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FAIR USE AS CREATIVE MUSE

An Ongoing Case Study

Malin Abrahamsson and Stephanie Margolin

Traditionally, academic libraries don't *teach* students, staff, or faculty much about copyright; rather, by approaching copyright law as something to be enforced, libraries have often assumed the role of de facto enforcers. Faculty, in turn, rely on library reserves departments to interpret copyright regulations and help them determine how much content they are *allowed* to provide to students. There is a primacy to their role as consumers, along with an attitude that copyright limits consumers' access to the content that they want. For students, if they think of copyright at all, it is generally outside the context of schoolwork, and again it is seen as restrictive, limiting file sharing, for example. In a world transitioning from print to digital media, change is necessary in how we think about, talk about, and teach copyright.

When it comes to copyright and academia, these old rules and paradigms no longer apply. For faculty, compliance with copyright regulations has become both more urgent—with cases like Georgia State (United States Court of Appeals for the 11th Circuit 2014) looming large over academic use of copyrighted material—and increasingly complex, in part due to the advent of e-books, PDFs of journal articles, and other electronica. What's more, as faculty continue to move their classes to online spaces and consider "open" (as in open access, or OA) spaces for their work, there are new rules and challenges. Faculty's role as content creators in the public sphere has expanded. While the coin of the realm continues to be academic journal articles, blog posts, tweets, digital conference presentations, and open access syllabi and course materials necessarily require faculty to take a new look at their behaviors as both content creators *and* consumers. How do we help faculty navigate these two approaches to content?

For students, too, the rules are changing. As virtually every college and university requires a "plagiarism" statement of some sort on all syllabi, students tend to conflate the concepts of plagiarism and copyright—and to fear and abhor them both as restrictive. Student work, however, is becoming increasingly public, open (again, as in OA) and multimodal. This leaves the ethical and cultural definitions of plagiarism banging against the legal definitions of copyright. What do the two ideas have in common, and how do they differ? How do we help students understand

lessons of copyright that apply to both their personal and academic lives, and how do we begin to introduce students to the idea that they not only consume content but also create it?

We live in interesting times, and both of us (authors) love a good challenge. How, then, do we begin to change ideas about copyright on our campus (and, with this chapter, beyond our campus), without making the regulations of copyright seem overly stifling, restrictive, and antiquated? We asked ourselves: is there a way that we can help faculty and students to see the opportunities that copyright provides, not merely to content producers (though we encourage that thinking as well) but also to content consumers?

In this chapter, we discuss the approaches that we have tried with faculty and students at our college. We are an interesting team. One author, Margolin, is the instructional design librarian but has little prior experience with or knowledge of copyright. Author Abrahamsson is not a librarian but is the library's acquisitions manager and copyright assistant. Her position is somewhat unique among libraries but helps to show that copyright is important because it affects all of us and that fair use is and should be accessible by anyone—including those of us who are not lawyers. Each in our own way feels that our job is to point people (faculty, staff, and students) to the necessary resources. In teaming up, we realized that we could build on one another's strengths and on our shared enthusiasm. The idea that propelled us to rethink our outreach was to a large part inspired by the publication of the Association of Research Libraries' Code of Best Practices in Fair Use for Academic and Research Libraries (www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf) and its radical take on transformative use. By explicitly extending the concept of transformation to also include the *contextual* use of copyrighted material, this guiding document effectively invites new thinking and supports creative solutions to old problems. We are fortunate to have been able to conduct this work in an intuitive and experimental fashion; there were few expectations put on us and our instruction, so we were free to improvise and even to fail. Our attempts have advanced our own thinking on these topics, and we hope that by discussing them in this work we will bring them to a still larger audience.

Our case study is divided into four different programs that we developed for faculty and students at Hunter College, a public higher education institution with 23,000 undergraduate and graduate students enrolled in more than 170 academic programs, located in New York City and part of the City University of New York (CUNY) system. As we will see in the pages that follow, it is only through courageous, collaborative, and creative approaches to teaching copyright that we can discover “what works” to advance the knowledge of faculty and students in making wise decisions about the use of copyrighted content in (and beyond) education. Through this process we have collaborated closely with faculty and staff with the goal of providing pragmatic and creative approaches to copyright and fair use.

Program 1: The Faculty Seminar

Hunter College's center for teaching and learning, known as the Academic Center for Excellence in Research Teaching (ACERT), sponsors a regularly scheduled Lunchtime Seminar series. This series provides a rare opportunity to speak directly to a small but interested group of faculty about various aspects of their pedagogy. Academic library faculty and staff occasionally use these sessions to share new ideas and programs within the broad realm of library instruction in the hopes of building interest and finding new faculty with whom we might collaborate.

During the 2014 spring semester, we felt the time was right for a new kind of conversation about copyright and fair use, and so we presented a Lunchtime Seminar entitled “How to Use

(and Transform) Stuff That You Don't Own." The title signaled our (not so hidden) agenda, which was to begin to transform the way that Hunter College faculty saw the topic of copyright and fair use, moving beyond the traditional focus on compliance with copyright requirements. Unlike other programs, where librarians simply share a curated collection of resources, we instead modeled the reasoning and critical-thinking practices that are needed to make a fair use determination, showcasing fair use reasoning in the context of classroom instruction. As we were inviting faculty to think in new ways about "borrowing" materials—we believed that we would have to model our lesson, demonstrating transformative use, rather than simply talking about it. Ultimately, our demonstrations were twofold: we created a lesson using transformative use, and, within that, we presented material from a colleague's lesson, which was another example of transformative use.

First, we must describe our own transformative use of copyrighted materials for teaching and learning. As luck would have it, in early 2014, an episode of *The Good Wife*, a popular CBS legal drama, considered a case of copyright infringement (King, King, & Schellhaas 2014: "Goliath and David"; Season 5, episode 11; air date January 5, 2014). We decided to let the characters of the drama do some of our teaching for us, and this fictitious television case became the center of our presentation. In this episode, the plot includes a storyline about musicians who have created a pop cover of a rap song and now believe that their version of the song has been "stolen" by a popular television show. The musicians seek legal advice because they would like to sue for a portion of the profits on the song.

To prepare, we purchased a streaming license for the particular episode. We then watched several times to carefully select the necessary scenes. In our presentation, we alternated between showing the video clips and offering key ideas in our instruction, not only providing feedback and context for the ideas about copyright related to the TV show but explicitly outlining how, in order for this to be transformative use, we—as educators—needed to show only the relevant portions that contributed to our lesson, no more, but thankfully also no less. This is a great example of how there is no "magic number"; use the amount of content that is needed to tell your story.

Then, we addressed the pedagogical value of discussing copyright and fair use using the University of Minnesota Libraries' excellent interactive web tool, Thinking Through Fair Use (www.lib.umn.edu/copyright/fairthoughts). The website invites users to reflect on the four factors in considering how fair use may apply to their particular context and situation of use. Users complete the form, which encourages them to reflect on their particular use of copyrighted content. We believe that one strength of this tool is that it is not prescriptive; rather, it encourages users to *think* and *discuss*. It provides a scaffolding to help guide deeper thinking about one's use of copyrighted materials and to structure an argument. By highlighting the intentionally ambiguous legal formulation of fair use, the tool effectively validates the gray areas, helping users see where their usage supports and does not support fair use. As a result, users can formulate their own arguments as to whether their [usage] is fair use. It appropriately presents the gray areas of fair use evaluation and supports and scaffolds their arguments about whether a given example constitutes fair use.

Finally, in the context of pedagogy and innovations to one's teaching, we showed a second example of transformative use, created by a former librarian colleague, Danielle Becker. To demonstrate the complexity of bias in sources for an undergraduate research class, Becker illustrated her lesson with a carefully selected scene from the television drama, *The West Wing*. In this scene, the characters discuss and show examples of the biases inherent in maps ("Somebody's Going to Emergency, Somebody's Going to Jail"; Season 2, episode 16; air date February 28, 2001). We learn about a fictional professional organization of cartographers who want

to replace the familiar Mercator projection map with an inverted version of the Gall-Peters projection map, arguing that the Mercator project map distorts the scale, location, and relative position of developing countries. The episode points out that even maps have a representational bias. We pointed out that Professor Becker included only the specific scenes of the television show that were relevant to the point she was raising with her students.

Fair use is, perhaps frustratingly, all about the gray areas. To illustrate this point, we showed a concluding scene from *The Good Wife* that appropriately muddies the copyright issues by introducing music experts who disagree on the satirical (and thus transformative) nature of the work.

At this point, we moved the discussion to situations where fair use will *not* apply: when people use others' copyrighted materials for decorative illustrations or when they use copyrighted music for the background of their videos, for example. Such cases provide the opportunity to introduce Creative Commons licensing and searching and to discuss some of the ways that open access materials can be useful for content consumers. As always, our goal is to empower, so we directed faculty to sources that they can legally use, often without seeking permission or paying any fees. However, we stress the importance of attribution, reminding faculty and staff of their role as creators who, in turn, want their own work to also serve as a building block.

Lessons Learned

Even when faculty are exposed to a presentation like this one, transformation of habits and attitudes takes a good deal of time. On the one hand, faculty response to our presentation opened eyes. Faculty likely attended our presentation because they may be using copyrighted materials, often in the development of their hybrid or online courses. Because they are learning a new pedagogy *and* new technology, their use of media and other copyright-protected materials is often haphazard. And, in several cases, their response was one of fear or hesitation. In fact, despite our assertions to the contrary, in the eyes of some, we became the “copyright police.” A small number of attendees had experience with copyright-protected materials and habitually sought permissions rather than take advantage of the protection of fair use. For these users, too, we may have moved the needle, but it was slow and gradual. We continue to work with faculty in other ACERT settings, and this presentation is one we like to offer on a semiannual basis because the needle is so slow to move. As contexts change, we have found that faculty may hear the same presentation with new ears. What’s more, new faculty members who may benefit from the learning experience arrive on a regular basis.

Program 2: Hands-On Workshops for Faculty

Twice annually, ACERT offers a week-long intensive training aimed at faculty who will be teaching online or hybrid courses in the upcoming year. Faculty spend the week preparing an online module, either transforming a traditional face-to experience or developing a new wholly online one. Working with ACERT’s instructional technologists and other guests, faculty are supported in their course design. The participants are introduced to a variety of organizational strategies and design tools that utilize a range of technologies in support of teaching and learning.

We are regularly asked to present a hands-on workshop as part of this curriculum, as faculty are often considering which materials they can use and how. This tends to be a small group, allowing us to be highly responsive to the individual needs of each cohort and consequently with our material changes with each presentation. We ask each faculty member to introduce

themselves and describe their course, what types of materials they currently use, and whether there is a specific rationale for this use. We cover topics such as copyright, fair use, and suggested tools and information about how to find and use other people's materials without running into copyright problems.

It is a common misconception among faculty that because, online and hybrid college courses are educational, any copyrighted material used in them is categorically permitted and/or considered fair use. We begin by teasing out different types of use to address this misunderstanding and encourage a deeper analysis. For example, we might point to the difference between using a specific image because it illustrates a key concept in the course and using that image as a decorative banner. Participants then take a moment to consider the purposes of the materials they will be using in their course.

Decorative Use

Very often, we found that faculty wanted to find material for decorative purposes in order to make their website or PowerPoint slides more attractive. They sometimes use images or visual material merely to attract and hold attention. They were surprised to learn that this use also requires fair use analysis for copyrighted material. We then introduced Creative Commons and demonstrated how to search for images, sound, and video with limited or no copyright restrictions. We also asked faculty to explore how search results may vary depending on media and license settings in Creative Commons.

Educational Use

We next talked about where to find and how to use educational content that is accessible through the library (i.e., subscription databases). Thus far, we have only advised faculty designing online and hybrid courses aimed at Hunter students (restricted access behind a login). Consequently, for these courses, we have used material that is restricted to the Hunter community, explained how to find material using library tools, and how to correctly embed it in the course.

Transformative Use

The authors find the conversation about transformative use to be the most rewarding because this is where we can encourage faculty creativity. A conversation about intentionality may help people think about their purpose in a new way and understand that transformative use can be conceptual. Relevant and meaningful examples illustrate this point better than abstract discussion, and we have tried to give suggestions that were based on the topics and material that faculty members were already working with. For example, advertising can be used for the critical study of culture and gender, and popular Hollywood productions similarly can illustrate key concepts in a course. It is the recontextualization of the original intents behind these familiar works that constitutes the transformative aspect of fair use. What's more, in changing the context of these works for students, they can become powerful learning tools.


Lessons Learned

The most significant lesson we've learned from this scenario is to work with the faculty while they are actively creating. Rather than working with abstract what-ifs, we are able to make

our instruction directly relevant as we listen and respond to the needs of our participants in real time.

Program 3: Student Workshops in Freshman Composition

Hunter offers over 100 sections of Freshman Composition (ENGL 120) each year, all of which conform to a standard curriculum including a scaffolded research paper assignment. Each section is required to have at least one session with a librarian, and, most often, these library sessions introduce students to college-level databases to prepare them for the research that they will be doing. Beginning in fall 2014, several Hunter instructors launched a small pilot ENGL 120 with a multimodal focus where, in addition to the required research paper, students also created a digital project to be publicly displayed (e.g., YouTube or Vimeo) at the student's discretion. Having identified that this student work would be publicly displayed, the authors reached out to an instructor of this initial pilot, Jack Kenigsberg, and we agreed to collaborate on fair use instruction.

The authors remember this pair of workshops (two sections of the same course, both taught by Kenigsberg) as initially disappointing. However, upon further reflection, there were several positive aspects to these two student-facing workshops. Most importantly, our relationship with Kenigsberg helped make this collaboration successful. Like us, Kenigsberg is willing to experiment. His teaching is innovative: he adopted the multimodal pilot, and he was eager for us to bring  use instruction to his students. What's more, he understood that such instruction would take time. Not only did we work with his students for one full-class session, Kenigsberg also devoted additional class time to jointly developed fair use–related activities.

Our final curriculum for this class had three parts. First, Kenigsberg administered an in-class “pre-assessment” given via Google Form a few days before our scheduled visit. Both the authors and Kenigsberg were able to review results and assess student knowledge of the subject. Next, the authors came into the classroom to work with the students for one class period. Finally, several weeks later, Kenigsberg gave the students a “real-world” assignment where they completed an analysis of one of the objects they were using in their multimodal projects.

Pre-Assessing Student Knowledge

We asked students seven multiple-choice questions and one that required a short answer. We deliberately created questions that played on common perceptions and misperceptions about copyright. We provided more than one correct answer among our multiple choices, and in several cases, all answers were correct. However, by seeing the answers that students did select, we began to learn what they did and did not know about copyright. For example, one of our questions was, “What is the process of getting copyright?” Despite the fact that all of the answers we listed were correct, in looking at the answer that most students selected, we knew where to focus our teaching. (See the Appendix for a full list of copyright questions and answers.)

We included a short-answer question (“Why is copyright relevant to this class?”) to provide a starting point for our in-person conversation with the students. Perhaps the most common response that we saw was students who conflated and confused the concepts of copyright and plagiarism, as well as the punishments associated with each. On the flip side, some students correctly identified positive aspects of copyright: it protects the author; it helps keep works safe from replication. Others noted that copyright related to their ability to use “outside” materials (e.g., materials that they did not create). A small number of students recognized themselves as

content creators who were therefore protected by copyright. Interestingly, it was only a few students who correctly identified how copyright was relevant to the assignment in this particular class.

The pre-assessment helped us to see that our preparations were on target. The challenges included clarifying the differences between copyright and plagiarism and encouraging students to see themselves as content creators, producing work that was, in turn, copyrightable.

In-Class Curriculum

In addition to the content of our workshop, we were primarily concerned with effectively engaging with our students, a problem that author Margolin has often found in similar “one-shot sessions.” As we prepared to meet the students, we tried to balance a curriculum that was informative, useful, and fun. We prepared our lesson with feedback from Kenigsberg, who prompted, “Personally, I’m less interested in finding materials that are ‘safe’ and more interested in how to use ‘unsafe’ materials with fair use or transformative use” (Kenigsberg, personal communication October 3, 2014). Kenigsberg’s input helped us to fine-tune what would be most relevant to the students in this particular class.

The pre-assessment results provided an entry into our direct work with the students. We reassured them that, for the most part, they were on target and that *almost* everything is copyrightable. We began to wrestle with the confusion between copyright and plagiarism, pointing out the differences and thus further clarifying the importance of copyright in this class.

We discussed students’ roles as both consumer and creator. We used a think-pair-share exercise for students to consider their interests in copyright from both perspectives. We also introduced the idea of Creative Commons licenses, which provided a nice transition, again, from a producer (who uses a CC license on her work) to a consumer, who might opt to search by CC license to find appropriate materials.

The bulk of our talk was about fair use and transformative use. We discussed the origins and rationale behind the concept of fair use, as well as the four factors. Since the students were to create their own short films using found materials, we illustrated our discussion of transformative use with a video mashup and then worked as a class to analyze the four factors in the context of this video.

Final Assignment

Several weeks after our visit, in conjunction with their video assignment deadline, each student had to select one item from her mashup and analyze its use with the Thinking About Fair Use analysis tool. It was here that we found a wrinkle in our collaboration. The authors had intended for this to be a brief writing assignment for the students, where they would apply what they had learned in class, with prompts from the tool. Instead, Kenigsberg assigned them to use the tool to reflect on one of the objects, with no writing assignment attached. This shifted the exercise from one of analysis and critical thinking to one more oriented toward button pushing and completing an online form. Students were not required to provide evidence and did not use this tool for its intended purpose: to develop an argument.

Lessons Learned

True collaboration is essential. One of the great strengths of this particular experience was the strong collaboration between the authors and the instructor, Jack Kenigsberg. He understood

the importance of fair use and transformative use for his students, particularly in the context of their multimodal assignment. To that end, he was willing to collaborate with us on assignment design and provide feedback. That said, no collaboration is perfect. In our final assignment, we were unclear about the work product. We envisioned the follow-up as a written critical analysis of whether the use of one item from their project constituted fair use. We feel that our impact would have been greater and student learning would have improved with the follow-up assignment as we had designed it. However, Kenigsberg's feedback continued to be supportive. He said that his students' work "showed they understood the concepts and could apply them" (Kenigsberg, personal communication February 9, 2015). We look forward to trying the writing assignment in a future workshop.

We also learned that it is important to use every engagement strategy that you can think of. A presentation about fair use and copyright has all of the usual challenges of one-shot instruction, and more. Many students carry severe anxiety related to the punitive nature of plagiarism (e.g., harsh punishments for plagiarism that they may consider accidental or confusing). These students may also erroneously link plagiarism and copyright. This results in a class full of students who, at best, do not want to hear what librarians are teaching and, at worst, may have anxieties about it. We used humor. Our pretest, for example, contained silly answers designed to help alleviate some of the anxiety that students might be feeling. We presented a campy mashup based on the popular film *Top Gun* that transforms the narrative. We attempted to be approachable and to make the material so. In the end, we could have done even more: a lesson that promoted active learning would likely have enhanced the experience for students or perhaps a question-answer format where they were invited to ask us questions.

We learned the importance of linking lessons directly to assignment. Overall, our work was relevant to the students' multimodal assignments. However, our lessons lost some of their relevance: "when it came to actually making their movies, a lot of them were so clearly in violation of copyright that I could have made a small fortune in finder fees. . . . That's probably because I told them a few times that I didn't actually care that much how often they violated copyright. I should probably stop doing that" (Kenigsberg, personal communication February 9, 2015). His own goal for the course was to give students the intellectual experience of creating these multimodal projects, and, ultimately, no doubt like many of his fellow instructors, he decided that (in this case) copyright rules got in the way (though from his comments, perhaps he is reconsidering that approach). We also learned that it's hard to expand our target audience of faculty members within the institution. While adjustments are needed, we feel that we have the start of a solid and innovative copyright/fair use lesson for undergraduates that is well aligned with the nature of the undergraduate Freshman English course. However, it has proven difficult to get more faculty interested and to reach more students. We have therefore opted to aim even bigger—spreading the word *outside* our institution in the hopes that others might adapt our lesson ideas to their own campus needs.

Program 4: Student Workshops in Studio Art and Combined Media

In 2015, we received two separate invitations by art instructors Constance DeJong and Peter Dudek to speak to their students about fair use. In both cases, the instructors wanted us to follow up on previous class discussions. In preparation, we collaboratively selected a series of relevant readings about art and appropriation that the students completed before our visits.

In the early spring of 2015, instructor Peter Dudek invited us to visit his Studio Art (Art 101) class. These undergraduates were already somewhat familiar with copyright: after a class visit to a gallery showing work by Richard Prince, they had briefly discussed a couple of the

most infamous art-related copyright cases (*Cariou v. Prince* and *Davidovici v. Koons*). We knew that these students had a basic understanding of copyright and wanted to build upon their existing knowledge. We therefore suggested a selection of recent news articles about *Prince* and *Koons*, as well as an article in *The New York Times*, about artists who are using other people's photography in their work.

In the classroom, first we contrasted Koons' and Prince's works with those of the plaintiff in each case in order to demonstrate how to conduct a fair use analysis using the four factors. Our work included a discussion of transformative use and the difficulty in quantifying it, particularly in cases that concern nonliteral material such as fine art and music. We wanted the students to understand that fair use analysis is subjective with no established or fixed limits and that well reasoned arguments often constitute the best defense.

For the second half of our workshop, we used a role-playing activity. We divided the students into four groups in order to consider the arguments of each side in the fair use analysis of two separate artworks. Two groups represented the artists' viewpoints, and the other two represented those whose work had been appropriated. Each group conducted a fair use analysis based on their assumed role. For this portion of the workshop, the authors walked around the room, answered questions, and helped get the conversations started. We asked the groups to record their findings on posters we have prepared in advance, listing the four factors. We closed with a full-class discussion. This session was effective because we were able to build on what we'd learned in our Engl 120 class, most significantly in transforming our exercise to one of active learning. As artists, our students more readily self-identified as creators, they had prepared with readings in advance, and we had great support from Professor Dudeney. It was ultimately effective to have students work in teams, with each team formulating an argument. In September of 2015, Professor Constance DeJong invited us to do a 1-hour presentation on fair use to the students in her Combined Media (ARTCR 290) course. This small class of undergraduates had already discussed the works by Omer Fast and Christian Marclay, two artists who make use of existing video material. Before our visit, DeJong had explained, "Almost every semester I am asked by students to explain the consequences/legalities of using found and/or appropriated materials" (DeJong, personal communication September 5, 2015). Encouraged by the students' already existing awareness and interest in the topic, we assigned them our reading list in preparation for our visit.

We knew that this small class was comprised of students who were already raising important questions about copyright in their own work, and we decided to experiment with a class discussion that was much less structured than our previous workshops. Our goal was to encourage the students to actively participate in a discussion about Marclay and Fast and to understand how skillfully these video artists utilize fair use in the making of their work. We began by asking the students to explain how they use other people's material in their own work. We wanted the students to think critically about how, why, and to whom their work may be transformative and to understand that this type of purposeful reasoning constitutes the very core of fair use. We let the students' questions guide the discussion, and, rather than provide simple yes-or-no answers to their questions about what may or may not be fair use, we made the class partake in our reasoning. The last few minutes of our presentation was spent on the so-called Dancing baby case (*Lenz v. Universal*), which had been settled a few days prior to our visit.

Lessons Learned

We were able to build upon our previous guided discussions with students and make what we felt was a strong lesson plan the second time around. The students in both art classes were

engaged and inquisitive, and they had not only a firm grasp of the concept of fair use but also a vested interest in forming strong arguments for their opinions. According to Professor DeJong, the issue of fair use comes up in class:

not so much because of the syllabus and/or specific assignments, but rather because appropriation has become such a common aspect of making art. And, the meaning of “appropriation” has changed from simply using found objects . . . to manipulating/trans-forming/metamorphosing existing material, particularly images but also sound/music.

(DeJong, personal communication September 5, 2015)

DeJong also pointed to the persistent confusion that surrounds plagiarism and copyright and said:

Nearly every college student is aware of plagiarism when it comes to fulfilling writing assignments in their classes. But the issue is more nuanced and confusing when it comes to using existing material in their art. On the one hand they see instances of appropriation all over the place—in art, on-line, in popular music, etc.—and on the other hand they hear of legal suits brought against artists like Richard Prince, Sherry Levine whose work entails appropriated material.

(DeJong, personal communication September 5, 2015)

Referencing their own work during class discussions, these students naturally identified as content creators who wanted protection for their work but at the same time also understood the importance of being able to use and build upon other’s works. They offered intuitive and well articulated responses and asked nuanced follow-up questions. Instructor Dudek thought his students had taken an active interest in the topic and said:

I think because there were several prominent examples of artists having copyright issues (that we had previously discussed) helped the students engage. That, coupled with the texts you sent, and the Richard Prince exhibit which we saw . . . before you came, kept the students on point. Plus we have weekly dialogs/crits, so maybe verbal feedback . . . is more part of an art class (a requirement actually).

(Dudek, personal communication May 20, 2015)

Asked what he thought the students had learned by our workshop, Dudek elaborated: “The students did think that copyright, in general, was historically more related to written material. And that artists are getting sued now simply because of the prices [that art] is selling for these days” (Dudek, personal communication May 20, 2015).

These workshops were one-offs in the sense that they included only a few preparatory readings and no assignment or other practical follow-up. However, we learned that ability to identify as both consumer and creator of content is essential to the understanding of the transformative aspect of fair use. At first we thought that this “dual identity” may come more naturally to the creative art students—and perhaps even more so now than ever before as the definition of art continues to be stretched to include already existing content that has been made by people other than the artists themselves. As we prepared this chapter, however, we have come to realize that our skills and material improved over time as we became more comfortable in our roles as copyright educators and could engage the students more successfully by asking relevant and provoking questions.

Conclusion

Fair use and transformative use offer the potential to launch many interesting and worthwhile discussions with students and faculty. Returning to the questions that we asked ourselves in the introduction, we return as well to the authors' starting points. While we've outlined lessons learned from each of the four scenarios, we wonder what are the broader lessons learned over nearly two years of interacting with faculty and students on these issues?

The first time we took part in the hands-on faculty workshop, we had an interesting conversation about using work that wasn't one's own. In designing a hybrid course, one instructor wanted to show samples of past student work to assist her future students. When we changed the context and asked how she would feel if she learned that her own work could be included in a course without her permission, it was a great aha moment. From there, we were able to open the door to faculty's role as content creators, as well as consumers, and to help put a real purpose to the previously abstract notion of Creative Commons licenses. For faculty—and students too—illustrating their role as both creators and consumers has been a helpful model. In thinking about ourselves as producers and consumers, we can effectively start the conversation about copyright, fair use, and transformative use in a positive and creative place.

For students, it's time to be very clear about the differences between copyright and plagiarism, as well as the reasons for each. As Professor DeJong pointed out, most college students are highly aware of plagiarism being a problem but often confuse it with copyright when they want to incorporate existing material into their own work. While our workshops stress copyright over plagiarism, it's important for us, as teachers, to know and acknowledge where students are coming from in order to better understand their anxiety about this topic. Again, casting them as creators *can* help to change the conversation: we hypothesized that this *might* have been one reason that our workshops with art students were so successful. On the other hand, it might also be that our student-facing workshops became progressively less structured and instead focused more on being responsive. We started out with a structured three-part lesson plan (Program 3), and by the time we visited Professor DeJong's art students (Program 4), we relied entirely on specialized readings, tailored examples, and specific questions *directed to the students* about their work. Small-class discussions are also more effective than the larger-class lecture model that we used in the English classes (Program 4 versus Program 3). We are glad to see so many of our students working on academic and artistic projects that have a public face, and we believe with the increasingly public nature of student work—and of all of our lives—that a more sophisticated understanding of copyright, fair use, and transformative use is essential.

Finally, on some level, we believe it is our role to spread our enthusiasm for the *creativity* of fair use and transformative use. When we first began our outreach, we wanted to see if we could complicate the conversation around copyright and infuse it with a sense of possibility to counter the pervasive negativity. Faculty often find fair use analysis a tedious and time-consuming exercise that inevitably leads to unhelpful limitations. (“A clean-cut number or amount would be so much easier! Why not draw a line at 10%?”) Many students, on the other hand, have strong ideas about the challenges of copyright and see no reason why or how it can benefit them as individuals.

Across the board, however, what seems to reach both students and faculty on a personal level are questions about authorship and other people's potential use of *their own work*. With good, real-life examples and relevant questions that are directly geared to a particular audience and/or use, students and faculty quickly understand that they are *both* consumers and creators with a stake in the ongoing conversation about copyright. From this perspective, the idea that

recontextualization of copyrighted material may qualify as transformative fair use can take on a both personal and practical meaning, and the authors' enthusiasm about launching this copyright-related outreach project comes from this realization. Through our talks, workshops, and presentations, we have tried to bring these critical and pertinent questions directly to faculty and students. If we have accomplished nothing else through our work, we have at least approached the topic with a genuine interest and excitement.

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Appendix

A Questionnaire to Assess Students' Copyright Knowledge

What kinds of materials can be copyrighted?

- Everything
- Nothing on the Internet
- Paintings, movies, books
- Commercially produced products like Disney and iPads

Where can you find copyrighted material?

- Everywhere
- Only in the library or on library websites
- Never on the Internet

Who benefits from copyright?

- Creative artists, musicians, and filmmakers
- College professors

FAIR USE AS CREATIVE MUSE

- Big corporations, i.e., Apple and Disney
- Any individual

Who loses out with copyright?

- Creative artists, musicians, and filmmakers
- College professors
- Big corporations, i.e., Apple and Disney
- Any individual

Who can be a copyright owner?

- Creative artists, musicians, and filmmakers
- College professors
- Big corporations, i.e., Disney and Apple
- Any individual

What is the process of getting copyright?

- Add a © to your materials.
- Register with the U.S. Copyright Office.
- Do nothing. If your work is copyrightable, it's automatically under copyright.
- Big corporations hire expensive lawyers to do this.

What can happen if you violate copyright?

- You get lots of stuff (movies, books, etc.) without paying for it. No big deal.
- You may get sued.
- You may receive a request from the copyright owners' lawyers asking you to stop using the copyrighted material.
- Nothing

Why is copyright relevant to this class?