We have all been forced to write it: the dreaded expository essay that has characterized academia for centuries. We have been warned on every syllabus of our college careers about plagiarism and how our professors will gladly guillotine the “4” off of our beloved 4.0s if we take someone else’s words and make them sound as if they are our own. But our generation, the generation that was raised on technologies that seemed inconceivable not so long ago, is increasingly being asked to write in new and innovative ways.

As Martine Rife explains in her article, The Fair Use Doctrine: History, Application, and Implications for (new media) Writing Teachers, with these new outlets for writing and creating available there comes an increased risk of violating copyright laws. In order to compose work in new media outlets students need to understand when copyright law is a threat to them and their creativity, and when it is not, by understanding the little-known “escape clause” of copyright law: fair use (Rife, 158).

Students are not just writing essays anymore. They are creating videos, websites, audio files and other forms of modern composition that set their generation apart from those of the past. As Rife argues in her article, the internet and connectivity have made classroom work more visible to anyone and everyone who knows how to use a search engine, making it easier than ever to get caught in the act of copyright infringement. While copyright law gives the copyright holder exclusive control over the work they produce, the fair use doctrine (Section 107) of the Copyright Act of 1976 states that reproducing a copyrighted work for purposes such as, “criticism, comment, news reporting, teaching . . . scholarship, or research, is not an infringement of copyright” (Rife, 158). In terms of fair use, crediting the creator of the copyrighted work is irrelevant, which is different from plagiarism, where citing sources is imperative.

There are some cases in which fair use is inapplicable, and you can save yourself the drama if you know when this is. So how can students decide if fair use is applicable? Well, if a work is unprotected by copyright fair use is unnecessary. You only have to worry about copyright infringement if there is a copyright to infringe upon. There are also four specific types of documents that can be used freely without fear of copyright infringement.

The first of these documents Rife mentions is any work that is in the public domain. It will most often be the case that a work published prior to December 31st, 1922 is in the public domain. Original written and visual works are protected for the period of the creator’s lifetime plus between 70 and 120 years (depending on the situation) before they become part of the public domain. For works that are “trite,” unoriginal, or authored by the U.S. government, fair use is
also inapplicable. Some examples of these kinds of documents would be, “case law, statutes, legislation [and] government authored documentation” (Rife, 162). Lastly, if your use of a particular work is *de minimus* (meaning you have some kind of license or permission to use it) fair use is inapplicable.

The next important (and slightly more difficult) thing that students need to know is when fair use *does* apply to the work they create. Within new multi-media composing outlets, other people’s work is often a main ingredient in a student’s own finished product, whether they are criticizing, admiring, teaching, or doing something else with a copyrighted work. Rife promotes using what she calls the Four Factor Test to decide whether the use of someone else’s work falls under fair use. Below are the four factors Rife urges students and teachers alike to consider when determining fair use (Rife, 158).

- The purpose and character of the use (e.g. research, parody, nontransformative, commercial, educational)
- The nature of the copyrighted work (e.g. creative, factual)
- The amount of substantiality of the portion used in relation to the copyrighted work as a whole
- The effect of use upon the potential market

Since determining whether or not fair use is applicable can be difficult, obtaining permission to use copyrighted works can be extremely helpful to students, and it doesn’t necessarily have to involve the expensive purchasing of usage rights. An invaluable resource for students is the Creative Commons web site created by Lawrence Lessig in 2001. Creative Commons allows users to obtain permission to use works posted to the site in certain ways (determined by the poster/creator) for their own creative endeavors. Options of usage include the right to use for commercial purposes, non-commercial purposes, modification, and as-is usage. People posting work to the site usually allow a combination of these different usage options.

If we are indeed going to use fair use as our get out of jail free card for copyright infringement, we need to follow the guidelines for fair use as they are laid out in Section 107 of the Copyright Act of 1976 listed above. Understanding fair use and copyright law is not easy, but if we are given the information we need, we will be able to make our own decisions—not only as students but as creators—about how to protect ourselves from being accused of using someone else’s work unfairly. For more information about Martine Rife visit her webpage at: https://www.msu.edu/~courantm/

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