

**Using Copyrighted Works in Our Own Creations:
Fair Use, Creative Commons, Permissions, and Public Domain**



PURPOSE

To help students understand ethical and responsible ways for creating new media with others' work.

PREPARATION

- Prepare computer/screen to show videos
- Preview all videos in the lesson and the Student-directed Online Learning videos to ensure they are appropriate for your class. Where possible, download videos, rather than stream. View YouTube links in ViewPure.com for more secure viewing.
 - **VIDEO:** Phineas and Ferb Parody of PSY Gangnam Style
<https://www.youtube.com/watch?v=F4yhA3DUkn0>
 - **VIDEO:** "Creativity, Copyright, and Fair Use for Ethical Digital Citizens" (4 min): <https://www.youtube.com/watch?v=h7QmSKHCQoY> or download here: <https://goo.gl/gVRfOZ>
 - **VIDEO:** "Help! I Need Something: Finding Creative Work with (Almost) No Restrictions," <https://goo.gl/9TTwN6> (5 min)
 - **VIDEO (Optional):** "Wanna Work Together" (3 min): <https://creativecommons.org/videos/wanna-work-together/> or https://youtu.be/J_oBBcY5Qkk
 - **STUDENT-DIRECTED ONLINE LEARNING VIDEOS**
Found here: <http://ikeepSAFE.org/copyright-for-students/>

C.1	Using Copyrighted Works in Our Own Creations: Fair Use, Creative Commons, Permissions, and Public Domain (3 min)	https://youtu.be/ILTxP1OBrx0
C.2	Using Others' Creative Work With Permission (4 min)	https://youtu.be/Gfl_QMVuQE
C.3	Help! I Need Something: Finding Creative Work with (Almost) No Restrictions (5 min)	https://www.youtube.com/watch?v=-2mtXzxJ3gc
C.4	(Optional) Creative Commons: Wanna Work Together (3 min)	https://youtu.be/J_oBBcY5Qkk
C.5	Permission Not Required (Fair Use section ONLY with intro/outro) (5 min)	https://youtu.be/IIQmOITxW5E
C.6	Fair Use in the Real World: Jon Stewart, Food Chain Barbie, Richard Prince, and More (14 min)	https://youtu.be/EBmhr_Jbfbk

Gathering Discussion

Have you ever watched a great movie or heard a great song and been inspired to do something creative when you saw or heard it? *[Accept responses.]*

It's great to draw inspiration from the creativity around us. But, what if you want to re-use part of someone else's work in something new that you are writing or creating yourself? Did you know there are ways to do this without permission that are still legal and fair to the artist?

Watch this video. What's going on here?

PLAY VIDEO: Phineas and Ferb Parody of PSY Gangnam Style

<https://www.youtube.com/watch?v=F4yhA3DUkn0>

What's going on in this video? Do you remember Psy's Gangnam style video? It has almost 2.5 billion views on YouTube. Obviously, the creators of Phineas and Ferb are copying the sound and the look and the dance steps of Psy's Gangnam video which are copyrighted. Why might that be OK?

There are three ways we can share or re-use other's creative work, responsibly and ethically, in our own works:

- fair use
- getting permission from the copyright owner (either directly or through a Creative Commons license)
- public domain

In the Phineas and Ferb video, why might the producers be able to use elements of the Gangnam Style video? *[Accept responses and follow up with the following explanation: Maybe they got permission. Or this might be a fair use situation. They copied elements of Psy's video to poke fun at Psy's song. In other words, this might be a parody, and parodies are generally protected as a fair use within copyright.]*

The videos you'll watch at home will go into more detail about the different ways we might re-use someone else's work in a project of our own. Let's start with fair use.

PART 1: FAIR USE

Fair use is an important part of copyright that allows limited use of copyrighted work without permission for purposes such as commentary, criticism, parody, teaching, and works that are "transformative." Fair use promotes creativity and innovation. Classic examples of fair use include quoting from books, movies, or poems in reviews and commentaries, articles, book reports, and parodies. Have you done any of those before? *[Accept responses.]*

This video will help us understand when our use of another person's work might be a 'fair use.'

PLAY VIDEO: "Creativity, Copyright, and Fair Use for Ethical Digital Citizens" (4 min)

<https://www.youtube.com/watch?v=h7QmSKHCQoY> or download here: <https://goo.gl/gVRfOZ>

Optional Homework: Self Portrait

You will all have a chance to create something that involves fair use. Make a self portrait from images you cut from magazines, newspapers, or print from online sources. Cut out and arrange the images together to produce a new image of yourself. *Show the example of the image at the beginning of the lesson.* Bring your self-portraits to share after you have completed the at-home learning components of this lesson.

PART 2: PERMISSION

We just talked about Fair Use, but what if you're not in a fair use situation or maybe you're just not sure. Are there ways to re-use or copy someone's work without having to wonder if you're infringing on their copyright?

If you have a particular work in mind, you might need to ask for the artist's permission. Artists and creators can give permission to copy and re-use their work. This can mean giving specific, direct permission to particular users. However, an easier way to use work with permission is to choose something from the massive collection of creative work that has been licensed for you to use for free! This is called Creative Commons. Artists who give their work a Creative Commons license are giving permission in advance for you to use and re-use their work in your own. Depending on which license they chose, you might have to follow some requirements, but many Creative Commons works are available to use without any restrictions.

Let's watch a video that explains this.

PLAY VIDEO: "Help! I Need Something: Finding Creative Work with (Almost) No Restrictions,"

<https://www.youtube.com/watch?v=-2mtXzxJ3gc> or download: <https://goo.gl/9TTwN6> (5 min)

Let's talk about the Creative Commons system described in the video. Creative Commons is really just another example of the creator giving permission—but it's permission for everyone, instead of an individual user. With Creative Commons, artists choose to give permission for their work to be used *in advance and for free*. This allows you to copy or re-use a creative work (photo, song, video, software) according to the way the artist licensed it. You just have to follow the terms of the license. One place to find creative work that has been licensed to share and re-use for free is the Creative Commons website.

[Show the Creative Commons webpage: <http://creativecommons.org/about>

(Optional) Show video: "Wanna Work Together" (3 min):

<https://creativecommons.org/videos/wanna-work-together/> or https://youtu.be/J_oBbcY5Qkk]

By the way, you might also consider using a Creative Commons license for one of your own creations. If you want to let people share and re-use your work, you can give it a Creative Commons license that spells out what you allow.

PART 3: Public Domain

As you saw in the video, we can also copy and re-use works from the public domain. What do we mean when we say 'public domain'? *[Accept responses: when we say 'public domain,' we mean all the creative work that is not currently subject to copyright protection. This includes works for which the copyright has expired and works to which copyright never applied in the first place, such as government documents.*

Creative works in the public domain are free for everyone to use, share, and copy. (But, remember, you still should cite your sources, even if they're in the public domain.)

NOTE: The online lessons will go into more detail on how to tell which works are part of the public domain and how to find works in the public domain to use in your own creations. For now, we will focus on presenting the concept.

STUDENT-DIRECTED ONLINE LEARNING

Found here: <http://ikeepSAFE.org/copyright-for-students/>

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IN-CLASS WRAP UP

Fair Use

Let's review what we know about Fair Use. Unfortunately, there is no hard-and-fast rule about what counts as fair use. There is a four-factor legal test that can be difficult to determine, but to simplify, a use is more likely to be a 'fair use' if:¹

¹ Fair use is an important part of copyright law that allows the public to use copyrighted work without permission in certain situations that are still fair to the artist/creator. Fair use is a legal doctrine that is decided on a case-by-case basis and can be difficult to determine. As we try to simplify fair use for students, we have used the shorthand of saying kids may use content they "need" for educational purposes. However, fair use analysis always involves full consideration of the four factors, weighed together as a whole:

1. **Purpose & Character of Your Use:** Is your use noncommercial, rather than commercial? Is your use transformative because it adds new expression to the original, like a parody, or because it uses the original for a new purpose, like for teaching? If so, that favors your fair use claim.
2. **Nature of the Original:** Is the work to be copied factual/informational, or is it highly imaginative/creative? Using a factual/informational work is more likely to be fair use, while using an imaginative work is less likely to be fair use.
3. **Amount & Substance:** Is the amount you used limited to what is necessary and reasonable in light of your purpose? If yes, this will help your fair use claim. Even if you've only used a small portion, have you taken and used the "heart" of the work? In some cases, this will hurt your fair use claim.

Your use is for commentary, news-reporting, criticism, parody, or a non-commercial purpose such as education. For example, using a clip of a song or movie in a project you're doing for school generally. On the other hand, if your use could potentially serve as a replacement for the original in the marketplace, it's less likely to be fair use.

The at-home learning videos showed several examples of fair use. Which do you remember?

[Accept responses: review fair use examples.]

Self Portrait Homework Wrap-up

[If students did the self portrait homework activity, ask them to show their creations.]

What do you think of these? Do you think the creators of the images you used would object? Does it seem "fair" to them? Does it hurt their ability to profit from their work, or would it discourage them from creating new work in the future? Could the images in your collage substitute for the originals in the marketplace?

Do you think this is a fair use of the original images?

This is a fair use because:

- We have produced something new with a new meaning or purpose that differs from the artist's original meaning or purpose. We aren't just redistributing the original images.
- Our new work will not substitute for the original in the marketplace. It won't undermine the ability of the magazine publishers, photographers, or artists to sell, license, or otherwise distribute their work, because the collage you made is not a substitute for the original images.
- Beyond those reasons, this is for a class lesson, so its purpose is educational and non-commercial.
- Also, many of you may have used only portions of images rather than whole images. This favors fair use as well. However, even if you used a whole photo or image, that might be OK too if it was really necessary. Some images are only useful if you use the whole thing, because if you only take a piece, the viewer can't tell what it shows. For example, a close up photo of a car is recognizable only if you show the whole thing.

Permissions

Direct Permission: We can also use creative work by getting permission from the owner/creator. Let's review one of the examples from the at-home learning:

- Layla McCalla with Langston Hughes' poetry
- Sony Bravia Bouncy Balls Commercial with Jose Gonzales "Heartbeats" song:
 - Sony certainly got permission and likely paid the artist to use the song. Could Sony have used this without permission? *[No.]*

Creative Commons: What did you learn from the videos about Creative Commons? *[Accept responses. Creative Commons provides a licensing system that allows people all over the world to license their own works in advance for others to share and use responsibly and respectfully. Artists choose to give permission for their work to be used in advance and for free. This allows you to use a creative work (photo, song, video, software, etc.) according to the way the artist licensed it. You just need to follow the terms of the license. Creative Commons works can be*

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4. **Effect on the Market:** Could your use affect the market by substituting for the original in the marketplace (e.g., making copies of textbooks for students.)? Even if it's not a substitute, could it occupy markets to which the copyright owner is entitled (e.g., markets for sequels and other derivative works)? This will hurt your fair use claim.

found at the Creative Commons website or in any Google search by using SEARCH TOOLS → USAGE RIGHTS.

Public Domain

We can also use works in the public domain. What do we mean when we refer to the public domain? *[Accept responses. Public domain refers to all the creative work that is not currently subject to copyright protection. This includes works for which the copyright has expired and works to which copyright never applied in the first place, such as US government documents. Creative works in the public domain are free for everyone to use.]*

The public domain is full of a rich history of art and music. Works from the public domain are used, and re-used, and remixed for new creative work by many people throughout history, and you are free to do the same. You don't need permission.

In-class Activity 1: Memes (5 minutes)

Have students find images in the public domain to use in making a meme. Share memes on a class Instagram account or other class site if you have one.

[NOTE: Take care not to post student identities or associate first names with faces on a class account.]

In-class Activity (or optional homework): Navigating Materials (Fair Use, Creative Commons, Public Domain)

Split class into groups of 2-3 people each. Assign each group to prepare a presentation on a topic relevant to your class curriculum.

- 1. Each group must find 5 images to use in the presentation:
 - a. 2 images from the public domain;*
 - b. 2 images licensed through Creative Commons, and*
 - c. 1 regular copyrighted image. (Your use of the copyrighted work for this classroom project counts as a fair use.)**
- 2. All borrowed materials should be attributed to the original creator (i.e. cite your sources)! Even though attribution is not required by copyright law, it's part of being an ethical student and avoiding plagiarism.*
- 3. All materials with Creative Commons licenses should follow the terms of the license, including attribution. Show the license icon with attribution.*

Conclusion

You can be inspired by all the creative work around you. If you use others' work to make your own new creative works, be fair. Be a savvy digital citizen—ask yourself: Who owns this work? Is this a fair use situation where it would be OK for me to use it without permission? Should I contact the artist/owner for specific permission? Or, should I go find a work from the public domain or a work with a Creative Commons license?

END

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