# The Routledge Companion to Media Education, Copyright, and Fair Use

Edited by Renee Hobbs

# THE ROUTLEDGE COMPANION TO MEDIA EDUCATION, COPYRIGHT, AND FAIR USE

Media literacy educators rely on the ability to make use of copyrighted materials from mass media, digital media, and popular culture for both analysis and production activities. Whether they work in higher education, in elementary and secondary schools, or in informal learning settings in libraries, communities, and non-profit organizations, educators know that the practice of media literacy depends on a robust interpretation of copyright and fair use. With chapters written by leading scholars and practitioners from the fields of media studies, education, writing and rhetoric, law and society, library and information studies, and the digital humanities, this companion provides a scholarly and professional context for understanding the ways in which new conceptualizations of copyright and fair use are shaping the pedagogical practices of media literacy.

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*Edited by*
*Renee Hobbs*

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Dedicated to the memory of Elizabeth Thoman

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# Part I

# FOUNDATIONAL ISSUES

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# 1

# MEDIA EDUCATION, COPYRIGHT, AND FAIR USE

## *Renee Hobbs*

When my longtime colleague and friend Elizabeth Thoman, founder and director of the Center for Media Literacy in Los Angeles was developing a curriculum to help educators explore the pervasiveness of violence in the media, she did not worry about whether teachers and communities would engage with the topic. From the volume of phone calls and letters she was receiving back in the early 1990s, she knew that parents, educators, and community leaders were clamoring for resources to help them teach about media violence as a social issue. Thoman had designed the comprehensive Beyond Blame: Challenging Violence in the Media curriculum to promote dialogue, discussion, and critical thinking among children, young people, and adults of all ages who were being bombarded with violent images from the media and popular culture.

For example, for middle school students, lessons include activities that invite students to become more aware of what they are watching on television and to consider why television violence attracts attention. Students analyze TV and film narratives to study how aggressive behavior is presented as a "solution" to social problems and how heroes engage in violence that is often depicted as justified and noble. They explore how media violence may affect behaviors, increase fear, and contribute to desensitization. They consider the various responsibilities of the media industry, government, and viewers in relation to media violence.

Of course, Thoman wanted to reduce children's exposure to media violence, knowing that exposure to too much media violence can be harmful. She also wanted to change the impact of violent images by enabling youth to deconstruct different genres, including news, cartoons, drama, sports, and music. She also wanted people to consider the complex parameters of media violence as a social and political issue, including First Amendment concerns, the consequences of Reagan-era deregulation of the media industry, and the role of violence as part of the American mythology of independence. All in all, Thoman believed that media literacy education could be a necessary component of violence prevention.

Although the Center for Media Literacy was located in Los Angeles, only minutes away from major television and film companies, Thoman was certainly not worried about the topic of media violence being "too controversial." But she did worry about the legality of her intention to use copyrighted materials as part of the curriculum. She intended to package the lesson plans and curriculum materials along with a VHS tape with clips from a variety of movies and television shows that featured violence in all its many forms. She did not want her small nonprofit organization to face a lawsuit.

Ever since the early 1980s, educators had been using home videotape recording to capture television programs, advertising, and news using short clips for educational purposes in the classroom. Media educators make active use of copyrighted works in the practice of teaching and learning, using artifacts of popular culture, mass media, digital media, or other artifacts that are not traditionally defined as educational media. But the question of whether curriculum materials could be created and sold with clips from commercial copyrighted media content, including materials produced by major television networks, was an open one and a source of concern.

After consultation with a copyright lawyer, Elizabeth Thoman decided to move forward using a clip compilation reel as part of the curriculum. She placed a label on the packaging, asserting her fair use rights to use copyrighted content without payment or permission, citing Section 107 of the 1976 Copyright Act, which states:

> Notwithstanding the provisions of sections 106 and 106A, 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), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall 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. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

The Beyond Blame curriculum became one of the best-selling curriculum products at the Center for Media Literacy, reaching thousands and thousands of students, teachers, and community members. When Thoman (2003: 609) reflected on her work in an article published in the *Federal Communications Law Journal*, she noted that the conceptualization of the public interest was becoming a "vast wasteland." The problem? In part, she acknowledged:

> [the] morass of contradictions in the intellectual property, copyright, and Fair Use regulations (and their interpretations) which threaten to stifle and even shut down the process of critical inquiry—of comment and criticism that is so fundamental for an educated citizenry in a democratic society in this or any century.
>
> (Thoman (2003: 609)

In the article, Thoman described the typical questions that she had experienced in teaching teachers:

- "Can I show that movie clip in the classroom?"
- "Can I make thirty copies of this ad so every student can read the fine print?"
- "Can my students bring in taped examples from TV that demonstrate different persuasion techniques?"

She recognized that the climate of fear was impacting teachers' confidence in using media literacy pedagogies, noting that teachers felt their jobs could be at risk if they or their students bring unauthorized material into their classrooms. She described how librarians had been forced into the role of copyright police and how school district lawyers, lacking expertise in copyright law, often too strictly interpreted the doctrine of fair use. Even more troubling, she noted, was the position of educational producers and textbook publishers, who were quite often a division of some larger media conglomerate. Their reluctance to incorporate contemporary media as "texts" for analysis into curriculum materials was strangling the development of media literacy education in the United States.

In many senses, the volume you are holding in your hands is the product of Thoman's own legacy because she was among the first to urge media literacy educators to address the problem of copyright confusion. Aware that this volume will be read by those from across a wide disciplinary spectrum, in this chapter, I orient the reader to this complex and multifaceted field. First, I provide some definitions of media education that reflect its diverse interdisciplinary formulations in relation to the dialectic of protection and empowerment, which helps to explain why there are so many different perspectives on issues of copyright and fair use in the context of education initiatives. Then I preview the contributions of the authors in this volume, whose chapters collectively provide a state-of-the-art examination of the intersections between media education, copyright, and fair use.

## Matters of Definition

Of course, the terms "media education" and "media literacy" are just some of many now in circulation to describe the competencies people need to thrive in relation to mass media, popular culture, digital media, and contemporary culture. Scholars and academics have been debating "what to call it" for more than fifty years as they aim to describe the dynamic and multifaceted competencies needed for thriving in a world full of media. In the 1970s, the term "critical viewing skills" became popular (Brown 1991). During the 1980s, academic conferences in communication featured raging debates about the use of terms like "media literacy" and "media education," as scholars sought to distinguish between teaching with and teaching about media. Tyner (1998) considered media education to be a transitional concept in recognition of the sensitivity around definitions and terms associated with expanding the concept of literacy. In the 1990s, the need to distinguish between focusing on educational processes and learning outcomes emerged. For example, the term "youth media" emerged as the preferred term to describe a particular set of pedagogical practices whereby students analyze and create media outside of educational institutions (Goodman 2003). More recently, definitions and terminology have emerged that acknowledge the differences between teaching in higher education settings and working with younger learners, both in and out of school (Aspen Institute Task Force on Learning and the Internet 2014).

Among the international community of media literacy scholars, the term "media literacy" can be a source of continuing debate because some languages lack a term that equates to literacy. The emergence of terms like "media competence," "media fluency," and "transliteracy" reflects the global growth of the field (Grafe & Breitner 2014). With the support of the European Union, media literacy education researchers have developed, implemented, and assessed how media literacy may help address the challenges of discrimination in contemporary societies (Ranieri 2016), and scholars have even begun to examine youth media programs in developing nations (Asthana 2012). Approaches to media literacy education in urban schools assume distinct forms that connect to students' lived experience and identification with popular culture (Morrell et al. 2013). Overall, the field is replete with diverse theoretical and methodological frames and practical initiatives designed to influence support the work of parents, teachers, and children and young people in particular community contexts.

Definitional issues continue to be a challenge partially because of the exceedingly rapid changes in technology and the rise of digital authorship. A constantly changing media ecosystem has encouraged a forward-looking orientation toward the practice of learning how to create and compose with media formats, genres, and tools. Digital media technologies have changed dramatically over a relatively short period of time. Thinking back to my own authorship experiences with making media, I made my first film on Super 8 film while an undergraduate in the late 1970s; about then I also got to make my first video using a Sony Portapak video camera, with videotape reel-to-reel recording. I typed my dissertation on a DEC Pro 350 computer in the 1980s, with a very primitive word processor; I started using CompuServe in 1989 to use a new technology called e-mail. Through this, I was also able to host lively discussion board dialogues between my college students at Babson College and students enrolled at Ohio State University. In the 1990s, I made my first documentary film using a high-end video camera, working with a professional editor using a nonlinear editing system. I worked with a team of web developers and programmers to create an interactive digital learning game for girls ages 9–14. By the time I created the Media Education Lab website using Drupal and created my own WordPress blog, web technologies had already become relatively simple for nonspecialists to use.

Today, I assign my students the job of creating podcasts, infographics, vlogs, screencasts, and even memes. So it’s no wonder that the definitions are in flux. As a variety of disciplines and subdisciplines have contributed to the field, they all engage learners in analyzing and creating media. The dynamic quality of the terms used reflects the changing nature of media systems and enrolls a wide variety of stakeholders well beyond those in the scholarly and academic community.

Today, activists, librarians, business leaders, government officials, and creative media professionals are part of the media education community, even if they use terms like “new literacies,” “critical literacy,” “connected learning,” “digital media and learning,” “digital citizenship,” or other terms. As we will see in this chapter, media education is aligned in relation to a dialectic of empowerment and protection, reflecting the public’s complex love–hate relationship with mass media, popular culture, and digital media. Each of these perspectives offers insight on how copyright and fair use are conceptualized as a dimension of learning and teaching.

## Dialectic of Empowerment and Protection

Paradigms of empowerment and protection affect how media literacy educators conceptualize their goals and shape their pedagogical strategies, which is why digital and media literacy education may differ from place to place, depending on the particular values and motivations of educators (Hobbs & Tuzel 2017). Protectionist perspectives have been part of U.S. cultural discourses about media since the introduction of film at the turn of the 20th century (Polan 2007). Concerns about media violence increased during the 1960s and 1970s as Marshall McLuhan’s engaging thesis about the interplay between form and content (“the medium is the message”) and the return of tribalism (“the global village”) influenced a generation of educators, who were observing shifts in the attention spans, interests, and values of students who were growing up with commercial television.

Research on media effects has examined the differential processes by which media may have influence on attitudes and behaviors (Valkenberg & Peter 2013). George Gerbner first helped to explore the relationship between media usage and children's aggressive behavior and built alliances with those concerned about advertising, materialism and exposure to gender, racial, and ethnic stereotypes, with the goal of "trying to awaken television viewers from their stupefaction" (Stossel 1997: 1). When the birth of cable television brought into American living rooms a 500-channel universe, one that was largely free from the regulatory demands placed on broadcasting, medical professionals and child development specialists grew concerned about the impact of media on children's attention span (Villani, Olson, & Jellinek 2005). Reflecting the perspective that media literacy education could counter the negative effects of media, Elizabeth Thoman developed *Media&Values*, a magazine that ran for fifty-nine issues from 1977 to 1999, growing to a distribution of over 10,000 copies, with media literacy lesson plan kits to encourage educators to bring lessons to life in the classroom (Robb Grieco 2014).

Media literacy educators and scholars have been battling to secure their legal rights to use popular culture for critical analysis and learning for nearly thirty years. That's because, in order to critique media and popular culture, it is necessary to make use of examples from Hollywood, Madison Avenue, and Silicon Valley. In the early 1990s, in his efforts to advance media literacy among university students, Sut Jhally at the University of Massachusetts–Amherst developed educational videos demonstrating the deconstruction and analysis of commercial mass media. Jhally made a video for his class using 165 clips from music videos he had taped at home using a VHS video recorder. In the video titled *Dreamworlds: Desire/Sex/Power in Rock Video*, Jhally's narration replaces the music "as clips of scantily clad women, some chained and bound, appear on the screen" (Professor's Class Video 1991). After MTV sent Jhally a cease and desist letter, he took his case to *The New York Times* to defend his right to make fair use of the clips under the Copyright Act of 1976. Today, Jhally's nonprofit organization, the Media Education Foundation, employs a staff of ten and makes a variety of films about the commercialization of childhood, pornography, pop-cultural misogyny and sexism, consumer culture, and the environment. The organization's aim is to inspire students to think critically and in new ways about the hypermediated world around them (Media Education Foundation 2017).

Interest in these issues transcends disciplinary boundaries. Psychologists and education specialists, as they came to recognize that reading and writing were literacy practices bound up with particularities of culture and society (Vygotsky & Cole 1978), also began to need to use copyrighted content in their scholarly and educational work. These scholars used the term "literacy" in a very broad way: to refer to communicative and cultural practices for making sense of the world. The term "critical literacy" (or "critical pedagogy") was used to emphasize the idea that literacy practices were inherently inflected with ideologies of power, as both media messages and pedagogical practices might evoke forms of racism, classism, sexism, and homophobia perpetuating inequality (Shor 1980). Perhaps the most famous of the critical literacy scholars is Henry Giroux, who has identified how free market ideology and privatization may weaken the practice of democracy. Giroux recognizes that if "education has a political role to play," it must imagine itself as a mechanism for changing the world by encouraging both resistance and hope "in order to challenge unquestioned modes of authority" (Giroux 2004: 79).

Teaching people to critically analyze media and explore power relationships in culture is aided by the use of images, films, television shows, news stories, video games, and advertising. Most typical is the practice of learning to identify stereotypes of race, class, and gender. Working in underfunded poor and urban public schools, teachers unveil how media reproduce inequality and justice, thus reducing power differentials between students and teachers. Instructional strategies include reading or viewing media and popular culture from a resistant perspective, producing counter-texts, researching topics of personal interest, and challenging students to take social action (Behrman 2006). In Australia, critical media literacy moved from the margins to the mainstream because it became part of a semiotic "toolkit" in a statewide curriculum (Luke 2000). Critical media literacy is "an educational project that engages with critique of the worlds of work, community life, media and popular and traditional cultures" (Luke 2000: 459). As a result, the products of mainstream popular culture, often produced by Time Warner Disney and News Corporation are used as objects of critical inquiry. Media literacy educators who are oriented to protectionist perspectives make active and regular use of copyrighted content as a means to examine and critique the power relationships and other potential harms and risks of life in a mediatized society.

## Empowerment Perspectives

Media literacy educators and students may also use copyrighted content when involved in learning experiences designed for other goals. Empowerment perspectives generally have their theoretical roots in alignment with the work of John Dewey, who first conceptualized the complex and dynamic relationship between communication and education (Dyehouse 2016).

Media literacy educators make an important distinction between teaching with and teaching about media, and yet, in reality, these distinctions are continually blurred. Both strategies require the use of copyrighted content. In the 1930s, high school courses in film appreciation were proposed, implemented, and assessed by Ohio State University professor Edgar Dale as a strategy for engaging adolescents in the discussion of film as a way to build communication and critical thinking skills (Nichols 2006). In the 1960s, the term "visual literacy" emerged in the literature of communication and education (Snelson & Perkins 2009), referring to the perceptual, cognitive, and interpretive competencies associated with understanding and using many new types of images and symbols beginning to flood the cultural environment with the rise of mass market magazines and broadcast television. Developed by a group of educators and artists in Rochester, New York (home of the Eastman Kodak Company), the term was first coined by John Debes and included an emphasis on students as active readers of visual materials, applying concepts like framing, scale, dimension, tone, perspective, and juxtaposition. At the school district level, educators in the 1960s created curricula to teach high school students strategies for using, analyzing, and creating film, sound media, and other media (Friesem, Quaglia, & Crane 2014). Distinguished scholars fueled the visibility of the field by advocating for a multidisciplinary approach that included the disciplines of art history, psychology, education, and the humanities (Arnheim 1969; Kress & van Leeuwen 1996). Arts educators aiming to empower student creativity and learning use copyrighted materials as objects of study and as inspiration for visual learners.

Librarians have long offered instruction on copyright as part of their work to advance information literacy. In the 1970s, they first began providing patrons with information literacy skills (like learning to use Boolean search strategies) for accessing information using new electronic database systems (Behrens 1994). Today, librarians and teacher librarians also provide and receive copyright education through MOOCs (massive open online courses) and online learning platforms. For example, Kevin Smith, Lisa Macklin, and Anne Gilliland are university librarians who offer an online course titled Copyright for Educators and Librarians. The course helps learners understand the history, purpose, and structure of U.S. copyright law and its relevance for educators and librarians. Learners gain knowledge about the scope of copyright's protections and grasp the role of limitations and exceptions to copyright, understanding how fair use fits within an overall framework for copyright analysis. They practice analyzing specific cases and situations to consider how the law may apply to the uses of copyrighted material in educational contexts. In a fully-online learning experience, librarians and teachers watch videos, read, participate in threaded discussions, and complete quizzes to demonstrate their learning (Smith, Macklin, & Gilliland 2017).

Writing teachers are also important stakeholders in educating learners about copyright and fair use. Writing teachers have adapted their pedagogies to meet the changing needs of students by engaging them in both analyzing and producing multimedia texts such as slide multimedia shows and collages. When the field of writing and composition broke away from its parent field of English in the 1970s, scholars and teachers built on the sociocultural theories of literacy circulating in the field and began using the term "multimodal composition" to refer to the practice of helping students compose digital videos, audio essays, animations and websites for both expressive and activist purposes (Palmieri 2012). One pioneer, William Costanzo, used creative instructional practices that helped students investigate the interconnections between viewing, reading, writing, and filmmaking (Costanzo 2008 [1986]). Costanzo described to me how he faced a number of challenges in the development of his writing and composition textbook, *The Writer's Eye: Composition in the Multimedia Age* as his publisher struggled to accommodate his need to make extensive use of examples from advertising, film, and popular media content in his textbook.

The rise of educational technology in the 1980s also depended on a robust interpretation of copyright and fair use for learning. During this time, the term "computer literacy" referred to the new knowledge and skills needed to use hardware and software that was small enough to sit on our desktops. Technology corporations had raced to supply new educational technologies with the promise of revolutionizing classrooms by bringing computers into schools (Hoffman & Blake 2003). But there was some confusion about whether the focus of computer literacy should emphasize teaching *with* or teaching *about* the technology (Moursund 1983). A new paradigm emerged when Seymour Papert published *Mindstorms* (1983), showing how learning to program computers could jump-start children's intellectual curiosity and promote learning. As a student of the developmental psychologist Jean Piaget, Papert advocated for student-centered discovery learning in which students use, apply, and test ideas through participation in project-based learning with media and technology (Kafai & Resnick 1996; Papert & Harel 1991). Today, educational technology and media literacy specialists may emphasize the value of learners being able to "create to learn" by creating infographics, podcasts, animation, and other types of media as a means to develop competencies (Hobbs 2017).

Reflecting a focus on exploring interest-driven learning in out-of-school contexts, Mimi Ito and her colleagues (2013) use the term "connected learning" to refer to learning that uses peer-to-peer networks to demonstrate learning through creative production. When students create media using connected learning, they may explore remix practices as part of their work. Of course, Silicon Valley also sees considerable economic potential for the future of digital learning, and edtech venture capitalists invested $3.1 billion in more than 450 start-up initiatives in 2015, reflecting widespread recognition of the importance of digital media for the future of learning and education (CB Insights 2016). Clearly, for a wide range of stakeholders, concerns about copyright are an important part of the landscape for digital learning, media education, and digital literacy.

RENEE HOBBS

## Continuing Concerns About Copyright

Like my colleague Elizabeth Thoman, I distinctly remember a time when teachers started to raise concerns about copyright in professional development programs with teachers. Most of the teachers I have worked with in my career as a teacher educator have been unaware that the purpose of copyright law is to promote knowledge, creativity, and the spread of innovation. They generally see copyright as a dimension of private property and lack a broader understanding of the social goals that copyright is designed to enable. I feel lucky to have been able to help bring some measure of copyright clarity as a result of my involvement in the creation of the Code of Best Practices in Fair Use for Media Literacy Education (Hobbs 2010). I am also grateful to Peter Jaszi for supporting my efforts in petitioning the Library of Congress for an exemption that enables K–12 educators to legally "rip" DVDs for media literacy education (Hobbs 2016).

Of course, with 3 million teachers and 50 million students in American public schools, there is still much work to be done. In part because of several well publicized cases in which severe penalties have been directed at individuals involved in file sharing and because of the rise of licensed online multimedia products marketed directly to schools, a climate of fear about potential liability concerning the unlicensed use of copyrighted materials in education continues to be prevalent among educators in higher education and K–12 schools. Undoubtedly, media literacy and media education has been hampered by the perceived restrictions of copyright. Palfrey and colleagues (2009) demonstrated how provisions of copyright law concerning the educational use of copyrighted material interfere with realizing the full potential of digital technology in education. Educators aim to embrace a culture where digital resources are plentiful, building new skills of accessing, curating, evaluating, analyzing, and creating with digital resources. But educational structures, as well as business and institutional structures shaped by copyright law, may limit innovation.

I have taught thousands of teachers about copyright and fair use for media literacy education over the past ten years. Three common areas of concern among American teachers remain as persistent and longstanding issues. First, some teachers hesitate to curate or compose educational materials with copyrighted content, especially when they distribute it to other teachers for use in their classrooms and particularly when they sell their creative work using peer-to-peer educator networks. Second, among librarians and educational technology specialists, there are also concerns about how digital rights management technologies may lock up content and create practical difficulties obtaining rights to use content when licenses are necessary. There is significant copyright confusion and hyper-compliance by gatekeepers such as educational administrators, IT administrators, and librarians, which may interfere with movement toward legal reform. Technological improvements in the rights clearance process, educator agreement on best practices, and increased use of open access distribution are beginning to address this problem, however. Finally, teachers and school leaders are still generally uncertain about the conditions under which student creative work can make use of copyrighted music, images, and other elements, especially when their work is distributed outside the school network or when exhibited at festivals. Too many student media festivals still restrict students from using any copyrighted content in their work, even when many such uses fall squarely under the doctrine of fair use.

Fortunately, broad public interest and scholarship on the topic of copyright and fair use are rising, and this trend has helped build educators' awareness of their rights under the law. Since the publication of Lawrence Lessig's books *Free Culture* (2004) and *Remix* (2008), we are seeing an increase in public awareness about the scope of people's rights under the law. Documentary films, including Ben Lewis's *Google and the World Brain*, Brett Gaylor's *Rip! A Remix Manifesto*, and Kembrew McLeod's *Freedom of Expression: Resistance and Repression in the Age of Intellectual Property* have also helped to build a larger constituency of librarians, educators, and activists who value copyright education.

Media literacy educators themselves have developed innovative digital technology tools that address media literacy, copyright, and fair use issues. For example, D. C. Vito, executive director of the New York City–based nonprofit organization, The LAMP, has developed Media Breaker, which enables learners to comment on advertising using existing examples of copyrighted ad content. Jonathan McIntosh's Gender Remixer is a digital play-and-learning tool that enables users to compare television ads for girls and boys to see how gender is constructed through both visual and audio content. Finally, Common Sense Media has developed online lesson plans and videos for teaching copyright and fair use as part of their digital citizenship curriculum.

Thanks to the rise of YouTube, the use of copyrighted materials is becoming normative in the K–12 classroom, and educators are developing a more sophisticated understanding of how, why, and when they and their students can use media texts for learning. As you will see in the chapters that follow, the concept of transformative use is being acknowledged not just as a legal concept but as a pedagogical one. When educators use digital media not just for content transmission but as an object of inquiry or as a means of sharing meaning, they may deepen their flexibility in analyzing message purpose, target audience, point of view, issues of representation, and other key concepts.

*The Routledge Companion on Media Education, Copyright, and Fair Use* is designed to advance scholarship in the field by offering an overview of issues as conceptualized by both scholars and practitioners working in a wide range of disciplinary perspectives and educational contexts, including communication and media studies, library and information studies, law and society, education, and the humanities. In the next section, I overview some of the insights from this volume's contributors to suggest how their work advances new knowledge and helps frame new research questions for the future of the field.

## Foundational Issues

Part I, "Foundational Issues," includes chapters from contributors who explore broad issues about the nature of copying as part of self-expression and learning; learning about copyright as a form of civic liberal arts learning; how law changes in response to society, technology, corporate, and political interests; how pedagogies empower students to acquire competencies for self-expression in a remix culture; and the shifting legal status of new forms of youth expression and creativity.

We begin by thinking critically about copying and its value to the practice of learning and expression. Throughout history, copying has been understood as a fundamental practice of learning. Access to copies is needed in order for learners to acquire information, of course, but educators themselves have not traditionally defined copying as a transformative use of copyrighted material. Rebecca Tushnet, a distinguished legal scholar at Harvard Law School, offers a chapter entitled "Mix and Match: Transformative Purpose in the Classroom," where she explores some of the many ways in which copying is a practice of both self-expression and learning. Copying is a literacy practice: people copy the work of others as they engage in many forms of creative expression. In a cut-and-paste culture, where concerns about plagiarism are rampant, we may overlook the idea that sometimes the best way to express yourself is to use other people's words. Tushnet argues that as students compose media by using popular culture to represent their own experiences, they are "forming the self" through the selection of meaningful music, pictures, gifs, texts, and even dialogue from movies and TV shows. She demonstrates how courts have found transformative use in forms of expression and communication that do not necessarily conform to the "comment and criticism" language embedded in the doctrine of fair use. She shows that authors may have a transformative purpose when their goals are distinct from that of the original author and when they use copying in the service of another context or purpose.

Many readers of this volume will be interested in learning about creative approaches to teaching about copyright and fair use outside the law school. Communication professors have traditionally taught about copyright in ways that align with professional norms in the fields of music, film, or journalism. But in Chapter 3, Bill Herman offers insight on his experience teaching about copyright as a form of liberal arts education, where he eschews a narrow professional framing and instead offers a broad orientation to critical reading, the practice of legal reasoning and use of evidence, and the role of law in society. He describes his approach to teaching a class entitled Digital Copyright and shows how a close look at copyright connects to a broader array of social, political, and economic issues. In particular, we learn how conflicts over copyright are what make it fun to teach about copyright today. He helps students see how copyright shapes and is shaped by various media business models that help to illustrate the relationship among politics, technology, and social and political values. In a sense, Herman's approach to teaching copyright is designed to help students understand their position as stakeholders in a system where creating and consuming copyrighted content is central to leisure, work, and citizenship.

When nonlegal specialists think about the law, they often see it as fixed and static. Nothing can be further from the truth. For better or worse, the law is continually changing—just as digital technology continues to change. While at one time teachers could easily use their home video recording devices to capture excerpts of copyrighted movies, TV shows, and advertising, today the practice of creating clip compilations has been completely transformed. DVDs and streaming media have replaced VHS tapes and for nearly twenty years now, the law has made it difficult for teachers to make a clip compilation for classroom use, thanks to the Digital Millennium Copyright Act (DMCA). To use excerpts from a film, for example, teachers must first find the specific scenes they want to use and then "rip" the content by bypassing the digital encryption on a DVD or Blu-ray disc. In 2006, this practice was illegal. But as a result of advocacy by college professors and educators, some exemptions have been carved out to protect the use of film clip compilations for education. In Chapter 4, "Circumventing Barriers to Education: Educational Exemptions in the Triennial Rulemaking of the Digital Millennium Copyright Act," Jonathan Band and his colleagues Brandon Butler and Caile Morris unpack the nuances of the law. Band, Butler, and Morris show how these exemptions have become very complicated, noting that, although educators rely on the ability to bring excerpts from movies and digital content into the classroom, unfortunately the law has evolved in ways that dangerously compromise this practice.

Teachers of writing and composition have been leaders in advancing public understanding of copyright and fair use at the college level. In Chapter 5, "Remix and Unchill: Remaking Pedagogies to Support Ethical Fair Use," Tim Amidon, Kyle Stedman, and Dànielle Nicole DeVoss reflect on the centrality of remix culture in a digitally networked world. They have found that students want to use images, sounds, and multimedia from the digital worlds they inhabit, but they struggle with fear, uncertainty, and doubt. Teachers often close down student creativity as a result of their misunderstanding of the law. To give learners access, confidence, and know-how as a form of "rhetorical prowess," the authors recommend a set of empowering learning activities in composition classrooms that include composing musical parodies, engaging in critical photography, and using films from the past to understand the present. They also acknowledge that the process of composing does involve risks associated with the inclusion of multimedia content. Instead of teaching students what they cannot do, by focusing on plagiarism and takedown notices, these composition scholars want to open up opportunities for new types of multimedia composing that are responsive to an expanding conceptualization of fair use.

Human creativity is boundless and continually responsive to both our lived experience and the complex media environment in which we live. Growing up with thousands of characters encountered through movies, video games, and TV shows, today our own lives are intertwined with the narratives we have encountered through media. Significant pleasures are involved in creating fan fiction, which uses old and new characters and stories based on the culture that we experience in mass media. Unfortunately, because the copyright status of fan works is poorly understood, well-meaning educators may trivialize or dismiss such creative efforts. Some fan fiction is likely to violate copyright, while other fan fiction is likely to be lawful fair use. In Chapter 6, Aaron Schwabach, a legal scholar, offers insight and advice to people who are participating, as both readers and writers, in a fan fiction community. Clearly, as a result of common cultural practices for expression and communication, the concept of derivative use is changing within the copyright system. The opportunity for readers and writers to interact through peer-to-peer discussion and review is likely to improve students' awareness of audience. This stands in stark contrast to writing instruction in the typical classroom, where writers are often composing texts for teachers who may not share their knowledge of or interest in a topic.

Researchers and educators may be inspired by the chapters in Part I to explore these questions:

- How do teachers and students themselves understand the expressive value of copying?
- When students begin to see themselves as stakeholders in the copyright system, how may this affect their actual use of copyrighted content?
- Does educator participation in the DMCA rulemaking process really matter now that video streaming, YouTube downloading, and screencasting are replacing the need to "rip" DVDs?
- When writing and composition students learn to use copyrighted content as part of the writing process, how does this affect the development of critical analysis skills?
- In what ways might the online communities of fan fiction authors offer pedagogical insights for writing and composition teachers?

## Stakeholders in Copyright Education

In Part II, "Stakeholders in Copyright Education," we look at the perspectives of a wide variety of stakeholders who bring copyright education into the context of their work, including academic librarians, activists, writing and journalism educators, and researchers. We first examine the experiences of librarians, who for a number of different reasons may experience copyright as a source of anxiety. In "Copyright Literacy in the UK: Understanding Library and Information Professionals' Experiences of Copyright," Jane Secker and Chris Morrison interrogate the "copyright literacy" of librarians in the UK. While acknowledging the very real gaps in knowledge and complex perceptions of librarians' previous training experiences in library and information science (LIS) education, the authors recognize that copyright might be the lever upon which a wider approach to digital and information literacy might be advanced.

Pat Aufderheide who helped me to truly understand and use fair use for media literacy education. As I grew in confidence, this knowledge also helped me develop a new set of innovative practices for learning and teaching centered around students as creative media makers (Hobbs 2017). As Aufderheide notes in Chapter 8 in this volume, educating young people on the rights they have to create new culture using elements from the copyrighted world is a gift—one that needs to be passed on to the world. For me, Pat's generosity in enrolling me in this work was the starting place for my own learning on this topic, and in "Codes of Best Practices in Fair Use: Game Changers in Copyright Education," Aufderheide unpacks the deep values that underlie this advocacy. She is aware of how ignorance about copyright leads to self-censorship, when, as she puts it, "people decide not to risk teaching, learning or creating." At a time when copyright protections are "long and strong," as she puts it, a deep understanding of fair use is essential to free expression. Media literacy educators benefited enormously from the opportunity to express their collective judgment about the appropriate interpretation of fair use, given their cultural and creative practices. Communication and film professors, open courseware designers, librarians, archivists, visual artists, and journalists have also benefitted from the application of the "code of best practices" model of copyright education, and each community of practice helps scholars and teachers appreciate the power of context and situation in interpreting the flexible application of the law. When people understand the law, they unleash imagination and freedom to create new content without violating the rights of copyright holders.

Another approach to copyright education comes in the form of innovative journalism education being pioneered by educators working at both the high school and university levels. In Chapter 9, "Creative Commons in Journalism Education," Ed Madison and Esther Wojcicki introduce the Creative Commons licensing model, which frees media creators to choose varying levels of restrictions for their works. Such approaches provide support for new business models for journalism, which is happening as a result of changes in the way people receive and attend to news and information. Of course, student journalists who license their work through Creative Commons also get to reflect on their interests in participating in a knowledge economy.

Future teachers and media professionals are also a prime target for copyright education, and their needs are addressed in Chapter 10, "Blurred Lines and Shifting Boundaries: Copyright and Transformation in the Multimodal Compositions of Teachers, Teacher Educators, and Future Media Professionals," by J. P. McGrail and Ewa McGrail. The authors demonstrate how digital tools may erode former distinctions between amateur and professional. Takedowns that are made lawful by the 1998 Digital Millennium Copyright Act erode confidence in the law and can shape perceptions of copyright by both future teachers and future media professionals. They offer insight on how learners can acquire a solid understanding of fair use and transformative use as provided in the Copyright Act.

Copyright education can occur in a variety of contexts, and, especially in the context of writing and composition, the use of plagiarism detection and automatic essay scoring tools provide a ripe opportunity for teaching and learning about copyright and fair use. In Chapter 11, "Automated Plagiarism Detection as Opportunity for Education on Copyright and Media," Clancy Ratliff notes that educators may appreciate plagiarism detection platforms because they function as a "digital sheriff," offering the promise of deterrence to administrators and faculty who may believe that plagiarism is rampant. Administrators may value how automated essay scoring permits efficient placement into remedial, regular, or advanced writing courses. Ratliff considers the similarities between these digital tools, noting how they both rely on databases of student writing without compensation for students, making money on student writing and compromising student privacy, and work against pedagogical practices of writing as the process of making meaning. Her insights may help educators develop ways of unpacking the values lying behind the algorithms that shape the software tools we use in education.

Next, we consider the point of view of young media creators themselves, as they learn about copyright. Catherine Burwell explores their perspectives in Chapter 12, "Youth, Bytes, Copyright: Talking to Young Canadian Creators About Digital Copyright." Burwell shares what she learned from talking to twenty-five creators across five Canadian provinces, discovering that young creators have strong ethical impulses to respect the creative work of others. In particular, they value attribution as an ethical practice. For some, this was simply about respect, or, as more than one participant phrased it, "giving credit where credit is due." But Burwell's study shows that these understandings are nuanced by the medium in which young creators work. Filmmakers have different perspectives from musicians, for example. Some young artists view attribution as an "alternative form of payment" in an attention economy. For YouTube creators, in particular, attribution in the form of a link or "shout-out" can increase traffic to their own channel and thus potentially raise revenues from advertising.

It's likely that the mere practice of talking about copyright serves to help young people turn tacit knowledge into explicit knowledge. Burwell suggests that talking openly about copyright and about the kinds of artistic practices that musicians use to create new works can be a powerful learning experience. Teachers may not need to be experts on the law in order to facilitate these conversations, which might have the added valued of supporting a balanced view of the law, which includes copyright's support for "the creative activities the law is designed to enable" (Palfrey et al. 2009: 91). Even young people who do not see themselves as digital authors may benefit from these conversations.

Academic librarians who take on the challenge of embedding copyright education in their outreach and education programs can inspire others. At the Hunter College Libraries (CUNY), Malin Abrahamsson and Stephanie Margolin are trying to reach both students and faculty to inform them about the scope of their legal rights under fair use. Unlike college faculty who see a group of students weekly over the course of a semester, many academic librarians must offer one-offs, where instruction is expected to support student coursework in a single sixty- or ninety-minute session. But even short sessions like this, when designed skillfully and targeted with precision, can be powerful learning experiences. When an art teacher at Hunter explained that every semester he is asked by students to explain when it's OK (or not OK) to use found or appropriated materials, the Hunter College librarians got the chance to work with art students to examine work by a group of artists who are using other people's photography in their work. In Chapter 13 in this volume, "Fair Use as Creative Muse: An Ongoing Case Study," you will learn how they demonstrated how to conduct a fair use analysis using four factors. They used a role-playing activity to demonstrate the strong critical thinking that is at the heart of legal reasoning, inviting students to consider the arguments of each side in the fair use analysis of two separate artworks. They then asked students to describe how they wanted to use copyrighted material in their own creative work, letting students' ideas and questions guide the discussion. These librarians value transformative use and appreciate how its application is highly contextualized. Instead of thinking of copyright education as a one-size-fits-all ensemble, they design customized sessions relevant to the needs of the faculty, the discipline, and the learners.

Copyright law affects how researchers design, implement, and assess their work, and in Chapter 14, "Digital Transformations in the Arts and Humanities: Negotiating the Copyright Landscape in the United Kingdom," Smita Kheria and her colleagues Charlotte Waelde and Nadine Levin offer a case study of researchers exploring the digital humanities in the United Kingdom. There, the law permits fair dealing with any kind of work for the purposes of criticism, review, or noncommercial research. But this has posed problems for researchers in the humanities and social sciences due to the narrow interpretation of these exceptions by rights owners and publishers. Although some recent reforms have emerged to support researchers' needs for text and data mining activities, the effect of these reforms in practice has not kept pace.

Music researchers and music educators face particular challenges when it comes to copyright and fair use. The chapter's case study on the use of computational tools to explore musicology, for example, raises important questions about publicly funded projects. Copyright law's strict framing of "noncommercial" use challenges academic projects when the creative work produced may have commercial value. As you will see in this chapter, in their digital musicology project, researchers were able to share metadata about musical scores and recordings but not digital audio files. How valuable is their project, a web-based resource for public users, when human beings cannot test or validate the relevance or "correctness" of particular searches and results? Could the researchers link to existing commercial content on websites like Spotify and Amazon? Were the software tools and annotated musical libraries subject to commercialization, and, if so, how would this affect the public value of the project? Due to the considerable ambiguity around the scope of copyright exceptions and the risks involved, researchers struggled over the scope and overall direction of their work. How ironic that researchers who want to use copyright-protected materials for transformative research may not be even able to share their own work to the public whose tax dollars helped to pay for it.

Clearly, restrictive interpretations of copyright exceptions create real difficulties for researchers who are working at the intersection between academe and industry. Researchers may be inspired by the chapters in Part II to explore some issues that build upon their work, including these questions:

- What kinds of professional development learning experiences support the diverse needs of librarians as they learn about copyright?
- How might we measure students' knowledge about Creative Commons licensing, copyright, and fair use as part of formal and informal learning?
- What kinds of experiences help teachers and students discover the values that underlie algorithms for plagiarism detection and automated essay scoring?
- Regarding issues of copyright and fair use, how are the views of young YouTube creators different from students who have not created media?
- What reward systems could support the increased collaboration of academic librarians, researchers, and university faculty as they develop creative approaches to understanding copyright and fair use?

## Pedagogy of Media Education, Copyright, and Fair Use

In Part III of this volume, we focus on particular pedagogical strategies for teaching about copyright and fair use and for the educational use of copyrighted content, especially film and video. We explore how teachers perceive the educational value of film and how copyright shapes the way educators use YouTube. The chapters in this section examine the copyright implications of film digitization and streaming video, provide insight on how children learn about copyright and fair use, and examine how copyright issues are affecting the development of online and digital learning.

There's no doubt that for 21st-century teachers, YouTube has replaced the VHS clip compilation reel of olden days. But many schools still block YouTube, and copyright issues may surface when downloading videos to use in schools or when uploading content containing copyrighted materials. In Chapter 15, "The Benefits and Challenges of YouTube as an Educational Resource," Chareen Snelson describes how educators have used YouTube for both its content and video-sharing capacities. Access to free video content, the ease of curating video playlists, and even basic video editing and online captioning tools make it attractive for both teachers and students. As a teacher educator, Snelson describes some ways that she helps future teachers learn to make effective use of YouTube by sharing assignments from her course entitled YouTube for Educators. In this course, students review media licenses, develop media literacy competencies associated with creating video, and learn the technical skills of video editing. As they produce a mini-documentary, they are invited to actively pay attention to the legal and ethical uses of media for educational video projects. Insights from this course could be valuable for developing innovative approaches to teaching future teachers.

As digital data moves to the cloud, streaming video is becoming normative within the home, school, and library. Blended, hybrid, and fully online courses are also creating new digital environments that necessitate streaming the delivery of video content. From his vantage point in the academic library, in Chapter 17, Scott Spicer provides a comprehensive look at video in higher education, considering the history, the evolving pedagogy, as well as copyright challenges and support models as new approaches to teaching and learning emerge in the digital realm. Recent surveys show that many academic libraries provide access to video streaming but that often these titles are not discoverable via the university library's catalog (Farrelly 2015). Changes to video formats and changes to copyright law have intersected with normative practices of educational use, giving academic librarians the chance to support faculty who are exploring innovative approaches to teaching and learning. Streaming video does help expand campus access to instructional video, but it poses some interesting complications in regard to copyright. Spicer explains some recent court cases that addressed the digitization and streaming of instructional video materials under fair use and also considers copyright issues in making instructional videos accessible to students with disabilities. How should universities handle lawsuits for failing to caption their public massive open online courses (MOOC) and other online video content?

What should be done about the many university VHS/DVD video collections and licensed streaming content in library instructional video collections that are not captioned? It's not easy for academic libraries to maintain local technical infrastructure for the digitization and management of local streaming collections at a time when the costs for licensing streaming video are significant. Today, many feature films and television programs are often available for DVD purchase or at a reasonable rental cost via Netflix, Hulu, Amazon, and other consumer streaming services. How do collection development and technical services librarians interact with information literacy librarians to help faculty and students make effective use of video streaming services? Clearly, the work of the academic media librarian will continue to rapidly evolve as a result of changes in law and technology.

Still, as much as things change, some media education practices are timeless, it seems. In Chapter 16, "Teaching History with Film: Teaching About Film as History," Jeremy Stoddard digs into the use of film in and out of history classrooms, reflecting on the rapid expansion of access to history-related media. Film can be used to engage students in historical thinking, as part of media literacy, or as a way to engage in difficult or controversial history topics. As such, media education in the history classroom has direct implications for critical citizenship (Hoechsman and Poyntz 2012).

When is the right age to begin introducing children to concepts of copyright and fair use? It turns out that children might not need a comprehensive understanding of the American system of intellectual property law in order to understand the fundamental concepts of copyright and fair use. In "'I Got It from Google': Recontextualizing Authorship to Strengthen Fair Use Reasoning in the Elementary Grades," David Cooper Moore and John Landis show how to build children's fair use reasoning skills by emphasizing the development of critical thinking competencies that require students to understand the authorial message, purpose, and context of online images. As children develop skills of image searching, they can use language to identify authorship and purpose. They can describe their own new purposes for using that media and consider some ethical guidelines of "what's OK" and "what's not OK" when using the copyrighted work of others. Although the rise of social media makes it harder to identify the author of much of the digital content that circulates in culture today, a good understanding of the search process enables young children to use flexible, spontaneous search strategies, along with more deliberate and reflective approaches.

When Chris Sperry and Cyndy Scheibe first started created media literacy curriculum materials for social studies education, they were challenged to figure out how to use *Newsweek* covers as part of the curriculum materials. They got advice from two different attorneys: one who said that they could not publish without *Newsweek*'s permission and another who said that the fair use doctrine clearly protected their right to publish these materials, even if they were selling the kits. In Chapter 19, "Resolving Copyright Concerns in the Development of Diverse Curriculum Materials for Media Analysis Activities," they describe their experience with *Newsweek* and explain the multiperspectival nature of media literacy, copyright, and fair use. As they came to recognize that educators have the legal right to critique *Newsweek* content in the classroom without paying for permission to use excerpts of *Newsweek* content, they also point out how a lack of copyright clarity may work to the benefit of media companies. Sensitivity to power dynamics, especially in countries without a strong First Amendment tradition or without intellectual property rights as robust as ones available in the United States, deepens the appreciation of the role of fair use in supporting global media literacy education.

Teaching film to high school students opens up enormous opportunities for creative pedagogy and in Chapter 20, "Approaches to Active Reading and Visual Literacy in the High School Classroom," John S. O'Connor and Dan Lawler offer insights from their work as experienced educators. They describe the process of helping students engage in the close analysis of visual media, supporting students to read actively: to make discoveries, find patterns, and generate new ideas through analysis. Students learn to ask questions of the text with each reading. By generating questions, students wonder about why a filmmaker, graphic novelist, or broadcast journalist composed the work and made certain choices. In doing so, they come to appreciate how media construct reality through representation.

Another set of creative pedagogical opportunities arises in online higher education, which has, over a period of ten years, shifted from a Wild West mentality to one more controlled by institutional politics and bureaucratic processes. In Chapter 21, "Copyright and Fair Use Dilemmas in a Virtual Educational Institution in Mexico," David Ramírez Plascencia describes some experiences related to the use of copyrighted material at a virtual education center at the University of Guadalajara, Mexico. Rapid technological shifts led the university to modify its academic policies concerning the use of copyrighted materials, with a profound impact on the teaching and learning process. Today, at this university, the content of online learning is strictly reviewed, forcing professors to use exclusively free resources and, even in some cases, to create their own materials. Although some see such policies as restricting academic freedom, Plascencia notes that faculty also took the initiative to develop more creative assignments, to use digital collaboration tools, and to rely on open access resources. More and more, assignments include making a video and sharing it on YouTube or Vimeo or creating and displaying an online slide show or text. This chapter reminds us that copyright is constructed within a political and economic context with inherent North–South inequalities and that student learning and faculty intellectual freedoms are shaped by these inequalities. Of course, the future of online learning is still ahead of us, and it's not clear how copyright and fair use will evolve as this pedagogy becomes more and more a part of higher education.

Researchers may be inspired by the chapters in Part III to explore some issues that build upon their work, including these questions:

- How may increased knowledge of YouTube copyright policies impact teachers' use of video in the classroom?
- How do academic librarians support teachers and students in the discovery and effective use of video streaming resources?
- How might children developing their understanding of copyright and fair use affect the development of their critical thinking and communication skills?
- Given the global inequalities of access to information, what global "best practices" are emerging in the use of copyrighted materials for online learning?

## Past Is Prologue

In Part IV, we bring the volume to a close by providing a historical perspective that invites us to consider the significance of copyright and fair use in its historical context and its relevance to the future of education and scholarship. In Chapter 22, media historian and librarian Thomas Leonard offers an examination of both the history and the future of copyright. Examining the book trade of the 18th century, Leonard shows how copyright has resembled a 300-year-old game of Monopoly, where American booksellers, once the pirates of the publishing world, have repeatedly adapted and revised the rules to meet their own changing needs. Today, search engines like Google have continued in the pirating tradition, as spiders crawl copyrighted content of the world and the Google Books project has digitized more than 25 million book titles, transforming old volumes into online treasures. When the Supreme Court allowed the Second Circuit Court of Appeals to stand in favor of Google in *Author's Guild v. Google* (2015), the concept of fair use was at the center of the action, and many of the authors of this volume expect it will continue to play a central role in supporting the continuing innovation of media education far into the future. As you will see in the pages that follow, it is clear that educators, learners, authors, and users all benefit from a deeper understanding of copyright and fair use as a fundamental dimension of media literacy and media education.

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