



Supplemental Activity: Is It Fair Use?

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Facilitator's Guide

Lesson Overview (Grades 11-12; Advanced classes in grades 9-10)

This supplemental lesson introduces fair use, a legal principle that allows limited use of copyrighted materials without permission from the copyright holder. Students are given two similar, semi-fictional scenarios and must decide whether each can be considered fair use. The class considers the implication of fair use to the processes of appropriation and creation. Students discuss the potential benefits and harms of this concept.

Ethical thinking skills highlighted in this lesson:

- **Reflection on 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).
- Describe the purpose of fair use (attempts to balance the rights of copyright owners and creators of new content and to safeguard against private censorship by copyright holders).
- Identify key factors to consider when deciding whether a given appropriation is fair use (e.g., purpose and character of the use, nature of the copyrighted work, amount and substantiality of the portion used, financial effects).

Materials Used

For Students:

- “Ownership” Glossary
- “Is it Fair Use?” Worksheet: Group 1 and Group 2 versions

For Facilitator:

- Computer
- Clips:
 - “Remix Culture—Fair Use Is Your Friend.” Play to 2:07 and from 6:17 to 6:37. From American University’s Center for Social Media
<http://www.youtube.com/watch?v=79h78azzauA&p=50A29721BA6ED06F&playnext=1&index=20>
 - Optional: “Fair(y) Use.” Play from 6:22 from 8:14. From Professor Eric Faden of the Media Education Foundation
http://www.youtube.com/watch?v=CJn_jC4FNDo.
- “Is it Fair Use?” Worksheet Teacher Copy (Answer Key)
- “Fair Use”: Teacher Supplement

Lesson Introduction

1. **NOTE:** Part 1 of this Lesson Introduction is similar to the Lesson Introduction for the Supplemental Activity *Who Wants to be in the Public Domain?* If you have already done *Public*



Domain with your students, skip to part 2 of the Lesson Introduction.

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 owner 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?
 - I'd also like you to think about the remix they mention at the beginning between The White Stripes and Steven MacDonald. How do the artists work together? How do they approach appropriation and copyright?
- 2.** Intro Discussion: Ask students whether they ever use material they find on the Internet on their Facebook/MySpace pages, on a blog, as a part of a music remix/mash-up, etc. What would you do if you used copyrighted materials? Do you always need permission?

Today we are going to learn about how to appropriate/use materials that aren't in the public domain through a concept called *fair use*.

Screen the "Remix Culture" video for the class. Ask students to consider the following questions as they watch and be ready to discuss them afterward.

- Peter Jaszi from American University Law School cites two main purposes of fair use. What are they and how does he explain them?
 - 1.** Fair use is an attempt to balance the rights of copyright owners and creators of new content. On the one hand, owners can expect reasonable protection for creative works under the copyright system (i.e., control over their use, the right to financial compensation). On the other hand, it allows creators of new work the



right to use “old culture,” or copyrighted creations that have already been shared publicly.

2. Fair use is a safeguard against private censorship by copyright holders. This means that under certain circumstances, artists have the right to use copyrighted material in order to make critical commentary on an issue without the fear of legal action from the copyright holder.
- Peter Jaszi states that fair use is not a “blank check.” What are the three main limits on fair use that he cites?
 1. **The use of copyrighted material must be transformative.** This means that the new creator uses the source materials in a way that adds new meaning, points of view, or artistry to the original.
 2. **The amount of copyrighted material used is proportional to the purpose of the creation. This means that the** new creator should use only a portion of the original creation that seems reasonable in the scope of their work as a whole. In other words, did they take the whole thing and call it their own, or did they use only the parts that are most relevant to the message they are trying to get across?
 3. **Always try to give credit to sources.** Work that has already been published is easier to cite than work that has not already been “officially” revealed to the world. While it is not impossible to use unpublished work in a new creation, fair-use rights are harder to claim in such circumstances.
 4. While not mentioned by Jaszi, a fourth limitation on fair use relates to the **financial effects on the original work.** For example, does the new work cut off financial rewards for the original creator when he/she is trying to sell his/her work?

NOTE: for more resources on the concept of fair use to share with your class, you can screen Professor Eric Fadden’s “Fair(y) Use” video and/or review the definitions of fair use provided in the “Ownership” Glossary.

Lesson Instructions

1. Break the class into groups of 4-5 students.



2. Hand out the “Is It Fair Use?” Worksheet. Give Group 1 worksheets to some groups and Group 2 worksheets to the others.
3. Groups complete the “Is It Fair Use?” Worksheet. They must decide, among themselves, if Sara’s case qualifies as fair use in terms of the four factors of fair use. Refer students to the “Ownership” Glossary if they get stuck on the terms or forget the four factors.
4. Group presentations by students on their cases for whether or not Sara’s work can be defended under fair use.
5. Group Discussion.

Lesson Discussion Questions

Additional questions provided on the “Is It Fair Use?” Worksheet

1. For the scenario in **groups 1 and 2**, could Sara have made her creation without Damarkus’ photograph?
2. For **group 1**, what would have been lost if Sara couldn’t have used the photograph?
3. For **group 2**, at a broad scale, what consequences could you imagine if Sara were allowed to use the photograph?

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 owners the ability to control them and to profit from them for a limited time.
- Students should understand the definition of fair use—both its purpose, as a legal and creative balance between copyright holders and creators of new work, and the four-factor test that is used by the legal community to determine if a fair-use claim is valid.



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).
- Describe the purpose of fair use (attempts to balance the rights of copyright owners and creators of new content and to safeguard against private censorship by copyright holders).
- Identify key factors to consider when deciding whether a given appropriation is fair use (e.g., purpose and character of the use, nature of the copyrighted work, amount and substantiality of the portion used, financial effects).

Assessment Questions (Optional)

- What is the purpose of copyright? How is it meant to benefit creators and society?
- What is the purpose of fair use? How is it meant to benefit creators and society?
- Name at least 2 factors to consider when deciding whether a given appropriation is fair use.



Supplemental Lesson:

Is it Fair Use?

Worksheet Facilitator Copy

Group 1 Key

Sara and DaMarkus

Sara is an artist in New York City. Ever since she was in high school, Sara has been interested in why some women have body-image problems. Recently, she has been exploring this interest in her art—looking at how body image is affected by media, such as fashion magazines. Sara recently made a plaster cast of her body and decided she would combine her own realistic painting of her body with an altered image of a model’s legs from a photograph from a fashion magazine. She wanted to make a statement on how the media has distorted women’s perceptions of what their bodies should look like.

DaMarkus is the Paris-based fashion photographer of the original photograph and the photo’s copyright owner. His photograph features a model in an electric-lime-green bikini with 7-inch high heels walking next to a busy pool. All of the people in the pool are men who are looking at the model. DaMarkus licensed his photo for the magazine’s swimsuit issue that illustrated how high fashion can make a woman desirable to others. He received \$1,500 for the photograph from the magazine. DaMarkus has not licensed his photo since and has no plans to. He hasn’t felt any bad financial repercussions from Sara’s use.

Sara used only the model’s legs and altered the photo with her computer—elongating the legs, removing the background of the photo, and altering the colors to make the legs appear darker.

Sara’s work was recently bought by a new traveling museum that brings exhibitions on body image to high schools across the country. Sara received \$2,000 from the museum for her work.

Is Sara’s use fair use? Use the factors below to decide. (This case is loosely based on *Blanch vs. Koons*, 2005.)



Factor 1: The Purpose and Character of the Use

This factor looks at the reasons behind the new creation. Is the new creation for educational use or is it for profit? Is it transformative? Transformative use means that the new creator uses the source materials in a way that adds new meaning, points of view, or artistry to the original. Transformative use has been defined by the courts as the prime consideration in deciding fair use.

Is Sara's work transformative? Does her work add a new perspective? Is it for a commercial use? An educational use? Both?

A: Sara's work is transformative—she expresses a very different theme in an innovative way. Sara's work was for her commercial benefit, but museums are broadly educational. Factor one is in Sara's favor.

Note: it may be difficult for students to weigh financial benefit against transformativeness in determining factor 1. Previous cases such as *Koons vs. Blanch* have given more weight to transformativeness over financial benefit.

Factor 2: Nature of the Copyrighted Work

This refers to what the original work was intended to be. Was it creative or was it made for factual referencing? Is the work published? Fair use favors the use of factual, published works.

Was Damarkus' work published? Was it creative?

A: Damarkus' work was published and creative. Factor two would be in his favor. However, it is essential to impart to the class that Factor 1 is the most important factor.

Factor 3: Amount and Substantiality of Portion Used

Factor 3 refers to how much the new creator used in their new creation. Did the new creator take an amount that seems reasonable in the scope of their work as a whole, or did they just copy the original creation? There is no set amount; rather, the appropriated part is considered in relation to the purpose of the work. For example, in parodies (works that mimic the appropriated sources), creators can use large, substantial portions of the source.

Is Sara's use of the legs in Damarkus' photo an appropriate appropriation? Is it substantial when considering her entire creation?

A: Sara used a reasonable amount of content. In order to make her point that the fashion industry affects women's body images, she needed to make a significant reference to the types of creations that



Damarkus' work represents. She also only used the legs featured in the photo, cutting out the pool, male models, and the rest of the model's body. Factor 3 favors Sara.

Factor 4: Financial Effects on the Original Work

This factor examines what effect the new work has on financial value of the original work. Does the new work cut off financial rewards for the original creator when trying to sell his/her work?

Does Sara's creation impact the value of Damarkus' photograph? What are DaMarkus' plans for licensing his work?

A: DaMarkus hasn't felt any negative impacts on the market value of his work. He hasn't licensed the photo, illustrating that he didn't have plans for further use. DaMarkus received financial benefit for his work. Factor 4 favors Sara.

Decision: Fair Use?

A: Sara's use is a fair use of copyrighted materials.

Regardless of fair use, what do you think about Sara's use? Do you think she and others should be able to create new, "inspired-by" works? How could copyright affect her and other creators' abilities to make creative, new works that address issues in the world we live in? How can copyright benefit creators? What do you think DaMarkus would think about his photo being used in the way? Should Sara consider Damarkus' role as a creator? Regardless of the factors, is her use "fair"? Explain your reasoning below.

A: The class will express many different opinions on this matter. Impart to your class that appropriations are very important benefits to society and culture. When people are able to build upon other creations, they add to general knowledge, open society up to reexamine ideas, and allow for new voices to enter the public. Copyright can restrict creators from making their appropriated creations—this could be limiting for creators. Copyright can also protect creators; it allows creators to be able to financially benefit from their creations. Compensation allows for creators to continue creating. DaMarkus could be pleased to see his work used, or upset that the fashion industry (of which he is a part) is lampooned in Sara's work. Sara should consider DaMarkus. However, given the importance of her topic, Damarkus' concerns should be weighed against the possible impact her work can have on society. Creators should be responsible to each other, society, and the law.



Supplemental Lesson:

Is it Fair Use?

Worksheet Student Copy

Group 1

Sara and DaMarkus

Sara is an artist in New York City. Ever since she was in high school, Sara has been interested in why some women have body-image problems. Recently, she has been exploring this interest in her art—looking at how body image is affected by media, such as fashion magazines. Sara recently made a plaster cast of her body and decided she would combine her own realistic painting of her body with an altered image of a model's legs from a photograph from a fashion magazine. She wanted to make a statement on how the media has distorted women's perceptions of what their bodies should look like.

DaMarkus is the Paris-based fashion photographer of the original photograph and the photo's copyright owner. His photograph features a model in an electric-lime-green bikini with 7-inch high heels walking next to a busy pool. All of the people in the pool are men who are looking at the model. DaMarkus licensed his photo for the magazine's swimsuit issue that illustrated how high fashion can make a woman desirable to others. He received \$1,500 for the photograph from the magazine. DaMarkus has not licensed his photo since and has no plans to. He hasn't felt any bad financial repercussions from Sara's use.

Sara used only the model's legs and altered the photo with her computer—elongating the legs, removing the background of the photo, and altering the colors to make the legs appear darker.

Sara's work was recently bought by a new traveling museum that brings exhibitions on body image to high schools across the country. Sara received \$2,000 from the museum for her work.

Is Sara's use fair use? Use the factors below to decide. (This case is loosely based on *Blanch vs. Koons*, 2005.)



Factor 1: The Purpose and Character of the Use

This factor looks at the reasons behind the new creation. Is the new creation for educational use or is it for profit? Is it transformative? Transformative use means that the new creator uses the source materials in a way that adds new meaning, points of view, or artistry to the original. Transformative use has been defined by the courts as the prime consideration in deciding fair use.

Is Sara’s work transformative? Does her work add a new perspective? Is it for a commercial use? An educational use? Both?

Factor 2: Nature of the Copyrighted Work

This refers to what the original work was intended to be. Was it creative or was it made for factual referencing? Is the work published? Fair use favors the use of factual, published works.

Was Damarkus’ work published? Was it creative?

Factor 3: Amount and Substantiality of Portion Used

Factor 3 refers to how much the new creator used in his/her new creation. Did the new creator take an amount that seems reasonable in the scope of their work as a whole, or did they just copy the original creation? There is no set amount; rather, the appropriated part is considered in relation to the purpose of the work. For example, in parodies (works that mimic the appropriated sources), creators can use large, substantial portions of the source.

Is Sara’s use of the legs in Damarkus’ photo an appropriate appropriation? Is it substantial when considering her entire creation?



Supplemental Lesson:

Is it Fair Use?

Worksheet Facilitator Copy

Group 2 Key

Sara and DaMarkus

Sara owns a swimsuit boutique called Suit Up! in Newport, Rhode Island. Recently, business has been slow and Sara thinks advertising in some local papers might be a good way to attract customers. To keep costs down, Sara decided to make her own advertisement. She searched for images and came across a photo by a photographer named DaMarkus, which features a model in an electric-lime-green bikini with 7-inch high heels walking next to a busy pool. All of the people in the pool are men who are looking at the model. Sara added a caption to the photo (“Suit Up! and Get Noticed!”), cropped the photo to eliminate a few of the men, and changed both the color of the bikini and the model’s hair to bright red. Sara wanted to create an image-based ad that made it seem like getting a new bathing suit at her store would make her buyers feel attractive and admired. It seems to be working, as business is booming once again.

DaMarkus is the Paris-based fashion photographer of the original photograph and the copyright owner. DaMarkus licensed his photo for the magazine’s swimsuit issue that illustrated how high fashion can make a woman desirable to others. DaMarkus’ photograph is copyrighted. He received \$1,500 for the photograph’s license from the magazine. DaMarkus has licensed his photo to other magazines, a book on fashion, and several ad campaigns for perfume, sunglasses, and department stores. Recently, he lost a major campaign for a swimwear chain who wanted to use his photo after they discovered Sara’s ad.

Is Sara’s use fair use? Use the factors below to decide. (This case is loosely based on *Blanch vs. Koons*, 2005.)



Factor 1: The Purpose and Character of the Use.

This factor looks at the reasons behind the new creation. Is the new creation for educational use or is it for profit? Is it transformative? Transformative use means that the new creator uses the source materials in a way that adds new meaning, points of view, or artistry to the original. Transformative use has been defined by the courts as the prime consideration in deciding fair use.

Is Sara's work transformative? Does her work add a new perspective? Is it for a commercial use? An educational use? Both?

A: Sara's work is not transformative. She only made minor changes (color change, caption, and cropping). Her work does not add a new perspective; in fact, her ad has roughly the same message as Damarkus' photo (that one's fashionable swimsuit can get you noticed). Sara's work is also very clearly for a commercial purpose—the promotion of her store. Factor 1 favors DaMarkus. (Note: it may be difficult for students to weigh financial benefit against transformativeness in determining factor. Previous cases such as Koons vs. Blanch have given more weight to transformativeness over financial benefit.)

Factor 2: Nature of the Copyrighted Work

This refers to what the original work was intended to be. Was it creative or was it made for factual referencing? Is the work published? Fair use favors the use of factual, published works.

Was Damarkus' work published? Was it creative?

A: Damarkus' work was published and creative. Factor two is in his favor.

Factor 3: Amount and Substantiality of Portion Used.

Factor 3 refers to how much the new creator used in their new creation. Did the new creator take an amount that seems reasonable in the scope of their work as a whole, or did they just copy the original creation? There is no set amount; rather, the appropriated part is considered in relation to the purpose of the work. For example, in parodies (works that mimic the appropriated source), creators can use large, substantial portions of the sources.

Is Sara's use of Damarkus' photo an appropriate appropriation? Is it substantial when considering her entire creation?



A: Sara used almost the entire photograph in her ad. While she changed the color of the model's swimsuit, cropped the photo, and added a caption, the ad relies very heavily on DaMarkus' initial work. When considering her total creation, she has used a significant amount of his work. Factor 3 favors DaMarkus.

Factor 4: Financial Effects on the Original Work

This factor examines what effect the new work has on financial value of the original work. Does the new work cut off financial rewards for the original creator when trying to sell his/her work?

Does Sara's creation impact the value of DaMarkus' photograph? What are DaMarkus' plans for licensing his work?

A: DaMarkus relies on the licensing of his photos. He has begun to face major financial repercussions. Factor 4 favors DaMarkus.

Decision: Fair Use?

A: Sara's use is NOT a fair use of copyrighted materials.

Regardless of fair use, what do you think about Sara's use? Do you think she and others should be able to create new, "inspired-by" works? How could copyright affect her and other creators' abilities to make creative, new works that address issues in the world we live in? How can copyright benefit creators? What do you think DaMarkus would think about his photo being used in this way? Should Sara consider DaMarkus' role as a creator? Regardless of the factors, is her use "fair"? Explain your reasoning below.

A: The class will express many different opinions on this matter. Impart to your class that appropriations have very important benefits for society and culture. When people are able to build upon other creations appropriately, by recognizing others' contributions through payment and citation, they add to general knowledge, open society up to reexamine ideas, and allow for new voices to enter the public. Copyright can restrict creators from making their appropriated creations—this could be limiting for creators. Copyright can also protect creators; it allows creators to be able to financially benefit from their creations. Compensation allows for creators to continue creating. In this case, Sara may have thought she was building on DaMarkus' creation; however, she didn't really change his message and essentially profited from his work without crediting him in name or financial reward. Sara's work hurts DaMarkus and doesn't add to society's pool of knowledge or provide comment. DaMarkus would likely be upset that Sara didn't pay for his photo.



Supplemental Lesson:

Is it Fair Use?

Worksheet Student Copy

Group 2

Sara and DaMarkus

Sara owns a swimsuit boutique called Suit Up! in Newport, Rhode Island. Recently, business has been slow and Sara thinks advertising in some local papers might be a good way to attract customers. To keep costs down, Sara decided to make her own advertisement. She searched for images and came across DaMarkus' image. His photograph features a model in an electric-lime-green bikini with 7 inch high heels walking next to a busy pool. All of the people in the pool are men who are all looking at the model. Sara added a caption to the photo ("Suit Up! and Get Noticed!"), cropped the photo to eliminate a few of the men, and changed both the color of the bikini and the model's hair to bright red. Sara wanted to create an image-based ad that made it seem like getting a new bathing suit at her store would make her buyers feel attractive and admired. It seems to be working, as business is booming once again.

DaMarkus is the Paris-based fashion photographer of the original photograph and the copyright owner. DaMarkus licensed his photo for the magazine's swimsuit issue that illustrated how high fashion can make a woman desirable to others. DaMarkus' photograph is copyrighted. He received \$1,500 for the photograph's license from the magazine. DaMarkus has licensed his photo to other magazines, a book on fashion, and several ad campaigns for perfume, sunglasses, and department stores. Recently, he lost a major campaign for a swimwear chain who wanted to use his photo after they discovered Sara's ad.

Is Sara's use fair use? Use the factors below to decide. (This case is loosely based on *Blanch vs. Koons*, 2005.)



Factor 1: The Purpose and Character of the Use.

This factor looks at the reasons behind the new creation. Is the new creation for educational use or is it for profit? Is it transformative? Transformative use means that the new creator uses the source materials in a way that adds new meaning, points of view, or artistry to the original. Transformative use has been defined by the courts as the prime consideration in deciding fair use.

Is Sara’s work transformative? Does her work add a new perspective? Is it for a commercial use? An educational use? Both?

Factor 2: Nature of the Copyrighted Work

This refers to what the original work was intended to be. Was it creative or was it made for factual referencing? Is the work published? Fair use favors the use of factual, published works.

Was DaMarkus’ work published? Was it creative?

Factor 3: Amount and Substantiality of Portion Used

Factor 3 refers to how much the new creator used in their new creation. Did the new creator take an amount that seems reasonable in the scope of their work as a whole, or did they just copy the original creation? There is no set amount; rather, the appropriated part is considered in relation to the purpose of the work. For example, in parodies (works that mimic the appropriated source), creators can use large, substantial portions of the sources.

Is Sara’s use of DaMarkus’ photo an appropriate appropriation? Is it substantial when considering her entire creation?



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 (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, Kanye 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) **(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 (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.)**



Ownership Glossary

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.

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 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?
- 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?
- 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



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.

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