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Teaching With Writing

Winter 2013

Teaching With Writing: The WIC Newsletter

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Pre/Views

By Vicki Tolar Burton

Fair Use, English Language Learners, and More

We first learned of Digital Access Librarian Sue Kunda's deep knowledge of fair use of copyrighted material at a WIC lunch last May. Sue's insightful questions about visual literacy and her contributions on fair use of images led us to invite her to write an article on fair use for this newsletter. In her article "Helping Students Make Sense of Fair Use," Sue shares information that will strengthen teaching and writing at OSU. Students who borrow text and images from sources need instruction in fair and ethical use of the material, instruction they will need to receive from their WIC teachers. Sue Kunda gives us a fair use primer—perfect for our spring courses.

The INTO Pathways are leading more and more students to WIC courses, which means that WIC teachers must respond to the new challenges presented by this growing cadre of international writers in our classrooms. In her article "Working with L2 Students," Galina Romantsova, English Language Learning Coordinator for the Writing Center, encourages all OSU teachers to consider ways to reduce cultural bias in course design and to adjust responding to and grading the writing of ELL students in ways that are fair and reasonable. Have you heard the term "writing with an accent"? Read Galina's article to learn more.

Spring is the season for the WIC Culture of Writing Awards in the disciplines. Please remind your school or department to begin gathering nominees for the best undergraduate paper written in your unit this year. Find details in "Call for Culture of Writing Award Nominations."

And please join us for the 2013 WIC Spring Lunch Series. All faculty are invited, and we'll buy the pizza. Just RSVP by noon the Thursday before the lunch to 2013 WIC Spring Lunch Series.

Helping Students Make Sense of Fair Use

By Sue Kunda

Disclaimer: This article is intended for informational purposes only and does not constitute legal advice.

U.S. Copyright Law grants a number of exclusive rights to copyright owners, but those rights have various limitations. One of those limitations, fair use, is both a blessing and a curse for educators. It's a blessing because it gives us the right to use copyrighted materials without seeking permission from the copyright owner, but it can also be a curse due to misunderstandings and misinformation regarding fair use. Making matters worse is the circulation of various sets of classroom "guidelines" – on university and library websites – that have never been part of copyright legislation and are therefore, not legally binding. In fact, most classroom copyright guidelines are much too restrictive and, if followed to the letter, can erode and impair the educational mission of the University.

So if *we're* confused about copyright, what about our students? How do we help them think critically about using copyrighted materials in their classroom assignments when we're not even sure ourselves? This article will describe current fair use analysis and provide you with a framework to guide your students in making sound decisions about using copyrighted material in their work. I'll use actual student work to provide an example of fair use in action, show you how to teach students to think through and document their reasoning process, and provide additional sources that I've found especially useful.

Background

To fully understand and appreciate fair use, it's important to start with the reason for copyright itself. Although Hollywood, the recording industry and other large entertainment organizations would have us believe otherwise, the purpose of copyright, as established by the U.S. Constitution[1] is to:

"***promote the Progress of Science and Useful Arts...***"

The founding fathers believed giving authors and inventors a limited monopoly to their work would encourage them to share that work with the public, which would allow others to build upon it and further improve it.

The Copyright Act of 1976 provides a number of limits to a creator's monopoly in order to meet the Constitution's lofty goal[2]. One of those limits, fair use, is codified in Section 107 of the Copyright Act, which states,

"the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use),

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scholarship, or research, is not an infringement of copyright."[3]

As you can see, the fair use exemption targets the activities a typical university community engages in day in and day out – criticism, comment, teaching, research and scholarship. It's important to note, however, fair use is not limited to the uses and activities outlined in Section 107. Those responsible for drafting the fair use provision purposely used "such as" and other ambiguous wording in order to give greater flexibility to the doctrine. Just as they couldn't foresee the innovative practices digital technology would later afford (e.g., search engines, text-mining), we can't pretend to know how future researchers and scholars will engage with cultural and scholarly materials. Unfortunately, this lack of clarity creates confusion and uncertainty, which can in turn stifle our teaching and our students' learning.

Fair Use Analysis

Section 107, however, provides four factors to weigh when determining whether a use is fair or not. The four factors include:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.[4]

While courts weigh the four factors to resolve copyright disputes and educators refer to them when making decisions about using copyrighted material in the classroom, asking students to do the same is often impractical. We want them to understand the implications of making unauthorized uses of copyrighted materials. We want them to recognize their rights and responsibilities under fair use. But we want to provide them with a decision-making framework that is both legally sound *and* relatively uncomplicated.

Fortunately, modern fair use analysis does just that.

Recognizing the ambiguity in fair use court decisions, Pierre Leval, then a district judge on the Second Circuit, provided legal scholars with a more condensed view of the four factors.[5] Looking at the first factor (purpose and character of the use), which he considered "the soul of fair use," Leval determined that fair use decisions should be based on whether or not the use is transformative – does it add value, provide a different aesthetic sense or bring new meaning to the original or does it merely take the place of the first? The third factor (amount and substantiality of use), Leval opined, hinges directly on this idea of transformativeness – is the amount used in direct proportion to the purpose of the transformation? In other words, are you using only the amount you need to achieve your purpose?

Leval's reasoning has since been incorporated into a number of court decisions, most notably, the 1994 Supreme Court copyright law case, *Campbell v. Acuff-Rose Music, Inc.[6]*, which used the transformativeness standard to determine the legality of 2 Live Crew using Roy Orbison's "Oh, Pretty Woman" in their rap single, "Pretty Woman". Legal scholars may feel transformativeness is as equally ambiguous as the four-factor test, but, in my opinion, at least for the educational setting, we have a much better chance to engage students using the former rather than the latter. Remembering Leval's two questions about transformativeness and the amount taken is much easier to understand – and remember.

Students and Fair Use

When working with students, I like to walk them through an adapted version of Renee Hobbs' "Document the Fair-Use Reasoning Process" worksheet[7]. Ms. Hobbs is a tireless advocate for educators' and students' rights to use copyrighted materials in media literacy projects. She helped write the *Code of Best Practices in Fair Use for Media Literacy Education*[8], spearheaded the successful Copyright Office petition to allow K-12 educators to circumvent encrypted DVDs and online digital media for fair use purposes (the higher education community – including students – was granted rights in 2009)[9] and maintains an extensive copyright education library on her website. You can find the fair use reasoning process worksheet there or in the appendix of her book, *Copyright Clarity: How Fair Use Supports Digital Learning*.

Shown below is an example of an OSU graduate student's use of copyrighted material* in his 2012 thesis[10] and his use of the fair use reasoning process.

Original Image	Image with Student's Markup

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> **Movement:** The visual's sequential presentation of its components
>
> - Uses top-to-bottom and left-to-right motions of reading required by English
> - As illustrated by the inserted arrows, the large medical Red Cross navigates viewer's eyes from prominent "Help Her" to nurse's eyes
> - Following the direction of the soldier's eyes takes the viewer to the nurse's eyes
> - Nurse's headdress leads the viewer from nurse's eyes to her shoulder and down her arm, which reaches out to viewer as well as continues the visual pathway to the word "Join."

Pajak, Z. E. (2012). *Picture this, imagine that: the literary and pedagogic force of ekphrastic principles* (Master's thesis). 10 September. Retrieved December 13, 2012, from http://hdl.handle.net/1957/34331

*The age of this poster (1918) places it in the public domain and it can, therefore, be used for any purpose. I include it here merely for example.

1. What is the purpose of your project?

Answering this question sets the stage for making fair use determinations. Transformativeness rests, to a large extent, on using copyrighted works for a purpose different from the intent of the original.

I am using this copyrighted image in my graduate thesis.

2. Who is the target audience?

This question also helps set the stage. Repurposing a work for a completely different audience than the original helps make the case for Transformativeness.

The target audience for this thesis is K-12 and University instructors.

3. I am using (describe copyrighted material here) because (provide a reason here). *This final stage-setting question requires the student to think critically about the purpose for using the copyrighted material and will, hopefully, ensure there's a sound reason for doing so.*

I am using an image of a World War I poster because the arrangement of text and image create an urgent and emotional experience and achieve a strong rhetorical purpose.

4. Does your use of the work "transform" the material taken from the copyrighted

work by using it for a different purpose than that of the original? Explain why your work does not just repeat the intent and value of the original source material.

Students should describe how they've added value or repurposed the copyrighted material. Criticizing, commenting, marking up, deconstructing, making a parody, placing in context, and remixing are just a few examples of transformations.

The original work was used to encourage community members to donate to the Bayside, New York Red Cross. I'm using the poster as a pedagogical tool for helping students understand visual literacy.

5. Did you use only the amount you needed to accomplish your purpose? Explain why you used the portion you did.

Students should review their use of a copyrighted work to make sure the amount used is proportional with the purpose of their use.

I needed to use the entire poster to illustrate how its visual composition provides a powerful, crisp example of effective visual rhetoric, but I've used a reduced version of the image.

If a student answers 'yes' to the questions about transformativeness and amount, the use is most likely fair. If the student answers 'no' to one or both questions, I encourage them to make changes (if appropriate) so their use comes closer to the fair use ideal or consider using a resource not under copyright protection (one in the public domain or with a Creative Commons license[11]). Students are also free to request permission from the original creator if they discover their use is not fair.

When students create work that goes beyond the classroom walls (theses and dissertations, online media projects, etc.), I usually suggest they complete the "Document the Fair-Use Reasoning Process" worksheet and keep it with the final project. For most typical in-class assignments and projects, having students walk through the reasoning process may be sufficient.

There are several caveats to the above information:

Learn More

Books

Copyright clarity. (2010). Renee Hobbs. (Available in e-book format through OSU Libraries).

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A very quick and easy read written for both K–12 and higher education communities.

Copyright law for librarians and educators: creative strategies and practical solutions. (2012). Kenneth D. Crews. (2012 edition available at COCC; earlier editions available at Valley Library)

A more thorough analysis of copyright and its place in educational settings.

Reclaiming fair use. (2011). Patricia Aufderheide & Peter Jaszi. (Available in e-book format through OSU Libraries)

An eye-opening depiction of today's fair use environment.

Websites

Center for Social Media: Fair Use, School of Communications, American University.

Facilitated creation of "Best Practices in Fair Use" for creative and educational communities (media literacy education, academic and research libraries, communication scholars, use of images for teaching, research and study, film and media teachers, online video, etc.).

Copyright Advisory Office, Columbia University Libraries/Information Services.

Arguably *the* website for copyright, fair use and education is written and maintained by Kenneth D. Crews, Office Director and law professor. The site   contains everything you'll ever need regarding copyright and fair use in an academic setting. Topics include general copyright information, conducting searches for copyright owners, requesting permissions, distance education issues, copyright duration, fair use case summaries and much, much more.

Media Education Lab: Copyright And Fair Use: Lesson Plans for High School, College and Graduate Education

Renee Hobbs' website provides an extensive library (in multiple formats) of copyright-related educational materials, including the Fair Use Reasoning Process worksheet.

Videos

The following videos are examples of transformative uses of copyrighted works that you and your students might enjoy:

Buffy vs. Edward: Twilight Remixed

Perhaps the most celebrated remix on the web, at least in part, because of its travails with Lionsgate Entertainment, owners of the Twilight Franchise.

A Fair(y) Use Tale (NOT a Disney movie)

An explanation of copyright and fair use using Disney clips. The quality's not the best and it's difficult to hear at times, but the creator definitely makes his point.

Sue Kunda is the Digital Scholarship Librarian for OSU Libraries and recently received a certificate in Copyright Leadership and Management from the Center for Intellectual Property at the University of Maryland University College. She works with students and faculty on issues of copyright, author rights and Open Access.

[1] Stanford University Libraries. (n.d.). Primary materials. In *Copyright & Fair Use*. Retrieved February 15, 2013, from http://fairuse.stanford.edu/primary_materials/#usconstitution

[2] U.S. Copyright Office. (n.d.). Copyright law of the United States. In *Copyright*. Retrieved February 15, 2013, from http://www.copyright.gov/title17/

[3] U.S. Copyright Office. (n.d.). Copyright law of the United States. In *Copyright*. Retrieved February 15, 2013, from http://www.copyright.gov/title17/92chap1.html#107

[4] Ibid.

[5] Leval, P. N. (1990, March). Toward a fair use standard. *Harvard Law Review*. Retrieved February 15, 2013, from http://docs.law.gwu.edu/facweb/claw/levalfrustd.htm.

[6] Cornell Law School. (n.d.). Campbell v. Acuff-Rose Music (92-1292), 510 U.S. 569 (1994). . In *Legal Information Institute*. Retrieved February 15, 2013, from http://www.law.cornell.edu/supct/html/92-1292.ZS.html

[7] Hobbs, R. (n.d.). Document the fair-use reasoning process. In *Media Education Lab*. Retrieved February 15, 2013, from http://mediaeducationlab.com/document-fair-use-reasoning-process

[8] Hobbs, R. (n.d.). Code of best practices in fair use for media literacy education. In *Media Education Lab*. Retrieved February 15, 2013, from http://mediaeducationlab.com/code-best-practices-fair-use-media-literacy-education-0

[9] U.S. Copyright Office. (n.d.). Section 1201 exemptions to prohibition against circumvention of technological measures protecting copyrighted works. In *Copyright*. Retrieved February 15, 2013, from http://www.copyright.gov/1201/

[10] Pajak, Z. E. (2012). Picture this, imagine that : the literary and pedagogic force of ekphrastic principles (Master's thesis). 10 September. Retrieved December 13, 2012, from http://hdl.handle.net/1957/34331

[11] Creative Commons. (n.d.). About the licenses. In *Creative Commons*. Retrieved February 15, 2013, from http://creativecommons.org/licenses/

Working with L2 Students

By Galina Romantsova

The number of international students (L2 learners) on American campuses is increasing. Their cultural and language proficiency make it challenging for them to meet academic expectations in courses designed for domestic (L1) speakers. For L2 learners, these expectations constitute a distinct cultural bias, and they are caught in

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a double bind. First, the assignments contain cultural content "designed with American students in mind" (Cox, 2011). Second, the evaluation of L2 student writing does not take into account written accent and the language acquisition process. These biases present very real barriers to student learning. As WIC faculty, we need to make sure that our assignments are not inherently biased.

Many assignments require a sophisticated understanding of American culture, information that is unfamiliar to international students who have not spent much time in the United States. Additionally, these writing projects require students to analyze, synthesize, and apply this culturally-biased information in their papers. Lacking this knowledge, L2 students are unable to perform at the level of their domestic peers, and, as such, receive negative evaluations based on the content of their writing.

Lacking an understanding of the language acquisition process, faculty often evaluate L2 writing as inferior and mistake students' lack of linguistic proficiency as a lack of intellectual readiness (Cox, 2011). To perform at the same level as a domestic student, L2 learners must acquire two types of fluency: Basic Interpersonal Communication Skills (BICS)—the language skills needed to survive in social situations—and Cognitive Academic Language Proficiency (CALP)—the language and skills we employ in the academy (Cummins, 1979). According to Cummins' model, BICS takes about 2-3 years to develop, while CALP takes an additional 5-7 years. Unfortunately, not every L2 student has had the requisite 7-8 years of intensive exposure to English that they would need in order to perform at a level comparable to that of a domestic student.

Many of the L2 students we see are in a transitional mode from BICS to CALP. Normally, graduate students have higher levels of CALP. However, even at CALP-proficient levels, students might still have a measure of written accent (missing articles, incorrect prepositions, etc.) in their writing. These written accent features do not diminish our understanding of student writing and, as such, could (and should) be overlooked. Punishing students for their grammar/accent only leads to lower L2 student participation in class discussions and negative learning experiences. In addition, creating biased grading rubrics that give grammar too high an emphasis (up to 50% of a grade), shifts focus from the content. As such, biased evaluation gets in the way of student learning.

L2 students in a writing class are often seen as "a problem" that disrupts the curriculum. Seen through a culturally-biased lens, L2 learners' linguistic challenges make it difficult for faculty to see whether students understand course content and also make it difficult for faculty to evaluate student writing. However, the presence of English language learners is a great opportunity to create curriculum that promotes learning opportunities for a diverse student population. According to Paul Matsuda, a leader in the field of second language writing studies, "As teachers, we cannot make students learn; we can only create a condition in which learning can happen" (2012). If grammar is one of the priorities on a rubric, then the number of points for grammar should be proportionate to the amount of time spent teaching it in class (Matsuda, 2012). By adjusting the instruction of the course to suit the needs of a diverse student population, teaching faculty can offer assignments and evaluation practices that do not punish students for their linguistic challenges, but instead provide them with the instruction they need to achieve the outcomes of the course (Matsuda, 2012).

Work Cited:

Cox, Michelle. (2011, December 21). WAC: Closing doors or opening doors for second language writers? *Across the Disciplines, 8*(4). Retrieved February 20, 2013, from http://wac.colostate.edu/atd/ell/cox.cfm

Cummins, J. (1979). Linguistic interdependence and the educational development of bilingual children. Review of Educational Research, 49(2), 222 – 251.

Matsuda, Paul. Let's Face It: Language Issues and the Writing Program Administrator. *WPA 36.1* (Fall/Winter 2012), 141-163.

Eating-to-Learn Seminars! The WIC Spring 2013 Lunch Schedule
by Team WIC

We are excited and enthusiastic to announce the topics, guest speakers, and schedule for the WIC Spring 2013 Lunches. **This spring, all lunches will be held in Milam 215 from noon to 1 p.m**. If you would like to RSVP for any particular one, please click the "Register for this seminar here" text that follows the description of the seminar you wish to attend; you may of course attend more than one seminar. If you have any questions regarding the seminars, please contact Zach Pajak at zach.pajak@oregonstate.edu. As always, delicious pizza, beverages, and other snacks are on us!

Friday, April 12

Web and Document Accessibility Techniques
Gabriel Merrell (Office of Equity and Inclusion)

Disabilities may hinder students' ability to navigate and engage with the web and other documents essential to their education. It is paramount that all resources be made available and accessible to students with disabilities. Our presenter will discuss and provide resources on how to create, ensure, and affirm equal access and equal opportunity to all students. Register for this seminar here.

Friday, April 26

Teaching Science and Professional Writing: An Interdisciplinary Panel Discussion
Christine Pastorek (Chemistry), Ehren Pflugfelder (School of Writing, Literature, and Film), Allen Sprague (WIC)

The coherent transmission and communication of ideas is essential to science writing, technical writing, and students' professional development as writers and speakers across disciplines. Three panel presenters will offer ideas, insights, and strategies for helping students write as professionals in the field. Register for this seminar here.

Friday, May 3

Helping Students Make Sense of Fair Use
Sue Kunda (Valley Library)

As discussed in Sue Kunda's Winter 2013 newsletter article, fair use is "both a blessing and a curse for educators ... So if *we're* confused about copyright, what about our students?" Our presenter discusses how we help students think critically about using copyrighted materials, and provides a helpful framework to guide students and additional useful sources on the topic. Register for this seminar here.

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Friday, May 17

Cultural Rhetoric in the Writing Classroom
Rebecca Valdovinos (INTO)

For all students, the culture in which they grow up influences their writing; this is called "contrastive rhetoric." This presentation identifies the topic as "cultural rhetoric," and recognizes, discusses, and offers insights into this important, sensitive subject as a fundamental element to all students' development as writers in a diverse world. Register for this seminar here.
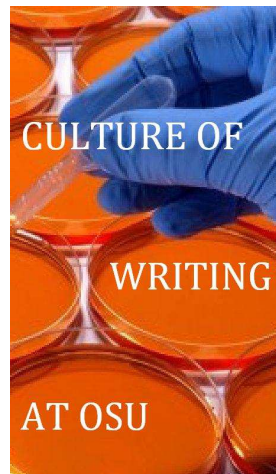
Call for Culture of Writing Award Nominations

By Team WIC

As spring term arrives, please remember to nominate outstanding undergraduate student essays for a WIC Culture of Writing Award. Recognizing exceptional student writing communicates to our students and the university that good writing matters in every discipline. Participating units (schools, departments) seek nominations from the faculty and select the best paper. WIC then awards $50 matching funds to each unit for the writing prize winner. What a great way to acknowledge the hard-work and talent of our undergraduate writers!

Once departments have chosen a paper to nominate, fill out the nomination form and submit it to WIC Assistant Coordinator Zach Pajak (Zach.Pajak@oregonstate.edu) by 5 PM PST, May 31, 2013. The complete policy and submission instructions are on the WIC website here.

Here are a few tips and models for the award nomination process:

CULTURE OF WRITING AT OSU

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