

Copyright Clarity



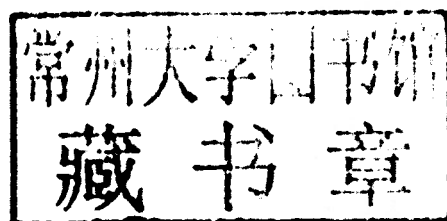
How Fair Use
Supports Digital Learning

RENEE HOBBS

Foreword by Donna Alvermann

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Copyright Clarity

Foreword

C*opyright Clarity: How Fair Use Supports Digital Learning* is a book that will make a significant difference in how I design my college courses for K–12 classroom teachers, media specialists, and school librarians from this point forward. In fact, I cannot imagine writing another syllabus without Renee Hobbs’s book close at hand. It is that essential.

For too long a time, copyright “law” had eluded me, and like many other colleagues who were equally unsure about their rights and responsibilities as users, I simply avoided numerous forms of copyrighted materials that undoubtedly would have enhanced both my instruction and my students’ learning. Although I was vaguely aware of the doctrine of fair use, I had assumed wrongly that, in principle, it was a concept meant to work against me. I now know differently, thanks to Renee Hobbs, who has written an immensely readable text on why fair use is actually an ally of teachers and students immersed in 21st-century literacies.

All of this was brought home to me when a student in one of my methods classes this semester used the term “copyfright” to signal her concern that a project she was planning on fan fiction for a high school English class might be in violation of certain copyright guidelines as she understood them. I realized then that *Copyright Clarity* could not go to press soon enough. I wanted to give this student a copy of the book, but since that was impossible, we talked through some of the issues Hobbs lays out in a chapter that explains a process K–12 educators and teacher educators can employ to determine the rights and responsibilities of fair use. Going through that process provided the self-confidence I needed to address questions from other students who had similar concerns about using copyrighted materials for their final projects.

Copyright Clarity is more than a simple eye opener on fair use, however. It deftly teaches, as well. Real-world examples abound, and there are several opportunities for the reader to engage in an inquiry process while turning the pages. In fact, I found myself dog earring numerous pages as I read, promising myself that no longer would I let certain assumptions (even myths) about seeking permissions deter me from incorporating copyrighted materials that I needed to make learning both meaningful and memorable in my students' eyes.

Finally, a book on topics as sensitive as copyright and fair use must provide documentation that is above reproach. Here, Renee Hobbs' scholarship and experience as a media literacy educator instilled the credibility that I was seeking. In a nutshell, *Copyright Clarity* is easily the most important book I have read this year.

Donna E. Alvermann
University of Georgia

Preface

Perhaps you're wondering why you should even pick up this book. What do educators really need to know about copyright?

Well, it turns out that we're in the middle of a great civic and cultural awakening about the topic of copyright and fair use, one that's increasing in visibility and importance as a result of the Internet and communications technology. Educators have a vital role to play in this process.

The doctrine of fair use is central to the enterprise of education—and this book shows why educational leaders and classroom teachers must join scholars, librarians, and others to understand their responsibilities and to advocate for their rights under copyright law.

I was motivated to write this book when I found myself sitting in the audience at a major educational technology conference, in a room filled with 150 people, listening to a presenter who was scaring teachers to death with distorted and inaccurate misinformation about copyright. People left the room more unsure and more fearful than when they arrived. This book provides a genuine alternative to the doom-and-gloom message you might be familiar with, the one that tells you, “Just *don't* do it.”

I promise: This book will forever change the way you think about copyright.

After reading this book, you'll have a confident understanding in the role that copyright and fair use play in promoting the development of students' literacy and learning. You and your students will be able to be truly *responsible* in using copyrighted materials and be able to take advantage of your *rights* under the doctrine of fair use. Most importantly, you'll have the knowledge you need to share these ideas with friends, family, colleagues, and others who care about the future of 21st-century literacy and learning.

Acknowledgments

Like many teachers, my computer laptop and office files are full of copyrighted materials: newspaper articles, book chapters, lesson plans, photos, films and videos, and computer programs. I'm lucky to have learned a lot about copyright and fair use over the years. But there won't be any legal jargon in this book because I'm not a legal expert, and this isn't the kind of book you can use to get free legal advice.

Before I began this project, I was pretty confused about copyright myself. I thought that only lawyers had the right to answer copyright questions. That's one of the myths of copyright that needs to be corrected. It seems that, when it comes to copyright, there's so much anxiety and insecurity about the topic that everyone—even lawyers—adopt a deferential tone, hypercautious in their interpretation of the law.

However, it turns out that, according to the law itself, *citizens themselves must interpret and apply the doctrine of fair use according to the specifics of each context and situation.*

How do educators gain the confidence to do this? Inspiring leadership has come from people like Carrie Russell at the Office for Information Technology Policy of the American Library Association (ALA), who has worked to make copyright law accessible to librarians and citizens nationwide. She reminds us that people must make a fair use determination based on sound judgment and the careful consideration of the situation at hand. She writes, "Those who prefer a 'yes' or 'no' answer may be troubled by the ambiguous nature of fair use, but fair use cannot be reduced to a checklist. Fair use requires that people *think*."¹ This book is motivated by the desire to promote the kind of critical thinking that Carrie Russell recognizes as essential for both teachers and learners alike.

I'm particularly grateful to Patricia Aufderheide of the Center for Social Media at American University, who launched me on this journey by sharing her passion, helping me to understand that copyright and

fair use is a free-speech issue. Pat's approach to scholarship-in-action is a model of inspiration to me. When Pat introduced me to Peter Jaszi, a distinguished legal scholar at American University Washington College of Law, I was in for a treat. Day by day, my understanding of copyright grew until I felt confident enough to share my knowledge with students and colleagues.

Pat, Peter, and I were truly honored to receive financial support from the John D. and Catherine T. MacArthur Foundation to create *The Code of Best Practices in Media Literacy Education*. My research assistant, Katie Donnelly, provided valued support for this project. Kristin Hokanson, David Cooper Moore, and Michael RobbGrieco all developed creative resources that helped this project to thrive. Thanks also go to the more than 200 educators from across the nation who helped us clarify how copyright applies to their work in a series of interviews and focus-group meetings. Kenneth Crews of Columbia University provided valuable insight on this project by sharing his expertise on copyright in education. Most of all, I would like to thank Professor Peter Jaszi, on whose brilliance, kindness, and expertise I have relied. The most important concepts presented in this book are those I have learned from him.

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About the Author



Renee Hobbs is one of the nation's leading authorities on media literacy education. She spearheaded the development of the *Journal of Media Literacy Education* to support the work of media literacy educators and scholars. She has created numerous award-winning videos, Web sites, and multimedia curriculum materials for K-12 educators and offers professional development programs to educators in school districts across the United States. Her research examines the impact of media literacy education on academic achievement and has been published in more than 50 scholarly and professional books and journals. She is a professor at the School of Communications and Theater at Temple University in Philadelphia and holds a joint appointment at the College of Education. She received an EdD from the Harvard Graduate School of Education, an MA in communication from the University of Michigan, and a BA with a double major in English literature and film video studies from the University of Michigan.



In the 21st century, teachers and students are using mass media, popular culture, and digital technologies to support the learning process.

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Copyright Matters for 21st-Century Learning

I began teaching teachers about media literacy back in the 1980s, when VHS tapes were the latest technology—it was the age of dinosaurs, it now seems. I would bring in a handful of tapes, which I had cued up, including excerpts from TV news, advertising, movies and popular television programming to demonstrate a variety of instructional techniques for developing critical analysis skills in responding to mass media and popular culture and show how creative media production activities support literacy and learning in English language arts, social studies, and health education.¹ Today, because media literacy is mandated in nearly all of the state curriculum frameworks, I cross the country offering teacher workshops. To develop learning activities for media literacy, I now use my digital video recorder to record television programs, manipulating and storing clips on my laptop.

Today, educators are discovering that 21st-century learners benefit from approaches that build creativity, critical thinking, and problem solving skills in the context of civic literacy and global awareness.² Students now make active use of multimedia texts, tools, and technologies. They are engaged in collaborative, hands-on work as both readers and writers of messages in print, visual, electronic, and digital forms.

But with every group of teachers I work with, there's a question that always comes up with an increasing spirit of trepidation: "Is it legal to use copyrighted material like this?"

“Of course,” I say. Like many media literacy educators, I use copyrighted materials under the doctrine of fair use, Section 107 of the Copyright Law of 1976. Users have the right to use copyrighted materials without payment or permission, depending on the specific context and situation of the use.

It is ironic that, at a time when online digital technologies are enabling educators to create and share an ever-widening array of texts, sounds, still and moving images, music, and graphic art, we are seeing a dramatic increase in the climate of fear among educators concerning the use of these resources for teaching and learning. And since fear reduces innovation, those of us who promote the use of digital media as tools for teaching and learning need to sit up and take notice.

Educators and Students Use Copyrighted Materials

With the rise of the Internet, it is becoming easier and easier to find and use documents, primary sources, and other materials including articles, documents, images, videos, games, and music. Nearly everything online is copyrighted.

And even the simple act of reading may trigger copyright issues. For example, when you read something online, you must make a digital copy of it to access it. So, copying is deeply implicated in the very act of using a computer.

Children and young people have a vast array of choices for information and entertainment. In this mediated childhood, they are simultaneously consuming and creating large quantities of media messages.³ According to a recent encyclopedia on children, adolescents, and the media,⁴ here’s some of what’s happening.

- Parents buy Baby Einstein videos for their infants in the mistaken belief that they build cognitive or perceptual skills.
- Preschoolers are watching the Sprout cable channel, a 24-hour channel just for them. They are lap-surfing with their moms, and practicing their social networking skills playing Club Penguin when they are six.
- By the time children are eight years old, they will generally be spending eight hours daily in some form of media-consumption experience, whether that be watching television or movies, playing videogames, sharing text messages, or listening to music.

- Children enjoy online games and post to social networking Web sites or talk with friends online.
- By high school, some teens are uploading photos, writing snappy captions, and putting their own poetry, art, and writing online.
- Student-produced videos, created over the weekend by friends just for fun—or for an assignment in Latin, biology, or history—are uploaded to YouTube, where they can be seen by millions.

As a result, parents, educators, and civic leaders are all beginning to recognize the need for a new set of competencies that are essential for engagement and cultural participation in 21st-century society. These include the four components of the definition of *media literacy*, which was developed at a convening at the Aspen Institute in 1993: “the ability to access, analyze, evaluate and communicate messages in a wide variety of forms.”⁵ As British media scholar Sonia Livingstone has explained,

Each component supports the others as part of a nonlinear, dynamic learning process. Learning to create content helps one to analyze that produced professionally by others; skills in analysis and evaluation open the doors to new uses of the Internet, expanding access, and so forth.⁶

Media literacy learning occurs at the college and university level, in high schools and elementary schools, with parents, and in environments like adult education, youth media, and public-access centers. Media literacy education vitally depends on the ability of educators to be able to use and manipulate copyrighted materials from digital media, mass media, and popular culture.

While they come from many different disciplines and types of educational backgrounds, educators who make use of media literacy concepts share a focus on critical inquiry.⁷ They often use the instructional method of close analysis or deconstruction, as well as formal and informal media production activities. Viewing and discussion activities are also common.

But today’s media literacy teachers operate in an environment where practically every object of interest is protected by copyright. Typically, they teach analytic skills with examples of photojournalism, news, documentary, advertising, reality shows, comedies, sports programs, music videos, videogames, Web sites, and even home-shopping shows. A growing number of educators make active educational use of downloaded videos from user-generated content

sites such as YouTube. Some access music or spoken-word files from purchases at iTunes or Audible. They often teach production skills along with critical thinking by encouraging students to produce new work that in part comments on or draws from existing work, capitalizing on students' appetite for popular-culture consumption and creative activities.

Here are some teachers who make use of media literacy educational practices:

Sarah Wing, a second-grade teacher at the Russell Byers Charter School in Philadelphia, explores the topic of media violence with her students. She invites students to talk about movies they have seen that might have scared them. They discuss the difference between realistic violence and fantasy violence and learn about using the film ratings to make decisions about what kinds of shows are appropriate and inappropriate for them.

Heidi Whitus, a teacher at the Communication Arts High School in San Antonio, Texas, videotapes off-air from television shows using a VCR. Heidi digitizes parts of the television programs and movies that she wants to use in the classroom and converts them to QuickTime files so she can use them in the classroom or reproduce them so her students can use them. She uses these clips to discuss and analyze the form and structure of visual media, exploring how issues of authorship, representation, technology, and culture are expressed in each work.

Cyndy Scheibe, a psychology professor and director of Project Look Sharp, a media literacy initiative at Ithaca College, uses comic strips from newspapers to involve students in a critique and commentary of the values messages have embedded in them. Her team at Project Look Sharp has created online curriculum materials about the media's representation of the Middle East that features clips from the Disney film, *Aladdin*. Another curriculum on the representation of war makes use of *Newsweek* magazine covers depicting the Vietnam War, the Gulf War, and the conflict in Afghanistan.

Caleb Smith, who teaches film and video at the Capital Area School for the Arts in Harrisburg, Pennsylvania, uses a "falsification" assignment, where he gives students dubbed and digitized copies of television programs and teaches editing by asking students to reedit a particular scene differently to communicate a different meaning than the original episode. In viewing the completed projects, students discover that meaning can be created through juxtaposition and sequencing.

Kristin Hokanson, a technology integration specialist at Upper Merion High School, helps teachers use digital media for teaching and learning. In one situation, she helped the biology teacher develop an assignment where students created a "virtual zoo,"