GEORGE LUCAS EDUCATIONAL FOUNDATION

MEDIA LITERACY

A Teacher's Guide to Copyright and Fair Use

There are rules when it comes to using copyrighted material in the classroom—and easy ways to make sure you're always in the clear.

By *Karen Lagola*

March 22, 2021

Michael Morgenstern / The iSpot

While some school districts have resources and policies to help teachers navigate the tricky waters of copyright and fair use, many teachers are under the impression that because they're educators, they have blanket protections.

But copyright and fair use laws are nuanced, and just because you're a teacher doesn't mean you're always in the safe zone. They're also not a nicety: In rare cases, school districts have *been fined* (https://apnews.com/article/fab401d4af034c9687e10e16e99e0582) for violating copyright, so paying attention to the details of fair use and copyright can protect you and the school district. Educating yourself on the substance of the issue is also important because as a teacher you *model proper use* (http://copyrightandcreativity.org/) for your students so that they can protect themselves, too.

Copyright and fair use law has become a topic of concern as technology has increasingly lowered the barriers to sharing, copying, and creating at any time, making us all potential publishers and distributors of content. It's become a lot easier to break the rules. Particularly in the digital age, copyright is about collective responsibility and protection—and digital citizenship.

WHAT'S PROTECTED AND WHAT'S NOT

American copyright law originates *in the U.S. Constitution* (https://fairuse.stanford.edu/law/us-constitution/#:~:text=Article%20I%20Section%208%20%7C%20Clause,their%20respective%20writings%20and%20discoveries.%E2%80%9D) and automatically protects all original, creative work in a fixed form; *the moment a work is created* (https://www.copyright.gov/help/faq/faq-general.html#:~:text=No.,infringement%20of%20a%20U.S.%20work.), it is protected. Generally speaking, works created after January 1, 1978, are covered by copyright for a term equaling the life of the author plus 70 years after their death. The original works by Shakespeare, Dickens, Frederick Douglass, and *just recently* (https://www.dramatistsguild.com/taxonomy/term/1834) F. Scott Fitzgerald's *The Great Gatsby* and Alain LeRoy Locke's *The New Negro: An Interpretation*, for example, are in the public domain and are no longer protected by copyright. In addition, copyright doesn't apply to facts and public information, print maps, or government documents or pictures,

so images and text from sources like NASA, the Smithsonian, and the National Archives can be used without permission.

The copyright for works that are not part of these exceptions is invisible and active at all times, of course, so it can be helpful to think about it like this: In most contexts, works created by others have a "No trespassing" sign on them. If you simply ignored a "No trespassing" sign on land, you'd be in violation of the law, right? Same thing with creative works, whether it's a doodle or the *selfies you took* (http://mttlr.org/2014/09/who-owns-copyright-in-a-selfie-when-its-captured-with-one-persons-phone-but-by-another-persons-finger-and-what-if-that-other-person-is-actually-a-monkey-or-a-bradley-coope/) with a friend's phone.

Within the context of educational and classroom settings (including online classes), copyright is a little more nuanced. There, even copyrighted material can be used if it's for face-to-face, instructional purposes and the educational institution is a nonprofit.

Teachers and most schools are therefore protected fairly broadly, allowing them to make use of films and articles from sources like the *New York Times* or *Scientific American*, as long as they do so in the context of instruction. Sharing a link to a recent *Washington Post* article in your learning management system, or to a video from PBS or CNN, is permissible if it's for the purposes of instruction and the educational institution is a nonprofit. Copying and distributing works created by others, however—for example, printing out whole articles and distributing them to your class—is generally riskier. In such cases, copyright law is more lenient when the copied material is not copied in whole or is not distributed to the whole class.

Be careful, as well, with any so-called creative works that you use in the classroom, like books, poems, movies, or songs. Generally speaking, even if you're using them for instructional purposes, these types of creative work are protected. In most cases, school systems purchase copies of those assets—or the students themselves are asked to purchase them—which gives everyone rights to consume them. Meanwhile, if you're using anything in this category for purposes that are not instructional, like showing a Pixar movie as a reward or during recess on a rainy day—without any instruction—then you're clearly infringing on copyright.

MAKING SENSE OF FAIR USE

To add to the confusion, there's the *fair use doctrine* (https://www.copyright.gov/fair-use/more-info.html), which is designed to promote freedom of expression (which is critical in educational settings) by permitting "the unlicensed use of copyright-protected works under certain circumstances"—a sort of legal counterbalance to copyright that allows for creativity. If there is a dispute about copyright, then judges use *four factors* (https://fairuse.stanford.edu/overview/fair-use/four-factors/) to determine if something is protected by fair use.

Generally speaking, courts factor in the purpose of the use (did you use it for instructional purposes, for example); the nature of the original (was it fiction or more factual, for example); the amount of the work used (using all of the work, or especially important parts of the work is risky); and the value of the work (if your actions materially impact the ability of the artist to make a living, that infringes on copyright).

An important caveat: Use of content in the service of satire is OK, so if you're using or creating memes as part of your lesson plan, you're in the clear.

QUICK TIPS TO PROTECT YOURSELF

Given how nuanced copyright and fair use are and the complexities of digital use and sharing, these tips can help keep you in the safe zone.

Limit your exposure: Use a password-protected space like Google Classroom or any learning management system (LMS) to share published materials with your students, instead of using your class webpage. That way, you're sharing to the students in your class only.

Use Google's Tools setting: After a search for an image has produced results, click Tools/Usage Rights/Creative Commons license to filter images.

Install browser extensions: Install add-ons from *Flaticon's Icons for Google Slides and Docs* (https://www.flaticon.com/for-google) and *Noun Project* (https://thenounproject.com/for-google/) so that you can easily search and insert free images.

Use *Project Gutenberg* (https://www.gutenberg.org/): It's a library of over 60,000 free e-books (and counting) for which copyright has expired. You can read them in a browser or on Kindle, or opt to download them. All of Shakespeare's work is there, for example, in addition to *Narrative of the Life of Frederick Douglass, an American Slave*, and works of many other authors.

Bookmark Creative Commons sites: The emergence of the internet spawned an innovation in copyright management called *Creative Commons* (https://creativecommons.org/), which allows the creators of photos, videos, and text to apply transparent copyright rules and make the content available broadly. *The Creative Commons search tool* (https://search.creativecommons.org/) is invaluable for finding content you can use legally. Also bookmark sites that collect images, videos, or text that is shared under liberal Creative Commons rules—like *Flickr* (https://www.flickr.com/), *Pixabay* (https://pixabay.com/) (images, videos, and music), and *Unsplash* (https://unsplash.com/) (photos); *Noun Project* (https://thenounproject.com/) (icons and photos); and *Bensound* (https://www.bensound.com/), which has a library of free audio files—in addition to higher-quality files you need to purchase. Share the bookmarks with your students.

Don't forget Wikipedia: It's the grandfather of Creative Commons sites. You can copy or alter the text of this comprehensive resource, updated by volunteers who are often experts, if you *include the backlink* (https://en.wikipedia.org/wiki/Wikipedia:Copyrights#:~:text=Wikipedia%20content%20can%20be%20copied,attribution%20requirement%3B%20see%20below%2
. Students should *be warned* (/article/teaching-students-how-use-wikipedia-wisely), of course, that Wikipedia is subject to hacks (both malicious and comical), and the information should be verified with other sources.

Make use of free audiobooks: *Multiple sites* (https://bookriot.com/11-websites-find-free-audiobooks-online/) like *Librivox* (https://librivox.org/) and *Spotify* (https://www.openculture.com/2016/09/hear-75-free-high-quality-audio-books-on-spotify.html) share free audiobooks. Titles on Spotify range from George Orwell's *Animal Farm* to Hans Christian Anderson's *The Fir Tree*.

Use resources from government sites: *NASA* (https://www.nasa.gov/), the *National Archives* (https://www.archives.gov/), *the Smithsonian* (https://www.si.edu/), *primary sources* (https://www.loc.gov/programs/teachers/about-this-program/) from the Library of Congress, and materials from state or local government agencies are a treasure trove for teachers.

Know that there isn't an urgency exemption: No matter how desperate the situation or noble your intentions, don't make and distribute copies of entire books, workbooks, study guides, practice books, or even an entire page from a textbook. Purchase enough copies for each student, or obtain permission from the owner to make copies.

Avoid copying and distributing "creative material": Novels, plays, movies, and poems are far more likely to be exempt from fair use.

Use published sources: Never copy and distribute unpublished material.

When in doubt, reach out: If a publication or resource you need is out of print and you cannot buy it (e.g., an out-of-print book), reach out to the publishing company and *ask permission* (https://copyright.universityofcalifornia.edu/use/obtaining-permission.html) to make copies.

Plan ahead: Don't wait until the last minute and use something in haste.

SHARE THIS STORY

FILED UNDER

Media Literacy