CONNECT!ONS Med!aLit moments

In This Issue…

Theme: Fair Use and Media Literacy

This issue of "Connections" focuses on fair use of copyrighted works because it is an issue integral to the practice of media literacy education. Two articles draw from recent documents produced by media and legal scholars: "The Cost of Copyright Confusion for Media Literacy Educators" and a "Code of Best Practices in Fair Use for Media Literacy Educators." Among other things, *The Cost of Copyright Confusion* details how, over the course of four decades, informal fair use guidelines became the touchstone for increasingly restrictive interpretations of fair use among educators. One function of the Code of Best Practices is to dispel the confusion created by these guidelines by conducting a clear analysis of judicial precedent. In brief, the record shows that parties who use copyrighted material for purposes other than that of the original work are rarely found liable for infringement. Our articles give you an overview of the Code and an analysis which educators can use for classroom practice.

On July 26th, a group of university librarians and educators led by Renee Hobbs, a media education professor at Temple University, successfully petitioned the Copyright Office within the U.S. Library of Congress to issue a ruling granting exemptions to the Digital Millennium Copyright Act, a law that covers devices which enable digital rights management (DRM) technologies to control user access to copyrighted works. The exemptions allow college professors and film/media studies students to "rip" excerpts of protected DVDs for comment, criticism and other educational purposes. Unfortunately, there are more limitations for K-12 educators than college professors; K-12 educators are not entitled to "rip" excerpts since the Register for Copyright believes that the same level of high quality images is not necessary for K-12 classrooms. The ruling may have been somewhat limited in scope; however, the process of petitioning for exemptions presented an opportunity for educators to convince the Copyright Office that it should value their fair use rights in a digital age rather than focus its rulemaking too closely on the ownership rights of media companies.

Hobbs has established a wikisite and invites K-12 educators to share experiences about using copyrighted materials for teaching and learning. The information will be used to petition the Copyright Office to extend the above exemption to K-12 teachers and students. www.copyrightconfusion.wikispaces.com

Why is media literacy education so important to the question of fair use? Consider two guiding principles espoused here at CML: teaching *with* media is not media literacy, while teaching *about* media is essential to media literacy. In other words, the philosophy and practice of media literacy education fully embrace the fair use principles recognized in copyright law.

Other articles in this issue also show the power of media literacy principles at work. Our resources article directs you to several resources available at Future Lab, which has successfully implemented an inquiry curriculum at two mainstream British schools. In one of our news stories, comments by CML to the National Association for the Education of Young Children demonstrate that empowerment is an essential aspect of educating young children

about advertising. In our MediaLit Moment, your elementary school students won't just enjoy a costume party, they'll also use critical thinking skills to understand the techniques used to transform an actor into a larger-than-life character on the big screen. And in other news, articles by CML and others use media literacy principles to challenge sexual violence on-screen and off.

As one Canadian media literacy educator remarked, "Media literate people know how to act, rather than being acted upon" (*Why Teach Media Literacy?* www.media-awareness.ca). Whether it's used for the purposes of social change, or to illuminate educational experiences which fulfill the spirit of the law, media literacy is vital to the practice of democracy in an information age.

Research Highlights

The Code of Best Practices in Fair Use for Media Literacy Educators

In November 2008, almost two years before the copyright ruling last month, an alliance of media educators and legal scholars released a Code of Best Practices in Fair Use for Media Literacy Education which offers teachers a set of reliable, reasonable criteria to apply to their use of copyrighted material within an educational context. Itself the result of two years of research, consultation and review, the Code of the Best Practices is designed to help teachers at all levels assert their Fair Use rights under current Copyright law. The group was spearheaded by Renee Hobbs, director of the Media Education Lab at Temple University's School of Communications and Theater; Patricia Aufderheide, director of the Center for Social Media at the American University School of Communication; and Peter Jaszi, director of the Program on Information Justice and Intellectual Property in the American University Washington College of Law.

The Code of Best Practices was drafted to dispel the myth that educators need to engage in a lengthy permissions process prior to any instructional use of copyrighted works, and to encourage educators to assert their fair use rights broadly as long as they are following widely accepted practices for media literacy education. Hobbs, Aufderheide and Jaszi also felt that a code of best practices was needed to help educators persuade gate-keepers, including principals, librarians and publishers, to accept well-founded assertions of fair use in favor of the rights clearance process.

The Code is delineated in five general principles:
1) Educators using the concepts and techniques of media literacy can choose illustrative material from the full range of copyrighted sources, from television news stories to newspaper articles to web content, and make them available to learners in a variety of settings in and out of the classroom.
2) Educators can integrate copyrighted material into curricular materials, including books, workbooks, podcasts, DVD compilations, web sites, and other materials designed for learning.
3) Educators should be able to share effective examples of teaching about media, including lessons and resources materials, as long as they are making sound decisions on fair use when they create those materials.
4) Educators using concepts and techniques of media literacy should be free to enable learners to incorporate, modify and re-present existing media objects into their own classroom work.
5) If the content produced by a student modifies copyrighted material to satisfy a purpose different from that of the original (i.e., a purpose which effectively "transforms" the original work), that content can be distributed to wide audiences under the doctrine of fair use.

The Code of Best Practices may be accessed at: www.mediaeducationlab.com

"The Cost of Copyright Confusion for Media Literacy" is available at:
www.centerforsocialmedia.org
Double click the "Fair Use" tab on the menu just below the website banner.

Fair Use Analysis and Application to Classroom Teaching

One reason why the doctrine of Fair Use has generated so much controversy is that the Copyright Act rarely specifies acceptable uses. Whenever a challenge to Fair Use is brought before a court, judges evaluate them on a case by case basis. It is this lack of specificity which has led many school districts to draft policies which create a Fair Use "fortress" for fear of any potential liability. Yet, as the authors of the Code of Best Practices assert, "Fair use is flexible; it is not unreliable" (p.5). The authors observe that judges have consistently asked two questions in deciding copyright cases:

1) Did the unlicensed use "transform" the material taken from the copyrighted work by using it for a different purpose than that of the original, or did it just repeat the work for the same intent and value as the original?

2) Was the material taken appropriate in kind and amount, considering the nature of the copyrighted work and of the use?

Many informal rules of thumb circulated among educators suggest that the length of copyrighted material selected is the main factor to be taken into consideration, but the "transformative use" criterion is usually of greatest importance. For example, television news broadcasts routinely reference popular films, classic TV programs and archival images, but the excerpts are used for the purpose of criticism or social commentary, and their use is rarely challenged. Uses which are likely to diminish the copyright owner's share of her core market are another matter, however. For example, a textbook author cannot quote large parts of a competitor's book—also written for instructional purposes--merely to avoid the trouble of drafting her own work.

With this analysis in mind, the rationale for the principles in the Code of Best Practices becomes more apparent. Principle Two touches on the practical aspects of the lack of specificity in fair use law. The principle emphasizes that teachers should use the best practices in their profession as a guide for claiming fair use *because they are the best guide available*. As the authors note, "Fair use is in wide and vigorous use today in many professional communities" (p.7). Historians, media scholars, documentary filmmakers and visual artists all do so, and some of their professional organizations have also written formal fair use codes.

The transformative use test also explains the freedoms and limitations for student work outlined in Principles Four and Five. Students need not take the high road of commentary and

criticism in producing media for classroom consumption. Satire and mash-ups of copyrighted works are allowed, especially when the new work is created with a specific purpose in mind. On the other hand, copyrighted works should not be used as a substitute for creative effort. Students should not count on using copyrighted works simply to establish a mood, and cannot rely on fair use when they use media such as popular songs simply to exploit their appeal and popularity (p.13). And, as detailed in Principle Five, the transformative use test is of primary importance in deciding whether student work should be distributed to wide audiences.

The authors of the Code also suggest something that CML and other media literacy organizations have recommended for some time: that teachers give students explicit instruction on attribution and citation, and fair use law and ethics, including privacy. In particular, the authors suggest that educators explore the distinction between material that should be licensed, material that is in the public domain, and copyrighted material subject to fair use. And they suggest that teachers model the permissions process whenever students distribute their work outside of restricted access networks (e.g., post work on You Tube).

Finally, the authors of the Code encourage teachers to assert their fair use rights boldly as well as broadly. They note that, despite the occasional issuance of "cease and desist" letters, no American media company has ever brought a suit against an educator over the use of media in the educational process (p. 17). From their point of view, the fact that very few court decisions interpret the fair use doctrine in an educational context gives educators a rare opportunity to publicly assert the appropriateness of their fair use practices and the justifications for them (p. 5). Finally, they emphasize that the consensus of educators—the kind of consensus that produces documents like the Code of Best Practices—is of paramount importance: "Educators know best what they need to use of existing copyrighted culture to construct their own lessons and materials. Only members of the actual community can decide what's really needed" (p. 15).

CML News
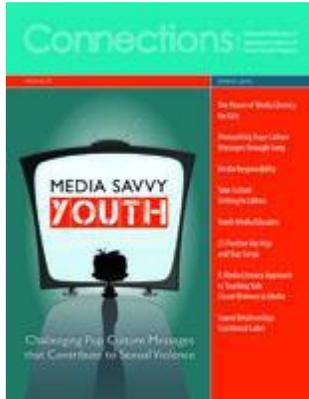
New Article Published in Journal Dedicated to Ending Sexual Violence

In June, the Washington Coalition of Sexual Assault Programs released an issue of its biannual journal which was devoted to the topic of media literacy for youth, parents, teachers, and victim advocates. The Washington Coalition, or WCSAP, is composed of over forty Washington state sexual assault programs, and its mission is to empower survivors and eliminate sexual assault through education, advocacy, victim services and social change. CML President and CEO Tessa Jolls was invited to contribute an article to the Coalition's "Connections" journal for its current issue on the theme of "Media Savvy Youth: Challenging Pop Culture Messages that Contribute to Sexual Violence."

Jolls' article, "Teaching Kids About Violence in Media," uses examples from implementations of CML anti-violence curricula to underscore one problem endemic to our media-saturated society: children become so inured to violent images that they are "often incapable of even seeing that violent depictions are occurring in media. . . ." (p.17).

The article draws attention to the new-found power youth discover when they become aware of media uses of violence: "The potent combination of sexuality and violence is a proven formula that has been branded again and again, whether through *Grand Theft Auto* or *Avatar*. When students see for themselves that media violence is a mechanism to sell, they begin to understand their relationship with violent and sexual media in a whole new way. Ultimately, they see the power of their own choices." (p. 18).

For more information, or to download a copy of this issue, visit the WCSAP website at:
http://www.wcsap.org/Advocacy/PDF/MediaSavvyYouth Spring2010.pdf

CML Recommends Revisions for NAEYC Policy on Technology and Young Children

This year, the National Association for the Education of Young Children, in partnership with the Fred Rogers Center for Early Learning and Children's Media, began the process of revising its 1996 Position Statement on Technology and Young Children Ages 3-8. Founded in 1926, the NAEYC is the world's largest organization working on behalf of young children, with particular focus on the quality of educational and developmental services for children from birth through age 8.

In July, the NAEYC invited a select group of organizations, including the Center for Media Literacy, to submit comments for revision of its position statement. In its rationale for revising the statement, NAEYC solicited comment on a number of topics. Responding to the content of screen media may be the top concern among members. Noting research demonstrating that young children are vulnerable to advertising, and may also imitate aggressive behaviors seen on violent media, the authors of the rationale declare: "With obesity on the rise, families and child care providers are well-advised to limit children's viewing habits, to encourage more active play, and to limit children's exposure to consumerism, particularly around unhealthy foods as well as aggressive toys."

In its comments, CML argues that media effects are inevitable, and points to research which indicates that 2-to-6-year-olds can already recognize familiar brand names, logos and characters and associate them with products. The solution to this challenge, CML asserts, is to help children learn how evaluate the media messages they receive: "Education is the best hope for preparing children to understand their relationship with media and to empower them to make wise choices regarding the technology and media they use. Literally, children's media diet affects their food diet!"

Several recurrent questions in the rationale also indicate that the NAEYC is still gathering information about the educational uses of new technologies. In its response, CML

advises that new technologies should be integrated into the curriculum with a distinct purpose in mind: "…to teach children the critical thinking skills that go along with the collaboration, learning and play that is inherent in media deconstruction and construction."

CML's comments will be posted on www.medialit.com as well as comments from the Early Education Initiative at the New America Foundation, a non-partisan public policy institute which emphasizes policy responsive to the changing conditions of a 21st century information-age economy. Among other things, the Early Education Initiative response highlights the benefits of using new technologies to expose children to high quality content, and recommends that teacher training and professional development programs prepare educators to competently discuss the purposes guiding their integration of technology into the curriculum.

About us…
The Consortium for Media Literacy addresses the role of global media through the advocacy, research and design of media literacy education for youth, educators and parents.

The Consortium focuses on K-12 grade youth and their parents and communities. The research efforts include nutrition and health education, body image/sexuality, safety and responsibility in media by consumers and creators of products.

The Consortium is building a body of research, interventions and communication that demonstrate scientifically that media literacy is an effective intervention strategy in addressing critical issues for youth.

Media Literacy Resources

Teaching Tip: As you get to know your students' parents this fall, keep an eye out for media professionals who might be willing to talk to your class. The more students learn about the behind-the-scenes work of the media, the better prepared they are to make wise decisions.

Future Lab: Shaping Educational Futures

Future Lab is an organization which has recently been drawing attention in the UK through its efforts to support systemic change in British schools. Though not widely known in the US, Future Lab is large enough to have a stable of permanent research staff, and has been gaining numerous policy, industry, and school partners. In addition, its website offers a comprehensive array of resources useful to educators on either side of the Atlantic.

One very interesting resource on the site is the result of a partnership with the UK Department of Children, Schools and Families. For its "Beyond Current Horizons" report on possible future scenarios in education and society, DCSF brought together over 100 researchers for consultation in five general areas such as Generations and Lifecourse, and Knowledge, Creativity and Communication. With the scenarios generated in the report, Future Lab created a Futures Thinking Teaching Pack (located in the Handbooks section of its site) which offers a wide variety of lessons and activities to stimulate students' critical thinking about possible and preferable futures for their lives and the world they live in. All lessons meet national curriculum standards and are designed to enhance 21st century skills.

The "Enquiring Minds" website, located in the "Blogs and Other Sites" section of the Future Lab site, is dedicated to a Future Lab project carried out with funding from the Microsoft Partners in Learning Initiative which fully implemented an inquiry-based curriculum in two Bristol schools. The site includes a report which documents the four distinct phases of inquiry which emerged from the project over the course of a year, and lists materials, lessons and online tools in sufficient detail for teachers to conceptualize the curricular changes they can make to encourage inquiry in their classrooms.

The "Free Online Tools" section features a wide variety of educational technology tools, such as Exploratree, which enables the kind of extended "mind mapping" necessary to launch an inquiry curriculum; Education Eye, which posts a daily update of staff picks for useful educational innovations; and Power League, which offers a number of creative methods for sampling group opinions and provoking group discussion.

Future Lab publishes its own online magazine, "Vision," which blends reasoned advocacy with short case studies of exciting, successful programs undertaken in and out of mainstream classrooms. In addition, Future Lab publishes a wide variety of research materials, from literature surveys on gaming in families to short discussion papers on media literacy as a tool for bridging the "digital divide."

All these resources and more are freely available at http://www.futurelab.org.uk/

Hats Ahoy!

Costume and makeup are essential elements of cinema and other media today, especially for live action features. In this simple and fun Media Lit Moment, your students will have the chance to learn how costume choices help create the characters they see on screen.

Ask students to compare and contrast two shots of an actor in and out of costume (Johnny Depp as himself, and as Captain Jack Sparrow of "Pirates of the Caribbean")

AHA!: It takes a hat and a lot of makeup to make someone look like a pirate!

Core Question #2:   What creative techniques are used to attract my attention?
Core Concept #2:   Media messages are constructed using a creative language with its own rules
Grade Level: K-3

Materials: Two images of Johnny Depp as himself and as that dangerous pirate of the high seas, Captain Jack Sparrow

Depp as himself:
http://www.hollywoodtoday.net/wp-content/uploads/2010/04/johnny-depp2.jpg

Depp as Jack Sparrow:
http://www.moviemobsters.com/wp-content/uploads/2009/11/JackSparrow300.jpg

Activity: Display or pass out copies of the two images. Ask students what kind of character Depp has turned into. Is he a fireman? An astronaut? Once they come to consensus that he looks like a pirate, ask, what makes him look like a pirate? What changes were made to make him look like a pirate? Next, start asking questions to help them understand that Depp is an actor playing a character. For example: Do you think he's a pirate all the time? Once students understand that costume and make-up are key to the transformation, you may want to emphasize that the people who make movies spend a lot of time and money doing just this kind of thing to turn actors into pirates, aliens and other fantastic characters.

Extended Activity: Have a hat party!
Key Question #2 for Producers: Does my message reflect understanding in format and creativity?

Materials: half a dozen colorful, character-y hats; Polaroid-style camera or digital camera, computer and printer

Ask students to take pictures of each other with and without the hats. Students could do so in

pairs, but with six hats, you or the students can take four or five group pictures of six students each. Ask students to compare pictures with and without the hats. What changes do they see? What kinds of characters do they look like when they've put on their hats?