



# Supplemental Activity: Who Wants to be in the Public Domain?

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## Facilitator's Guide

### **Lesson Overview** (Grades 9-12)

This supplemental lesson introduces the legal concepts of copyright and the public domain. Students are asked to demonstrate their knowledge of what constitutes a copyrighted work and a work in the public domain by brainstorming a list and playing a game in which they must decide if a given work is in the public domain or is protected under copyright.

### **Ethical thinking skills highlighted in this lesson:**

- **Roles and Responsibilities**—The role of creator involves many distinct responsibilities. The creators and users of content have responsibilities to their audiences, the broader community, and if they are using source content, to the original content and its creator.

### **New media literacies highlighted in this lesson:**

- **Appropriation**—the ability to meaningfully sample and remix media content.
- **Negotiation**—the ability to travel across diverse communities, discerning and respecting multiple perspectives, and grasping and following alternative norms.



## Learning Objectives

After this lesson, students should be able to:

- Understand the intent of copyright (to promote the creation of new works by giving copyright owners the ability to control them and to profit from them for a limited time).
- Distinguish between a copyrighted work and a work in the public domain.
- Identify benefits and potential negative outcomes of having a work copyrighted.
- Identify benefits and potential negative outcomes of having a work in the public domain.

## Materials Used

For Students:

- “Ownership” Glossary
- “Is it Fair Use?” Worksheet

For Facilitator:

- Computer
- Clips:
  - <http://support.creativecommons.org/videos#gc> (Video entitled *Get Creative*, stop at 6:37)
- “Who Wants to be in the Public Domain?” Scenarios
- “Is it Fair Use?” Worksheet: Teacher Copy (Answer Key)

## Lesson Introduction

**NOTE:** The Lesson Introduction is similar to the Lesson Introduction for the Supplemental Activity *Is It Fair Use?*. If you have already done *Is It Fair Use?* with your students, skip to the main lesson.



To begin this lesson, ask your students if they have heard of copyright. What are some examples of things that can be copyrighted? (For example, books, music, movies.) What can't be copyrighted? (For example, ideas.) Copyright grants the copyright holder the right to make a profit from the work and to designate how his/her work is used by others. What impact do you think copyright would have on remixers, like the DJs and authors we've already discussed?

Let's watch the following video to find out more about copyright and how it affects people wanting to use other creators' works: <http://support.creativecommons.org/videos#gc> (Video is entitled "Get Creative," play until 6:37). As you watch the video, think about and be prepared to discuss the following questions:

- How does the video define copyright? Why do you think they define copyright in this way? Do they have motivations to define it in this way? What are they?
- How does it define the public domain?
- I'd also like you to think about the remix they mention at the beginning between The White Stripes and Steven MacDonal. How do the artists work together? How do they approach appropriation and copyright?

**In today's lesson, we are going to learn more about copyright and what kinds of materials are in the public domain.**

### Lesson Instructions

1. In order to complete the following activity, students should have an understanding of the vocabulary found in the "Ownership" Glossary. You may use the glossary as a starting point for introducing these concepts.
2. **Group Brainstorm with the class**, according to the concepts in the "Ownership" Glossary, creative works that are in the public domain and those that are copyrighted.
  - **Examples:**
    - **Copyrighted**—*Harry Potter* books, Kanye West Music, TV shows like "The Hills," "Gossip Girl," NBA game telecasts, "Sports Center"



- **Public Domain**—*Jane Eyre*, “Home on the Range,” some old movies like “The Panther’s Claw” (1942).
- **NOTE:** For a high-tech version, use <http://www.publicdomainflicks.com/> or <http://pdmdb.org/> to find public-domain movies online as a class.

**3. Break the class into 2 teams.**

**4. In groups or as a whole class, play Who Wants to be in the Public Domain?** After reading each scenario, ask students to decide whether or not the examples are in the public domain.

## Concluding Takeaways

Students should understand the definition of copyright—i.e., who is entitled to it, its requirements/restrictions, and what types of material it covers. They should understand that the intent of modern copyright is to promote the creation of new works by giving copyright holders the ability to control them and to profit from them for a limited time.

- Students should understand the definition of public domain—i.e., what categories of work fall under its purview and how those works can be used. They should understand that the public-domain designation represents a necessary precursor to copyright law. All copyrighted works originate in the public domain and return to the full public domain upon their expiration. Public domain, as a concept, acknowledges the fact that all creative works must at some point become part of the collective ownership of society.
- While copyright law and public domain both impose positive and negative restrictions on the use of creative work, they represent an attempt to balance the rights of the individual and the rights of society as a whole.



## Assessment

**Through participation in class activities and discussions and/or answers to optional assessment questions, students should demonstrate they can:**

- Understand the intent of copyright (to promote the creation of new works by giving copyright owners the ability to control them and to profit from them for a limited time).
- Distinguish between a copyrighted work and a work in the public domain.
- Identify benefits and potential negative outcomes of having a work copyrighted.
- Identify benefits and potential negative outcomes of having a work in the public domain.

### Assessment Questions (Optional)

- What is the purpose of copyright? How does it protect content creators?
- What could be lost with copyright law that is too strong?
- What categories of work fall under the purview of public domain, and how can those works be used?
- What are the benefits of having works in the public domain? Are there any drawbacks?



# Ownership Glossary

## Teacher Copy

### **Appropriation:**

In the world of art, appropriation is the borrowing of artistic elements in the creation of a new piece or placing those elements in a new context. Project New Media Literacies defines appropriation as meaningfully sampling and remixing content to make it one's own. **(For teacher-reference use with Inspired Highlighter, Diamonds and DJs, Fair Use and Public Domain Supplemental Lessons.)**

### **Copyright:**

Copyright refers to a set of legal rights that gives the owner of an original work (such as a play, book, song, artwork, movie, or any creative work that exists in a fixed form, such as in print) certain rights to that work, its distribution, sale, and use for a limited period of time. Copyrights can be sold and transferred to other owners. Copyright owners have several main rights under the law. Owners can determine who (if anyone) may adapt the work into something new, perform the work in its current form, benefit financially from the work, and other related rights.

Copyright has several goals. First, copyright should promote the creation of new works by giving authors and copyright owners the ability to control their works and to profit from them. Copyright law not only protects the owners of copyrights, but also protects limited uses of copyrighted materials by users. Ideally, copyright strikes a balance between protecting an owner's rights to benefit from the ownership of the work and users' rights to use copyrighted materials for specific and limited purposes. Potentially, copyright can promote a culture of respect for ownership rights and allow for society to benefit from the production of new works. Most countries, including the United States, have copyright laws. **(Use with Ad Men, Axis, Fair Use and Public Domain Supplemental Lessons.)**

*Adapted from Wikipedia.org: <http://en.wikipedia.org/wiki/Copyright>*

### **Creative Commons License:**

A Creative Commons license provides a different way to license one's creative works while retaining some rights over the works. Unlike traditional copyright licenses, where the copyright owner has *ALL*



*rights reserved*—meaning he/she can decide who uses, adapts, and performs his/her works, etc.—Creative Commons licenses let authors, creators, scientists, artists, educators, and average users easily mark their creative work with *SOME rights reserved*.

Creators choose a set of conditions they wish to apply to their work. For example, a creator can choose to only let *noncommercial* copying, distribution, display, and performance of their works, or let others copy, distribute, display, perform, and adapt their works only if the new creator *attributes* their work to the original creator’s work. Creative Commons is then a way to maintain some rights over one’s creative works while enabling a wider range of license options for others who wish to use that creative work for new purposes. **(Use with Ad Men and Axis.)**

See <http://creativecommons.org/> for a complete list of specific rights and <http://creativecommons.org/about/license/> for more information about licenses.

### **Fair Use:**

This term first refers to both a doctrine established by both legal precedence and in codified law (Copyright Act of 1976) that allows limited use of copyrighted materials without having to pay for use or ask permission for use. This doctrine tries to balance the protection of a copyright owner’s ownership and users’ rights to access information and creative works. Not all uses of copyrighted materials are fair uses and when courts determine fair use, they attempt to consider the full background of the use and the context of the situation. The fair use doctrine states that uses for “criticism, comment, news reporting, teaching (including making multiple copies for classroom use), scholarship, or research” are usually, but not always, fair uses that do not constitute a violation of copyright (Copyright Act of 1976, 17 U.S.C. § 107). Though the doctrine was codified into statutory law, it is important to remember that judges still have leeway in making fair use decisions; therefore, predicting fair use can be very difficult.

**Fair use and copyright are complicated. When courts have to decide if a use of copyrighted materials is fair use, they use the following four guiding factors:**

- I. The purpose and character of the use
  - This factor most importantly refers to the ideas guiding the use of the source—is it used in a new way, adding value to society, the arts, and society’s collective knowledge? Does it create something different from its source—something that tells



a story from a new perspective? This factor also refers to whether the use of the copyrighted material is for profit. Is the user making a large profit largely from the work of another creator?

## 2. The nature of the copyrighted work

- This factor refers to whether or not the source work contains facts and ideas that should be free for anyone to see or use because they are useful to all of society. For example, a homemade film of the Kennedy assassination was originally copyrighted by *Time Magazine*. However, *Time's* copyright was later overturned for fair use purposes because the film was important to the U.S.'s common history and should therefore be available to all freely.

## 3. The amount and substantiality of the portion used

- This factor looks at how much of the source materials were used in the new work. Did the new creator use an appropriate amount of source material in relation to their new creation? This factor is particularly difficult because different creators need different amounts of materials for their creations.

## 4. Financial effects

- This refers to the negative effect the new work has on the sales of the source material. Will this new creation, which relies in part on another's creator's work, affect the sales of the original creator's work?

*Adapted from: [http://en.wikipedia.org/wiki/Fair\\_use](http://en.wikipedia.org/wiki/Fair_use) (Use with Axis and Fair Use Supplemental Lesson.)*

## Inspiration:

Inspiration refers to something that stimulates a creator to create. Creators can be inspired by nature, experiences, and even people. Often, creators are inspired by other creators' works. In these cases, creators find source materials for their works in others' creations and create a new, transformed text in part based on the source materials. For example, the author Jean Rhys wrote an original novel featuring some of the characters from *Jane Eyre*. Likewise, musicians often borrow from other works; for example, rappers often use samples from other songs. Creating a new "inspired-by" work can often



create rich works with new meanings, exploring important themes. For example, Kayne West’s song about the ethics of the diamond trade, “Diamonds from Sierra Leone,” features a sample from Shirley Bassey’s song “Diamonds are Forever,” the theme from a James Bond movie of the same name. Authors and creators use authorship tools—like the point of view from which the story is told or themes—to transform their source materials into original and meaningful works. There are several ways in which inspiration is different from plagiarism. First, “inspired-by” authors cite their inspiration and therefore do not attempt to pass off their work as something entirely new. They recognize the debt they have to the original creator. Second, sometimes “inspired-by” authors pay for the copyright rights to use others’ copyrighted work except where their use is protected by fair use principles. Third, “inspired-by” authors transform their source material into something innovative using their authorship tools. **(Use with Ad Men, Diamonds and DJs, Inspired Highlighter, Fair Use Supplemental Lesson.)**

### **Mash-Up:**

A mash-up is a song created by putting together a preexisting vocal track and a preexisting instrumental track. A DJ’s main work is identifying the two tracks and splicing them together. **(For teacher-reference use with Diamonds and DJs.)**

### **Plagiarism:**

Plagiarism refers to presenting another’s original work as your own original work. This can mean direct copying of text, music, or art, not citing someone’s work you use as inspiration, attempting to claim originality of one’s ideas without revealing they are based in previous work, not identifying quotations as quotations, or using someone’s main ideas as your own. In academic work and in artistic work, plagiarism is a problem for many reasons. First, plagiarism does not give credit to a creator’s work. Second, plagiarism is dishonest. Plagiarists take others’ work and mislead consumers about the originality of their creation, its sources, and its authors. Finally, plagiarism can have consequences for the community. Knowledge and art depend upon creators learning from and building on each other’s work and recognizing the contributions of others. When someone plagiarizes, it threatens all users’ abilities to trace the contributions of creators. Plagiarism can have dire consequences—for example, many schools expel students who plagiarize, and for professional creators, there may be financial and legal repercussions for plagiarizing. (For more information and resources on plagiarism, see [www.Plagiarism.org](http://www.Plagiarism.org)) **(Use with Inspired Highlighter, Ad Men.)**



## Public Domain:

In the American context, the public domain refers to creative and intellectual works that cannot be copyrighted (like oral folklore and math formulae), are not protected by copyright, or are no longer under copyright (for the U.S., most books published before 1923). Other items in the public domain in the United States are works published by the U.S. government. The public domain is envisioned by scholars and legal experts as important for many reasons including providing access to cultural history and enabling creators to build on the works of others.

Once a work is in the public domain, it can be used for any purpose—commercial or non-commercial. The author who uses a work in the public domain can add to it, reproduce it, and distribute it as he/she wishes without permission from the copyright owner and without having to pay for its use.

Laws governing what works are under the public domain vary by the type of media, when the work was created and copyrighted, and by each country's laws. Under current U.S. law, copyright expires for books 70 years after an author's death. For works for hire, anonymous, and pseudonymous works, the period of protection is 120 years from creation. Older works, published before 1977, are subject to different laws. Most literary works published before 1923 are in the public domain.

*Adapted from: [http://en.wikipedia.org/wiki/Public\\_domain](http://en.wikipedia.org/wiki/Public_domain) (Use with Axis, Highlighter, Ad Men, Public Domain Supplemental Lesson.)*

## Remixing:

A remix is a song created by putting together an original track and borrowing from a preexisting one. **(For teacher-reference use with Diamonds and DJs.)**

## Sampling:

A sample is a portion of a sound recording that is reused as an instrument or as a different sound recording in a song. **(For teacher-reference use with Diamonds and DJs.)**

## Transformative Works:

Transformative works are creative works by other authors rather than by the original creators. A transformative use is one that, in the words of the U.S. Supreme Court, "adds something new, with a further purpose, altering the [source] with new expression, meaning, or message." (Adapted from definition provided by Organization of Transformative Works.) **(For teacher-reference use with Diamonds and DJs.)**



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Copyright refers to a set of legal rights that gives the owner of an original work (such as a play, book, song, artwork, movie, or any creative work that exists in a “fixed” form, such as print) certain rights to that work, its distribution, sale, and use for a limited period of time. Owners have several rights under the law, including the right to determine who (if anyone) may adapt the work into something new, who may perform the work in its current form, who may benefit financially from the work, and other related rights. Copyright law not only protects the owners of copyrights, but also protects limited uses of copyrighted materials by users.

## **Creative Commons License:**

A Creative Commons license provides a different way to license one's creative works while retaining some rights over the works. Unlike traditional copyright licenses, where the copyright owner has *ALL rights reserved*—meaning they can decide who uses their works, adapts their works, performs their works, etc.—Creative Commons licenses let authors, creators, scientists, artists, educators, and average users easily mark their creative work with *SOME rights reserved*. Creators choose a set of conditions they wish to apply to their work. For example, a creator can choose to only allow *noncommercial* copying, distribution, display, and performance of their works, or let others copy, distribute, display, perform, and adapt their works only if the new creator *attributes* their work to the original creator's work. Creative Commons is then a way to maintain some rights over one's creative works while enabling a wider range of license options for others who wish to use that creative work for new purposes.

See <http://creativecommons.org/> for a complete list of specific rights and <http://creativecommons.org/about/license/> for more information about licenses.



## Fair Use:

This term refers to a doctrine in copyright law that allows limited use of copyrighted materials without having to pay for use or ask permission for use. Fair use tries to balance the protection of a copyright owner's ownership and users' rights to access information and creative works. The fair use doctrine states that uses for "criticism, comment, news reporting, teaching (including making multiple copies for classroom use), scholarship, or research" are usually, but not always, fair uses that do not constitute a violation of copyright (Copyright Act of 1976, 17 U.S.C. § 107).

### **When courts have to decide if a use of copyrighted materials is fair use, they use the following four guiding factors:**

- 1.** The purpose and character of the use
  - This factor refers to the ideas guiding the use of the source—is it used in a new way, adding value to society, the arts, and society's collective knowledge?
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- 3.** The amount and substantiality of the portion used
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  - This refers to the negative effect the new work has on the sales of the source material. Will this new creation, which relies in part on another's creator's work, affect the sales of the original creator's work?

Adapted from: [http://en.wikipedia.org/wiki/Fair\\_use](http://en.wikipedia.org/wiki/Fair_use)



### Inspiration:

Inspiration refers to something that stimulates a creator to create, such as nature, experiences, people, or other creators' works. When inspired by others' work, creators find source materials to create new, transformed texts based, in part, on the source materials. Inspiration differs from plagiarism in the following ways:

1. Inspired authors **cite their inspiration** and therefore do not attempt to pass off their work as something entirely new. They recognize the debt they have to the original creator.
2. **In certain cases**, like sampling a part of a song, inspired authors sometimes **pay for** the copyright rights to use others' work.
3. Inspired authors **transform their source material** into something innovative.

### Plagiarism:

Plagiarism refers to presenting another's original work as your own original work. This can mean direct copying of text, music, or art, not citing someone's work you use as inspiration, attempting to claim originality of one's ideas without revealing they are based in previous work, not identifying quotations as quotations, or using someone's main ideas as your own.

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