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Copyright, Fair Use, and Creative Commons: An Active-Learning Exercise for Studio Art Students

Arthur J. Boston
Murray State University, aboston@murraystate.edu

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Copyright, Fair Use, and Creative Commons: An Active-Learning Exercise for Studio Art Students

Arthur J. Boston
Murray State University

Correspondence regarding this article should be addressed to Arthur J. Boston, scholarly communication librarian, Murray State University, aboston@murraystate.edu.

Abstract

This article describes an active-learning exercise intended to help teach copyright, fair use, and Creative Commons licenses. In the exercise students use a worksheet to draw original pictures, create derivative pictures on tracing paper, select Creative Commons licenses, and explore commercial usage, fair use, and copyright infringement. Librarian-instructors may find the completed worksheets to be useful aids to supplement copyright lectures; student perspectives will be integral because they are generating the examples used in discussion. Although a scholarly communication librarian developed this exercise to help introduce some basic copyright information to an undergraduate studio art and design class, the exercise can be performed in a general educational setting.

Keywords: copyright, fair use, Creative Commons, active-learning, creative arts

Copyright, Fair Use, and Creative Commons: An Active-Learning Exercise for Studio Art Students

Introduction

The purpose of this article is to describe an active-learning exercise developed to introduce undergraduate studio art and design students to copyright, fair use, and Creative Commons licenses. During an hour-long session students use a worksheet to draw original pictures, remix drawings of their classmates, and devise ways to monetize the results. One or two completed worksheets are selected to help facilitate a class discussion over the varied ways that copyright, fair use, and Creative Commons can interact.

Copyright, which is a “form of protection provided by U.S. law to authors of ‘original works of authorship’ from the time the works are created in a fixed form” (US Copyright Office, 2017, p. 1), can be an abstract and complex subject to introduce to students, especially in situations where the students are not necessarily expecting to learn about it. The original inspiration for this exercise came from this exact type of situation, which this introduction will describe.

In 2016, I called a meeting with faculty members from my university’s humanities’ departments to introduce the newly branded open access institutional repository (IR). T. Michael Martin, the university galleries director, was among those in attendance. Martin instructed studio art and design professional practice courses, where juniors and seniors developed portfolio packets. The portfolios were intended to replicate those that might be posted on a professional artist website or an online art and design network (e.g., Behance, Dribbble, DeviantArt). At the time of the 2016 meeting these portfolios were being uploaded to the campus learning management system, where they were seen only by the instructor for grading.

Martin saw the university’s IR as an opportune outlet for students to post their portfolios publicly. In Martin’s view, giving students the option to share their artwork with a global audience, rather than an audience of one, could provide a richer educational experience. Additionally, there could be added professional benefits for the students, who could then add IR web links (rather than free blog links) to their résumés or curriculum vitae. Martin’s views ultimately aligned well with my own goals of increasing content deposits to the IR and gaining an opportunity to teach about scholarly communication topics (e.g., open access, copyright, and Creative Commons) on campus to a student audience (creative arts disciplines) I may otherwise not have had an obvious reason with which to interact.

After the decision was made to include the institutional repository as an optional final step for students in Martin’s studio art courses, he invited me to speak with the students about the IR. During my first visit I focused on demonstrating how to use the IR’s upload form and download statistics dashboard. Shortly after this first visit an optional Creative Commons (CC) license was added to the upload form.

CC licenses are designed as “a simple and standardized way to give the public permission to share and use [an author’s] creative work—on conditions of [their] choice” (Creative Commons, n.d.). During the next class visit I felt it important to expand the instructional session to go further in our discussion of the purpose of CC licenses and copyright.

In the second guest visit I briefly explained that copyright is a bundle of rights under US law (17 U.S.C. § 106) and that each student held copyright to the works created in their portfolio. Further, each student was entitled to the exclusive ability to exercise their rights over their work, such as granting others permission to use, copy, display, or remix the work. The major exception to students’ exclusive rights (where their permission for reuse was not necessary) were those uses that may be found to be *fair use*.

As the Stanford Copyright and Fair Use website states, fair use is *generally* “any copying of copyrighted material done for a limited and ‘transformative’ purpose . . . [that] can be done without permission from the copyright holder” (Stim, n.d.). Fair use is commonly found in “purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research” (Copyright Act of 1976), as defined under US copyright law (17 U.S.C. § 107). Fair use must be determined on a case-by-case basis, with the following four factors always in consideration:

- (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 (Copyright Act of 1976).

I attempted to explain that fair use—with its lack of bright lines and seemingly subjective four-factor consideration—had the potential to create uncertainty and doubt for those attempting to determine if their particular use qualifies. For those students who wished to see their creative work remixed and built upon, applying a CC license could help encourage such activity.

The six CC licenses are explained in Figure 1.

CREATIVE COMMONS LICENSES		COPY & PUBLISH	ATTRIBUTION REQUIRED	COMMERCIAL USE	MODIFY & ADAPT	CHANGE LICENSE
	PUBLIC DOMAIN	✓	✗	✓	✓	✓
	CC BY	✓	✓	✓	✓	✓
	CC BY-SA	✓	✓	✓	✓	✗
	CC BY-ND	✓	✓	✓	✗	✓
	CC BY-NC	✓	✓	✗	✓	✓
	CC BY-NC-SA	✓	✓	✗	✓	✗
	CC BY-NC-ND	✓	✓	✗	✗	✓

You can redistribute (copy, publish, display, communicate, etc.)
 You have to attribute the original work
 You can use the work commercially
 You can modify and adapt the original work
 You can choose license type for your adaptations of the work.

Creative Commons: The Ultimate Guide by foter.com is licensed under a Creative Commons Attribution-ShareAlike 3.0 United States License. Based on a work at <http://bit.ly/1eWg7W3>

Figure 1. Creative Commons: The Ultimate Guide by foter.com is licensed under a [Creative Commons Attribution-ShareAlike 3.0 United States License](https://creativecommons.org/licenses/by-sa/3.0/). Based on a work at <http://bit.ly/1eWg7W3>.

As mentioned earlier, copyright issues tend to be a complex subject to teach, especially with students not necessarily expecting such a lesson. This was certainly the case I experienced during the second guest visit to this studio art and design class. During and after the lecture I was uncertain as to whether any of the information had made a meaningful impression. Even if the students were able to remember some of the basic information mentioned in the lecture, how much of it would translate once students were deciding whether or not to assign a CC license to their own artwork? Was the learning environment doing enough to help students connect general concepts of copyright to their own artwork specifically?

Bearing these questions in mind I sought to create a learning experience that would hopefully better meet the students where they were. The hour needed to be utilized in some way that pivoted from a standard lecture session. Perhaps the sessions could be more effective if instead of trying to entice the student artists into the world of copyright, I adapted the copyright lesson toward the interests and needs of the students. Rather than focus on text-based works or examples between

two third-parties, a more apt solution might incorporate student-created artworks with interactions occurring between the students themselves.

I realized that the class could literally draw something and then draw over each other's works to better imagine the effect of remix or modification. Students drawing on each other's work, however, would be more akin to graffiti, which made the addition of tracing paper essential. Using tracing paper on top of an original work would also allow for an experience more analogous to remixing files downloaded from the web, where a new copy is created while the original file still rests untarnished on a server.

The exercise I ultimately developed squared well with literature recommendations that fair use instruction for undergraduate students should be situated in a "context that will be familiar to students" (Kelly, 2017). Approaches "incorporating the specific nature of the art and design information landscape" are supported methods used to meet the information literacy requirements of such students (Appleton, Montero, & Jones, 2017). And as Brier and Lebbin (2015) suggested, the physical act of drawing has the potential to improve understanding of abstract concepts. While many pedagogical objectives may be achieved here, it should also be noted that a drawing-based exercise (or game) is quite an enjoyable way to connect with students about copyright.

The exercise steps are described in detail in the next section. By the end of the exercise students should have an understanding that the creative content they create is their intellectual property. As copyright holders they may grant reuse permission directly or through CC licenses, but even if both of these are absent, that fair use is still viable.

Leading Up to the Exercise

Introduction to Copyright and the Institutional Repository

During these sessions, and prior to running the exercise, I begin by giving a review of what the students should expect to see on the IR upload form. This review includes a look at a few past student portfolios, noting basic metadata information fields like title, materials used, and the artist statement. The artist statement is a space meant for the student to discuss the meaning behind their work. I make a point to encourage students to discuss their artistic influences here by naming specific works or artists that have been informative to their present work. This serves to highlight how students are not only content creators but also beneficiaries of others' creations. Getting students to view their art as one voice in an ongoing conversation has the potential for thoughtful reflection about originality and influence. For information literacy librarians, this relates closely to the Association of College and Research Libraries' (ACRL) Framework for Information Literacy for

Higher Education, specifically the section “Scholarship as Conversation” (Association of College & Research Libraries, 2015).

During the review of other sections of the IR upload form, I intersperse portions of a copyright lecture at appropriate points. For instance, when looking at the remaining metadata fields—like the date of creation and the optional selection of a CC license—I note that students automatically become copyright holders to their original works once the works are put into a “fixed” medium. Part of being a copyright holder, I add, means the ability to permit others to reuse their works. One immediate way students can permit reuse is by granting nonexclusive permission to the university to host these works in the IR. (Students have the option to send portfolios directly to the teacher instead of the repository.) Future audiences encountering these works on the IR may wish to also reuse these works; while some may decide their particular use would qualify as fair use, others may be more doubtful. By applying a CC license to their artwork, a student may make reuse permission clear without the two parties ever having to directly communicate.

Although CC licenses were built for simplicity and have been added to the IR as a means of empowerment, their presence is a further layer of complexity for an instructor. Upon seeing the different CC license options that state permissions regarding reuse with attribution, modification, and for commercial purposes, students may begin to imagine a range of reuse scenarios for their artwork that they had not previously considered. While selecting a CC license may be a great benefit for the student who wishes to see their artworks reused, selecting a CC license may also consequently give a student the wrong idea about copyright and fair use. For instance, a student that selects a CC BY-ND license (which states no derivatives without creator permission) may get the false impression that others are precluded from making a fair use determination about proceeding with creation of a derivative work without seeking permission.

Building space into a one-hour lesson plan to discuss nuanced caveats like these can be a challenge, but meeting this challenge head-on has its rewards. The reward in this case is providing students a more concrete sense of what it all means by using an active-learning exercise. We will now delve into the steps for my active-learning exercise.

Preparation for the Exercise

On the practical side, print enough worksheets for each student, stapling half a sheet of tracing paper to the worksheet over Box A (see Supplement 1)¹. Each student should be provided with one worksheet and one fine-tipped black marker (to create marks easily visible through the tracing paper without much or any bleed through). Put inch-long sections of painter’s tape (or craft tape) to a wall, spaced to

¹ Supplements can be downloaded from the JCEL website at <https://doi.org/10.17161/jcel.v3i3.8193>.

accommodate each sheet, which will be displayed at the end of the exercise. Near this same wall place a good amount of small plain stickers. Prepare a slideshow to display each set of instructions (or adapt the one included in Supplement 2). Having the written directions for each step visible to the class helps the exercise run efficiently.

While making these physical preparations take time to consider how you want to frame the exercise, given your teaching objectives and the amount of time available. How will you introduce this exercise and its purpose? Will a copyright lesson take place on a separate day, or will it all need to be included in a single session? In case you should need to cut for time, which steps in the lesson are the most essential to the outcomes you have in mind?

For me, introducing the purpose of this exercise is tightly woven into the review of the IR. Unless you are in the same situation you should seek to introduce this exercise and its purpose in a way that makes sense for your context. This exercise could easily translate to two class sessions covering copyright: the first class devoted more to lecture and the second class devoted to the exercise. For those in a position to offer two sessions, consider adapting an existing copyright lecture aimed at art and design students, such as Hillary Miller's *Creators' Rights: Copyright for Creators*.²

Leading the Exercise

Step One: Initial Creation

The first step asks students to create copyrightable material, select a Creative Commons license for it, and imagine they are publishing the work online.

After introducing the exercise, have students begin by folding the tracing paper away from the worksheet and drawing an original picture in Box A. Prompt students to recall a meaningful childhood memory, like a vacation they took or a gift they received, and select a single image to represent the memory. Instructors should consider sharing a personal example. I describe a family vacation to an aquarium, choosing a manta ray as the single image.

Have students sign their name in the "by" box at the bottom of Box A. Have the students review the Creative Commons licenses (listed on page four of the worksheet). If they wish to select one for this picture, have them write it out next to their name. Finally, ask the students to pass the sheets to their left, imagining they are posting the picture online to their blog while doing so. Allot four minutes for drawing and another minute for signing and selecting a CC license.

² Found at https://guides.library.vcu.edu/ld.php?content_id=40364566.

Step Two: Derivative Work

The second step asks students to create a derivative work based on their classmates' original work that they imagine to have located online.

As students receive their classmate's drawings in this step, ask them to imagine they are discovering them online. Ask students to symbolically "download a copy" of the image by folding the tracing paper over Box A. Invite the students to create new images on the tracing paper by incorporating the underlying image, if they feel comfortable doing so. When done, direct the class to pass the sheets to their left-hand neighbor, imagining they are publishing this new picture to their online blog. Allot four minutes.

Step Three: Commercial Uses

The third step asks students to create a commercial work based on their classmates' work that they imagine to have located online.

When students receive these next images from their classmate, ask them to imagine they have come across the image online and to think of a commercial activity related to or inspired by it. They can choose to base their idea on either the *Initial Creation* drawing alone, the *Derivative Work* drawing alone, or the composite image of the sketch paper over the worksheet. Students can write or draw their commercial use idea in Box B, name it or brand it next to the ™ symbol, and set a price. Free, or zero dollars, is a price option, though this does not need to be explicitly stated. When done, direct the class to pass the sheets to their left-hand neighbor, imagining they are publishing this as an advertisement online. Allot four minutes.

Step Four: Infringement

The fourth step asks students to argue that the Derivative Work is an infringement of the Initial Creation.

Ask students to imagine they are an attorney representing the Initial Creation's artist and they have found the composite image online. In Box D, have the "attorney" student write a takedown request to the Derivative Work's artist on the basis of copyright infringement. The second page of the worksheet includes brief legal definitions of copyright and fair use in the United States, which may aid in this writing process. When done writing out this notice, students will pass the sheets to their left, imagining they are mailing this to the tracing-paper artist's talent agent. Allot four minutes.

Step Five: Fair Use

The fifth step asks students to argue that the Derivative Work is a fair use.

In this step students should imagine they are an agent representing the Derivative Work's artist who has just received the attorney takedown request. Ask these students to write a reply letter outlining why the artist will not be complying with the takedown request on the basis of fair use. As in the previous step students should use language from the copyright and fair use definitions on the second page. Allot four minutes.

Step Six: Exhibition

The sixth step asks the class to briefly review all of the drawings and vote for two.

Ask the students to take the sheet they have in hand and tape it to the wall. Give the students four minutes to look over all the sheets displayed and vote for two by placing stickers inside Box C of those sheets. After students have had a chance to vote, the instructor will call upon the students involved with the "winning" sheet(s) to participate in a discussion about their contributions.

Step Seven: Student Descriptions

The seventh step asks a select group of students to discuss a contribution they made to one or two of the worksheets.

Ask the participating students to describe their work. Prompt the *Commercial Use* student to describe their idea and how it relates to the images. (For levity, invite them to deliver their best elevator pitch.) Next ask the *Derivative Work* student to describe their drawing and how it incorporates the *Initial Creation*. Finally, ask the *Initial Creation* student to describe their drawing; if they chose a CC license, explain which one and why. This step is intended to provide some basic information about the content on the worksheet being used for class discussion. This process should also ease students into talking about their interaction with the exercise.

Step Eight: Student Justifications

The eighth and final step asks students to consider their contributions in light of copyright, had the imaginary sections been real.

1. First ask the *Commercial Use* student if they think their use would have needed permission from, or owed credit to, the artist(s). In turn, ask the artist(s) if they agree.

2. Next ask the Derivative Work student if they would have needed to ask permission of the Initial Creation student. Did they give any attribution? Explain why or why not.
3. Finally ask the “attorney” student and the “agent” student to read or summarize their infringement and fair use arguments. Follow up by asking them to discuss whether they actually agree with the argument they were assigned to create.

This concludes the steps for the exercise. Instructors should close out the exercise by reiterating each copyright concept introduced during the session, pointing to the examples where they exist. While there are a finite number of probable scenarios to occur during a session, the instructor should still be prepared to react on the fly. Some real student examples are included in Supplement 3, and these may provide some idea of what to expect.

Advanced Topics

There are other copyright concepts not discussed here that could be brought up with groups that are expected to have or gain a more advanced knowledge of copyright. These concepts include but are not limited to the following: original works of authorship, copyright on derivative works, orphan works, moral rights, the idea-expression dichotomy, and social media user agreements. Below are brief descriptions of how these could be included.

Original works of authorship. The students are prompted in the first step to draw something from memory, like a gift received or vacation taken. Therefore, there may be examples of drawings depicting works that may be subject to copyright, such as a cover for a book, record, or movie as well as famous paintings, statues, or works of architecture.

Copyright in derivative works. Since the tracing paper is able to be viewed separately from the underlying picture, it is possible to consider the contribution of the Derivate Work student in isolation. Copyright on derivative works applies to what has been added to an original work.

Orphan works. It is possible some students responsible for the Initial Creation drawings will forget to sign their name or have done so illegibly, which could affect the responses from Derivative Work students in regard to the level of attribution or permission.

Moral rights. In some cases the “attorney” student (or the instructor) could pose the argument that a Derivative Work drawing was defamatory to an Initial Creation drawing or its artist.

Idea-expression dichotomy. This may especially apply in regard to the Commercial Use concept. For instance, if a student drawing depicted an animal from a trip to a zoo, like a tiger, and the Commercial Use student was inspired to create a new book or television series based on a lion character, there could be a discussion

about whether this amounts to the same lion or simply the general concept of an anthropomorphic tiger.

Social media user agreements. During the first two steps the student imagines they post their images to their online blog. In a class with much more time available to devote to these topics, an instructor could direct some students to imagine they are posting their images to different social media sites, in which case a new layer of usage rights would be considered.

Conclusion

While this exercise was originally created for art and design students, it is perfectly suitable in a general education setting. I hope that the steps illustrated here along with the supplemental worksheet and presentation will inspire librarian-instructors and others to use this exercise in their own practice. The supplements also include several examples from completed sessions, which may give potential instructors an idea of what to expect during their own session.

As a final note, I would like to add that the author does not practice in law nor art, rarely teaches, and has nearly no formal training in any of these disciplines. I am quite sure my limitations in these areas have meant that the exercise has room for improvement. One of the motivations for writing and sharing this article was the belief that the underlying idea for this exercise has strong potential for use by more capable practitioners in fields of art, law, and teaching. I hope they will share their experiences.

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