *String of Puppies*, a sculpture by Jeff Koons from 1988. The students must conduct a fair use analysis to judge whether Koons' use of Rogers' work is fair based on the four fair use factors, and defend their conclusion.

Assessment

Although I don't employ a formal assessment, I have gathered some evidence of success and room for improvement from approximately 120 take-home assignments. The students' definitions, while not always eloquent, consistently show an understanding of the concepts, with few exceptions. Here are some samples of students' definitions (I maintained the students' errors):

Plagiarism: Taking someone's work and using as your own.

Copyright: Exclusive rights for the creator of the original work.

Public Domain: The public can access to the resources within the public domain, where intellectual property rights have expired.

Creative Commons: CC is a nonprofit organization that works alongside copyright to give the public increased rights to copyrighted material.

Fair Use: This allows limited use of copyrighted works without permission from right holders.

Based on assessments, the take-home assignment has evolved. For example, I had originally asked the students to list three reliable sources where they can find information about copyright. Based on their answers, it was clear that many of them used Google to find these sources, and others answered with “a lawyer” or “a librarian,” which isn’t inaccurate, but isn’t what I was looking for. I removed this question from the assignment, and will instead spend two minutes of the class explaining where students can find reliable information on copyright.

Furthermore, in the original assignment, the students were asked to write a response to a paragraph on fair use from the Center for Media & Social Impact (CMSI) (n.d.). The students’ responses to the reading on fair use from CMSI were varied, thoughtful, and gratifying:

Example 1: “Transformative” is a key factor to help judges make decisions on fair use.

Example 2: Fair use comes into play most often when you completely transform a piece of material to have a different purpose.

Example 3: Fair use is a very debatable topic & has four factors that should be consider in determining if the use is fair.

The paragraph that the students were asked to read is from a webpage that has recently been archived, and I evaluated that their critical thinking skills would be more challenged by having them write a fair use analysis and defend their conclusion. Indeed, the students’ fair use analyses showed critical thought and reflection. Their judgments were varied, but approximately half of them correctly noted that Jeff Koons’ work would affect the market of the original work, and for that reason above all, the sculpture did not fall under fair use. This judgment was also made when the case went to court in 1990.

Advice for teaching Copyright & Fair Use Fundamentals

To teach this course, one needs a basic understanding of copyright concepts and a sense of how copyright fits into current scholarship. The curriculum can, of course, be tweaked if certain concepts are more interesting to the instructor and therefore warrant more time.

The topics that are covered in this session are wonderfully controversial and messy; they cry out for group discussion. Students can easily gauge an instructor’s interest in copyright. I recommend focusing on an aspect of the copyright law that interests you to spark discussion, and the students will immediately become engaged simply by participating as stakeholders. If, during these discussions, students ask questions that are beyond your knowledge, I would echo Graveline’s advice: “Do not be afraid to say ‘I don’t know.’ It is always better to acknowledge your limitations than to provide incorrect information” (2011).

Most students are blank slates when it comes to this topic. As instructors, we are responsible for shaping their perceptions. However, occasionally, a student already has knowledge of one or more of the basic concepts. This means that they have taken an interest in the topic; take advantage of that by engaging those students in discussion as early as possible. Challenge them to articulate concepts, ideas, and opinions. They can teach their peers through their own participation.

Copyright & Fair Use Fundamentals is an integral part of undergraduate students’ information literacy and will therefore contribute to their academic success. In the long term, students who understand basic copyright concepts will develop informed attitudes and behaviors as they progress in their academic careers.

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