

Fair Use in Media Literacy Education FAQ

Media Education Lab at Temple University

Educators need to make better use of their fair use rights under copyright law. The [Code of Best Practices in Fair Use for Media Literacy Education](#) [1] helps clear away the copyright confusion and, in the process, encourage the use of mass media, popular culture and digital media as a means to build students' critical thinking and communication skills. Here, the [Media Education Lab](#) [2] answers some common questions about the Code.

What is the Code of Best Practices in Fair Use for Media Literacy Education?

[The Code of Best Practices in Fair Use for Media Literacy Education](#) [1] is a document that clarifies how fair use applies to the most common situations where media literacy educators make use of copyrighted materials in their work. It provides support and guidance for media literacy educators so that they can make their own reasoned and informed judgments about fair use. It addresses five areas of educational practice:

1. using copyrighted materials in media literacy lessons;
2. using copyrighted materials in creating curricula;
3. sharing curriculum materials;
4. student use of copyrighted materials in their work; and
5. developing audiences for student work.

How is the Code different from all of the educational use guidelines?

This Code is meant to offer guidance, not guidelines. Many educators are unaware that rigid guidelines (such as the 'ten percent rule' or the '30 second rule') are the results of negotiated agreements and are not, in fact, law. When we spoke with over 200 media literacy educators, we found that many found such guidelines to be confusing and restrictive. Fair use was not intended to be an inflexible list of rules. The Code of Best Practices relies on themes and principles based on the everyday needs of media literacy educators in order to help media literacy educators come to their own reasoned conclusions about what is (or isn't) fair use.

Why was the Code created?

When we conducted interviews with media literacy educators in 2006-2007, we discovered that most media literacy educators are confused and overwhelmed with conflicting information about copyright. The results are reported in the study, [The Cost of Copyright Confusion for Media Literacy](#) [3]. Some typical problems show that copyright confusion leads to:

1. Less effective classroom teaching. Teachers in K-12 settings have been stymied by school policies that limit their use of taped off-air and digital materials for media literacy education. A number of teachers voiced concern about the dampening effect of these policies on the creative use of media and popular culture to promote critical thinking and communication skills. Teachers are afraid to use real examples of real media in their classrooms, because of the message they have been receiving about copyright compliance.

2. Fewer quality teaching materials. Because many teachers are less familiar with the rapidly changing media tastes of adolescents, they depend on media literacy curriculum materials created by experts. However, these materials are scarcer than they need to be, in part because educators are not taking advantage of the rights that the fair use doctrine affords them. Worried about clearance issues, publishers have been leery of publishing materials for media literacy education. Many high-quality materials are unavailable or hard to access because of the limits of self-publication. Many teachers avoid even informal sharing of media literacy materials they have created with colleagues in other schools. In particular, they feel they must forego the advantages of the World Wide Web as a tool for circulating curricular materials since their materials include excerpts from copyrighted works.

3. Chilling of student work. Because of their fear of violating copyright, teachers make assignments based on their expectation that student media productions will not circulate beyond the classroom, limiting the ability of student work to reach real audiences and address genuine issues of community importance. Students who do produce critical commentaries of contemporary media have difficulty getting these works submitted to festivals and competitions. As a result, this important work is not shared with broader audiences.

4. Misinformation perpetuated. Few media literacy teachers in our study included a focus on copyright and fair use in their teaching, although some expressed a wish to do so. Most told us that they themselves 'don't know enough' to teach about the topic. Others communicate ad-hoc, groundless rules of thumb, and then let students ignore them. For instance, one teacher lets her middle-school students get their material from the Internet but does not let them use any clips from DVD movies in their video productions.

Why are media literacy teachers the subject of this work?

Media literacy educators face these problems every day, because of the nature of their work. Media literacy materials, curricula and resources are created by classroom teachers, librarians, educational publishers, leaders of youth media organizations, college professors, media professionals, and especially by children, teens, and students themselves. All of these people need to use copyrighted materials--- film and television clips, newspaper and magazine articles, popular music, online images, and other digital media content--- as an essential part of their own work.

Why is this a problem now?

It's a chronic problem, but it's getting worse as mediamaking becomes more ubiquitous and as media use in classrooms becomes ever more common. At the same time, concern over running afoul of extended copyright protections severely constrict our educational mission and our expressive ability when it comes to issues concerning mass media and popular culture. As Henry Jenkins has explained, increasingly the amateurs, fans, non-professionals, and citizens making media are reasserting their user rights. The rapid rise of participatory culture has created new opportunities that were not evident when people largely conceptualized media as a one-way medium dominated by large corporations and mass media culture.

How was the Code of Best Practices developed?

We conducted in-depth interviews with over 60 media literacy educators in order to determine the scope of the problem. Then, we held small group meetings with 150 educators in cities around the country where we discussed and debated hypothetical situations pertaining to fair use. The themes that arose in those meetings were used as the basis for the Code of Best Practices in Fair Use for Media Literacy Education.

You left it up to the teachers to decide this? What about the lawyers?

Educators need to make better use of their fair use rights under copyright law. The Code of Best Practices in Fair Use for Media Literacy Education helps clear away the copyright confusion and, in the process, encourage the use of mass media, popular culture and digital media as a means to build students' critical thinking and communication skills. Here, the Media Education Lab answers some

common questions about the Code.

Actually, the teachers are the ones who really have to decide what they think is fair and reasonable. They're the ones who know best how to interpret the general conditions for fair use laid out in the law. In assessing what is (or isn't) fair use, courts are strongly influenced by information about what constitutes accepted practice whatever field is involved. Our project is an attempt to apply this insight by helping media literacy educators to develop their own strong consensus about appropriate (and inappropriate) use. The Code was authored by media literacy educators who are familiar with the daily needs of educators and then subjected to rigorous legal review by a team of expert lawyers.

Wait a minute. Is this just some copyright experiment?

No, this is an approach that has worked in the past. In fact, recently, Aufderheide and Jaszi worked with documentary filmmakers, in a project that resulted in the [Documentary Filmmakers' Statement of Best Practices in Fair Use](#) [4]. This process, coordinated through the Center for Social Media and the Program on Information Justice and Intellectual Property, and funded by the John D. and Catherine T. MacArthur Foundation, the Rockefeller Foundation, and the Ford Foundation, resulted in fundamental change in business practices and liberated creativity and free speech for documentary filmmakers.

Because of the Documentary Filmmakers' Statement, industry practice actually changed. In less than two years, the Statement enabled films to be released into theaters and on television, enabled new projects to be conceived, saved filmmakers millions of dollars in costs, and convinced insurers, historically extremely cautious about risk, that insuring fair use was good business practice.

This project helped filmmakers to better understand the protections afforded by fair use and helped them to rely upon it where appropriate. Through this process, filmmakers persuaded distributors, broadcasters, insurers and other gatekeepers to accept well-founded assertions of fair use in place of affirmative rights clearance. The Documentary Filmmakers' Statement of Best Practices in Fair Use has also been helpful to copyright owners by clarifying what is fair use, and it now provides potential defendants with a basis on which to show that his or her uses were both objectively reasonable and undertaken in good faith.

How can I learn more?

After November 11, 2008, you can read Code of Best Practices in Fair Use for Media Literacy Education [here](#) [1], and get additional curriculum materials at the [Media Education Lab](#) [5]

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