Copyright and the Free Web

Disclaimer: I am not a lawyer. Any information contained in this chapter is for information purposes only. For important matters of law, contact appropriate legal consultants (your school’s or school board’s attorney, for example). Also note that this chapter discusses United States copyright law. Most countries have similar laws protecting intellectual property, but laws are different in different countries. For specific information about Creative Commons in countries other than the United States, refer to the Creative Commons website, http://CreativeCommons.org, at the link for Affiliate Network.
The web is full of resources. If you are reading this book, you are looking for ways to use those resources and create your own. Somewhere in the back of your mind, you might be struggling with the idea of copyright and wondering what you are allowed to use and what you are allowed to share. In the age of Web 2.0, where so much personal information is shared on Facebook and YouTube, the concept of copyright might seem to you to be obsolete. From a philosophical perspective, you might be right. As an educator and from a practical perspective, you might be right—at least most of the time. But from a legal and ethical perspective, you would be wrong.

Copyright law intrudes into our online work in two ways. First, it is a problem when gathering information. Because most material on the web is copyrighted, you have limitations when it comes to what you can do with the information you collect. You can certainly read whatever is not locked behind passwords and firewalls, but you might have limits when you want to incorporate that information (especially in its original form) into your own work. Second, it is a problem when distributing information. Although copying something for your class might be OK sometimes, you have far greater restrictions when putting that same material on the web for the whole world to see.

Imagine a world where all creative material that teachers might want to use is locked down. Some things are locked down by law, while others are locked down by technical measures and copy controls. Imagine a world where teachers need permission to use any material they have not created themselves.

Now, imagine a world where teachers have limited rights to use what they want in their teaching. For example, they can show a couple of pictures to their class but not too many. They can create a multimedia project with a short bit of a song, but they can’t distribute it too widely or use it for too long. Imagine a world where many things teachers want to do are allowed and many are not, but telling the difference is far from clear.

Finally, imagine a world where teachers can use whatever materials they want in whatever way they want. Imagine a world where pictures, texts, lesson plans, and videos are free for the taking. Imagine a world where teaching materials are widely available for unlimited use.

In reality, we live in all three worlds. The first is the world of copyright law, accompanied by a culture of no. The second is the world of fair use, accompanied by a culture of maybe. And the third is the world of the commons, accompanied by a culture of sharing. This chapter is about navigating these three worlds in education. In a previous publication on copyright, technology, and rights (Marcovitz, 2006), I laid out the basics of copyright law and how educators can take advantage of the fair use provisions of copyright law to use copyrighted material legally with limitations. In this chapter, I expand the discussion of
copyright and fair use to include emerging ideas about the commons (see, e.g., Lessig, 2001) and how Creative Commons licensing (see http://creativecommons.org) can help us shift from the world of copyright and fair use to the world of commons and from the culture of no and culture of maybe to the culture of sharing.

This is an important issue in the context of digital communication because the majority of our resources now come from the web, and we are most likely to share these resources on the web. As teachers, we must do this while following legal and ethical principles.

Is Copyright Obsolete?

Lessig (2001) discusses this question from a historical and philosophical perspective. This chapter summarizes some of the history and philosophy and discusses it from a practical perspective. Although rapid changes in technology have gotten well ahead of copyright law, the law still stands, and educators have the moral and legal obligation to follow it. However, the rise in popularity of new mechanisms for copyright permission, primarily Creative Commons, has provided easy access to materials with few or no copyright restrictions. The term *copyleft* (see, e.g., Free Software Foundation, 2009) is often used to refer to mechanisms or licenses that allow the copyright holder to retain some rights while granting broad rights for others to use and share the material.

Imagine that you want to create a digital story with music in the background. Your first inclination might be to remember a popular song that fits the mood of your story perfectly. Then, copyright will surely step in the way. You might remember some obscure rule about only using 30 seconds of the song and another rule imposing limits on how you can distribute your story and for how long. Now imagine that it is not a specific song that you need, but just a type of song that sets the right mood. With that slight change of mindset and a little help from Creative Commons, copyright no longer stands in the way. All you need to do is search for a song that includes appropriate Creative Commons licensing, and you can complete your digital story with few restrictions. Salpeter (2008) and Johnson (2009) give excellent overviews of options within Creative Commons and the importance of Creative Commons for K–12 schools.

Up until a few years ago, Creative Commons was a great idea in theory, but in practice it was largely unusable because of the limited availability of material distributed with Creative Commons licensing. Now, Creative Commons has reached a tipping point. Popular media collections (such as Flickr) and search engines (such as Google) have built-in mechanisms for creators to assign Creative Commons and for users to search
for material licensed under Creative Commons. Add to that the Creative Commons website (www.creativecommons.org) and a large supply of media is at the fingertips of every educator. Is everything available that you would ever possibly want to use? Of course not. However, millions of pictures, songs, and videos are freely available.

To answer the question at the beginning of this section, from a practical standpoint, copyright is not obsolete, but with the rise of Creative Commons we are shifting relevance from a culture of copyright to a culture of sharing. The rest of this chapter is divided into three sections: copyright, fair use, and the commons for education.

Copyright and the Culture of No

Copyright law was developed to encourage the creation of creative works. By giving creators (such as authors, poets, and photographers) limited rights to control their works, the law builds in incentives to create. For example, if I create something of value, I can copyright it for a period of time so that I can sell it, comfortable with the fact that others do not have the right to copy what I have created and undermine the market for it. For example, I wrote a book in 2004 (second edition, 2012). Although the core of the book was material I had worked on for other purposes and distributed freely on the web, I spent considerable time refining the material into a sellable product. Without the promise of compensation, I would have written some of the material, but I probably would not have expanded it and refined it to the level that I did. In essence, copyright law encouraged me to take the time to expand and polish my work. This benefited me and, I hope, the people who purchased my book. Originally, copyright law gave creators control of their work for 14 years with the option of renewing protection for one additional 14-year period. The current law gives copyright protection to intellectual property until 70 years after the author’s death (U.S. Copyright Office, 2009, Chapter 3).

If you want to use my 2004 book or this book, you have several options (aside from waiting for 70 years after I am dead). You can buy the book new in which case I receive royalties. You can buy the book used in which case I receive no royalties. You can borrow the book from a friend or a library (no royalties). The right to give or sell a work to someone else without permission is explicit in Section 109 of the copyright code (U. S. Copyright Office, 2009, Chapter 1, 22–24). Once you have accessed a legal copy, you have limited rights to copy small portions of it for personal use, and you have limited rights to incorporate portions of it in other projects under the fair use provisions found in Section 107 of the copyright code (U. S. Copyright Office, 2009, Chapter 1, 19).
This arrangement works fairly well for content creators who want to control their content. However, it is problematic for users of content. If you want to use content created by someone else, your rights are limited. This is particularly problematic for educators who are simply trying to do their best to teach their students and not trying to make a profit from someone else’s work. Fair use (described in more detail in further sections of this chapter) gives educators limited rights to use others’ work in their teaching. In some cases, fair use rights are all you need to do what you want. However, the rules are very restrictive when it comes to technology and are complex in general; they don’t allow you to distribute others’ copyrighted material on the web. The time, portion, and distribution limits for teacher-created multimedia projects are likely to make you not want to use copyrighted material at all. Add to that the complexity of fair use, which is based on case law in applying a four-factor test of “fairness,” and you end up with a confusing mess.

This confusion leads to the culture of no (if you are not sure about whether it is legal, just don’t use it) or the culture of yes (simply use anything you want for the good of the children). Neither option is reasonable. Teachers should have whatever tools they need to meet the needs of their students, but they must always behave legally and ethically. It is untenable for teachers to stand before their classes and be distributing learning materials in violation of the law.

Why Should I Care about Copyright?

With the laws being so confusing and the chances of being caught so remote, you might wonder why you should care about copyright. You might be thinking, “If I got it from the web, it’s already out there, so I should be able to put it on my website.” Although this is a convincing argument, it is not the law, it is not ethical, and it is not an appropriate example to set for students. Some sites are supported by advertising, so putting something on your site denies the creator the ad revenue. Other sites might want to attract attention to their products or services for other reasons. Others might want to have the ability to take the material down whenever they want. It is their right, not yours, to control their material. Once you put someone else’s work on the web, you have usurped the owner’s right.

Legally, you should care about copyright because violations can bring fines of thousands of dollars. Many classroom uses are unlikely to attract attention from the copyright holders or lead to any fines at all, but as material is distributed beyond the classroom
walls (including presentations at parent nights, distribution on the web, and distribution for distance learning), the chances of your actions violating the law and being noticed increase greatly.

Ethically, all of us should care about setting a good example for our students. Finding worthwhile material is important, but it should not take place at the expense of setting an example for our students that the law and ethics don’t matter. If we show respect for the intellectual property created by writers, artists, and inventors in our classrooms, we’ll teach our students the lifelong value of respect for others’ work.

Is the Copyright Symbol Necessary?

How many web pages have a copyright symbol? Many do, but many do not. Can you find a copyright symbol on YouTube videos, for example? A copyright notice might take this form:

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That is, it contains the c in a circle (or a p in a circle for nonvisual material such as sound recordings), the date, and the copyright owner’s name, sometimes followed by the phrase “All Rights Reserved.” However, a copyright notice is not necessary. As soon as you create a work, you have some copyright protection for that work. If the creator has included the © in the document, that person has thought about protecting it, but even without the copyright symbol, under Unites States law the document is protected. Note that this was enacted as a change to the copyright law in 1989, so some works without a copyright symbol that were created prior to that date might not be protected by copyright law, but you should assume that everything is protected unless you know otherwise.

The copyright holder has the right to seek damages when anyone uses his or her work without getting permission. However, for teachers, our biggest concern is not the prospect of being sued for damages (noncommercial violations of copyright are unlikely to result in large penalties). Our biggest concerns are our obligations as professionals to behave legally and ethically. We must assume that material is copyrighted and that our rights to use it are limited unless we know otherwise.
Public Domain

Exceptions to works being granted automatic copyright relate to the issue of public domain. Works in the public domain are free for anyone to use as they please. Works enter the public domain in three ways:

1. Older works eventually lose their copyright protection and fall into the public domain.
2. Works created by the United States government are automatically in the public domain.
3. The copyright owner may choose to place works in the public domain and forego any copyright protection.

Work is generally copyrighted until 70 years after the death of the author (a recent law extended this from 50 years). Work created by a corporation is generally copyrighted for 95 years after publication (recently extended from 75 years, coincidentally, just in time to save Mickey Mouse from entering the public domain). After the time limits, the work is in the public domain. An author might choose to place his or her work in the public domain. This means that the work can be used by anyone for any purpose. Ethically, you should still give credit to the author, but you may freely use the work.

As educators, this means that we have unlimited rights to use 70-year-old and older works of fiction and nonfiction in any way we choose. Theoretically, we have unlimited rights to use old movies as well, but this doesn’t yet apply because most movies are not 95 years old.

Songs present a special case because a song has three potential copyrights: the music, the lyrics, and the performance. Each can be copyrighted separately and may have separate copyright owners. Very old songs might be in the public domain, but the particular recording (i.e., the performance) might not be. If you want unlimited use of old songs, you have to use an old recording or record versions of the songs yourself.

As one final note, public domain grants unlimited rights to use, alter, sell, and copy works. Although you may have no desire to make a profit from the works you create, rather than placing them in the public domain, you might choose to give limited permission, such as for nonprofit educational uses. Creative Commons (www.creativecommons.org) and the Free Software Foundation’s public licenses (www.fsf.org) are good models for allowing limited use.
Permission

We know that some things are in the public domain for all to use freely, while other material can be used with limits under fair use (discussed in detail in this chapter’s section titled “Fair Use and the Culture of Maybe”). Another way to use works created by others is to request and receive permission from the copyright holder. The copyright holder has the right to grant you permission. Sometimes this is easy to obtain, and sometimes it is not. Many copyright holders are sympathetic to nonprofit educational uses and will be happy to give you permission. Other copyright holders, especially for music, lyrics, and works of art, generally charge substantial fees before they will grant anyone permission to reproduce those works.

To request permission, you first must figure out who owns the copyright. This is easy for traditionally published media (such as books, movies, and musical recordings). It will be listed on the copyright page or packaging. Beware when you find something you want to use on the web. Many things are posted on the web by someone other than the copyright holder. Furthermore, the creator isn’t necessarily the copyright holder. For many published works, the author retains the copyright. In other cases, the author assigns the copyright to someone else, such as the publisher. In other cases, the copyright might be owned by the employer of the author if the work is considered work for hire. Imagine a greeting card factory where someone is hired to write poems for the inside of greeting cards. Unless the employee and the company make special arrangements, the poems are considered work for hire, and the copyright belongs to the company.

As you create materials, be sure to check with your employer about the arrangements for retaining rights to your own work. In many school systems, teacher-created lessons are owned by the teacher even if they are technically considered work for hire, but that is not universally true.

Once you determine the copyright holder, you can simply send an email or write a letter (assuming you can find contact information on the website where the work was posted). Be clear about exactly how you want to use the material. Copyright holders are unlikely to grant you unlimited permission, but they might be sympathetic to educational uses with limited distribution of the work. Be reasonable and request permission for what you need, not every possible use you might ever want.

Don’t be surprised if your request is denied, goes unanswered, or is granted for a fee. Copyright holders have no responsibility to grant you permission, even for your seemingly benign use. Furthermore, they don’t even have a responsibility to respond to your request. Many requests for permission include a phrase like, “If I don’t hear from you
within 30 days, I will assume that permission is granted." Although this is a creative tactic, it will not work. Your assumption of permission is not permission, and failure to respond to such a request is not granting permission. Finally, you might find that copyright holders are willing to grant you permission for a fee. Several years ago, Ann Landers had a very nice column about the failings of computer spell checkers. It was cute, and I wanted to share it with my students, so I wrote to Ann Landers’s publisher and requested permission. A quick reply came back, announcing that permission was granted as soon as I sent them a $50 fee. It was cute but not that cute. Instead of distributing the article, I taped it to my office door.

Planning for Copyright

As you plan a project that includes copyrighted material, you must plan for copyright. As you will see following, fair use grants you some rights, but those rights are very limited and often too restrictive. For example, limiting use of a substantial multimedia project to two computers for two years might make the development effort more trouble than it is worth. For that reason, you should plan: plan to get permission, plan for alternatives if permission is not granted, and plan to use as much public domain, copyright-friendly (i.e., work that retains copyright but comes with a notice that many uses are permitted), and self-created material as possible. Seek permission early in the process of designing your project so you still have time to make alternative plans if permission is not granted.

Copyright is good for creators but not always good for users of material. Fortunately, the law has built-in provisions that specify limited rights for what you can use without permission: these limited rights to use copyrighted material are called fair use.

Fair Use and the Culture of Maybe

Now we know that most written works are copyrighted, and some are in the public domain. We can ask permission to use copyrighted material, and we have the freedom to do what we want with material that is in the public domain. Additionally, we have limited rights to use copyrighted material without asking permission.

Imagine that you are a book author, and you make your living selling books; if you don’t sell books, you don’t eat. Imagine you are a teacher who finds material online that will
benefit your students. Imagine you are a musician who sells millions of albums. Perhaps you are a struggling musician trying to eke a living out of a few album sales and appearances. Imagine you are a librarian trying to disseminate information to the public. Imagine you are a student who found some great pictures on the Internet for a school report.

These examples are just a few of the many competing interests involved in using or limiting the use of information. When I asked my students to role-play some of these roles, they took stands against libraries and used-book sales, in favor of unrestricted use of anything for students and educators, in favor of limiting use to reading books and talking about them, and in favor of a wide range of uses with very strict limitations on the amount of material that may be copied. They learned that copyright laws have to balance these competing interests. Although a bookseller might think it is reasonable that you may not copy even one page from a book, students, teachers, and librarians would find that restriction inappropriate.

The law tries to balance the rights of the copyright holder with the rights of the public, while maintaining its primary goal of promoting the creation of new works, but copyright law is very confusing, especially when applied to the classroom. Many educational applications of copyright law fall under the domain of fair use. This is good and bad. Fair use allows you, as educators, to use material that might otherwise be illegal for you to use. On the other hand, the rules of fair use are complicated and dominated by ambiguous case law. Beware that fair use places limits on the amount of a work (number of words) you may use relative to its entirety (portion limitations); the time for which you may use it (time limitations); and the ways you may distribute it (distribution limitations). These limitations almost certainly prohibit use of any material that is more than a brief quotation when you plan to post it publicly on the web. If you are showing your class a website (or something downloaded from a website), that is generally acceptable, but if you are incorporating it into your own projects or making copies for your class, you will run into time limitations (two years when incorporated into an educational multimedia project and one semester when simply copied), as well as distribution limitations (only loading your educational multimedia project onto two computers at a time for student use). For a complete discussion of fair use and educational multimedia, see Marcovitz (2006) and University of St. Francis (2004).

For educational multimedia, CONFU (the Conference on Fair Use) attempted to form a consensus on fair use in educational multimedia projects (CONFU: The Conference on Fair Use, 1996; Lehman, 1998). CONFU developed guidelines and published them in 1996. However, the participants in CONFU never achieved consensus, with representatives of copyright holders finding the guidelines too permissive and representatives of copyright consumers finding the guidelines too restrictive. With that said, the CONFU
guidelines are the best we have. For more details, consult CONFU: The Conference on Fair Use (1996); Davidson (2002); Harper & the University of Texas at Austin (2001, 2007); University of St. Francis (2004); and Lehman (1998). Some of the most common portion limitations include the following:

- Any kind of motion media (movies, videos, etc.) is limited to 10% of the entire work or three minutes, whichever is less.
- Text is limited to 10% of the entire work or 1,000 words, whichever is less.
- Poetry is limited to 250 words. Poems shorter than 250 words may be used in their entirety. Poetry is further limited to use of no more than three poems by one poet or five poems from different poets in an anthology.
- Music, lyrics, and music videos are limited to 10% of the entire work or 30 seconds, whichever is less. Recording your favorite song as the soundtrack of your PowerPoint presentation is not permitted unless it is a very short presentation.
- Pictures and illustrations may be used in their entirety (10% of a picture wouldn’t make sense), but no more than five pictures from a single artist and no more than 10% of the images or 15 images, whichever is less, from a collective work may be used.
- Numerical data sets are limited to 10% of the database or 2,500 cell entries, whichever is less. Note that cell entries refer to individual pieces of information, such as a name or a website’s URL.

These limitations are fairly restrictive. You may not post copyrighted work on your website. You may not make CDs and distribute your work to your entire class. You may not use the copyrighted work for commercial or noncurricular uses, so you may not use clips of popular songs (even if they are each less than 30 seconds) as the soundtrack for your video yearbook. These are guidelines, so you might be able to justify some additional uses beyond them, but most uses of copyrighted works beyond these limitations require permission. These limitations are not undisputed and some sources argue that the primary factor for fair use is whether or not the new work is transformative, using the work for a very different purpose than the original. This approach allows for far more leeway for educational purposes (see Hobbs, 2010, and http://copyrightconfusion.wikispaces.com).

Finally, fair use applies only to works to which you have some legal right. This can be a problem for work that is posted on the web because much of what was posted was posted without permission (and is, thus, illegal). If the copyright owner has not given permission for distribution, you do not have any right to the work. The primary offense is that of the person who illegally placed the work on the Internet, but you are liable as well if
you also use the work. Unfortunately, it is not always easy to tell what work on the web is there legally. The web can be a great source of media, but much of it may consist of illegal postings.

Fair use gives you limited rights to use copyrighted material. As a teacher, you have the freedom to use some material in some ways that you (as an individual citizen) might not otherwise be allowed to use. Sometimes, delving through the complexity of fair use is worth the effort, so that you can use exactly what you need with a clear conscience even if it is copyrighted. However, for many things you want to do, there is a better way, as discussed in the following sections.

Copyleft, Creative Commons, and the Culture of Sharing

If the previous sections have scared you a bit, you are not alone. The strictness of copyright and the complexity of fair use appear to leave us with three unsatisfactory choices: Giving up and not using any media at all (my description of the culture of no); being very, very careful about what you use (the culture of maybe); or giving up and using whatever you want in whatever way you want without regard for the law (the culture of yes).

I have been teaching about copyright for many years, and I have never found any of these options satisfactory, but I have begrudgingly had to live with the culture of maybe, knowing that my students (and most teachers) are likely to pick the culture of yes or the culture of no.

Fortunately, a fourth option has emerged. It has been a theoretical option for many years because until recently, it wasn’t a practical option for educators. Although Creative Commons licensing hasn’t been applied to anywhere close to a majority of the media available, it has been applied to enough media to provide teachers with a rich stockpile of media to use for almost any purpose.
Search for a picture of a flower. An early 2012 search for hibiscus on http://images.google.com yielded over five million hits. If you need a picture of a hibiscus, there are more than enough here. But you are not allowed to use all of them beyond the fair use guidelines. How many do you need? If there were only one million available, would that be enough? What about 4,560? Perhaps 4,560 are enough, but that may be a small number if you have specific requirements or want a picture to illustrate an obscure topic. Google image search yielded 4,560 results for hibiscus pictures that are labeled for reuse. Fortunately, a similar search on Flickr yielded 26 thousand hibiscus pictures licensed with Creative Commons.

In the 5 million hibiscus pictures on Google, you are very likely to find exactly what you need. However, in the 26 thousand Creative Commons licensed pictures, you are only slightly less likely to find what you need. That is why Creative Commons has reached the tipping point. If a common search term only yielded a few dozen, or even a few hundred pictures, there would be a high probability of not finding what you want. Now that the search yields thousands, there is little need to rely on traditionally copyrighted material.

This is the culture of sharing. This new culture fits well with the broader cultural trends in which digital information flows freely, if not legally, around the Internet. The difference is that this culture of sharing is legal because it keeps the power to share in the hands of the content creators, and most are happy to share their own work. Now that enough content creators have chosen to share their work (this is true for digital images, as demonstrated above, and is quickly emerging for music and video as well), and tools such as Wikimedia Commons or Wiki-commons (http://en.wikipedia.org/wiki/Wikimedia_Commons) and Flickr make it easy to do so, educational uses of media can make this cultural shift. Teachers can once again find sufficient media to use without worrying about ethical dilemmas. Further, teachers can now provide the honest and open culture of sharing as an alternative to students who are steeped in the illegal culture of yes (or mired in the restrictive culture of no).

The remainder of this chapter will outline the historical and philosophical background for the culture of sharing, give practical directions for finding and using media legally, and explain why, to be a full participant in the culture of sharing, you should share your creative works as well.

Philosophy and History

Lessig (2001, 2004) gives a complete history of the culture of sharing or what he calls “free culture.” He quotes Richard Stallman, founder of the free software movement,
in explaining that free culture is not like “free beer,” but rather like “‘free speech,’ ‘free markets,’ ‘free trade,’ ‘free enterprise,’ ‘free will,’ and ‘free elections’” (2004, p. xiv). Stallman advocates a world in which culture and cultural artifacts flow as freely as possible. This world is not without restrictions, constraints, controls, property rights, and profits, but it is a world in which those limitations on freedom are reasonable and kept from limiting free-flowing ideas and culture.

Lessig (2001) explains the concept of the commons as a resource that is free for public use. Sometimes a commons needs regulation and control to ensure its continued existence. This is true of physical resources, such as public parks (think of the Boston Common) and public roads. Being a commons doesn’t mean that these resources can be used by anyone at any time without regard for others. But it does mean that:

Anyone is free to access these spaces without first getting the permission of someone else. Access is not auctioned off to the highest bidder, and the right to control access is not handed off to some private or governmental entity. The resource … is made available to anyone. (Lessig, 2001, p. 20)

Lessig goes on to say, “Some are free in the sense that no price is paid. … Some are free even though a price may be paid (… as long as the fee is neutrally and consistently applied). … The essence, in other words, is that no one exercises the core of a property right with respect to these resources—the exclusive right to choose whether the resource is made available to others” (p. 20).

Certain resources that might be part of the commons are rivalrous, while others are non-rivalrous. Rivalrous resources are limited and can be used up or otherwise overtaxed. If, for example, too many people enter a park at one time, they will not all fit. If, over time, too many people are careless with the park, its value to society might be diminished by overuse. If I have a book from the library, others cannot read that book until I return it.

Non-rivalrous resources are unlimited. These are not physical resources. Rather, they are such things as ideas and electronic expressions. For example, use of information on the Internet is non-rivalrous because one person’s accessing it does not limit anyone else’s ability to use it.
Lessig (2001) argues that Einstein’s Theory of Relativity is an idea in the commons that is not diminished in any way by anyone’s use of it (p. 20). Electronic resources, such as an electronic copy of this book, are non-rivalrous because distributing electronic copies, unlike physical copies, keeps the original intact. Of course, electronic copies of this book have copy protection that prevents unlimited sharing, making what was a non-rivalrous resource a rivalrous one. Although electronic distribution of creative works, such as this book as an e-book, might diminish the market value of the work, the distribution doesn’t destroy the original. Lessig argues that overzealous control of creative works, by expansions of copyright law and corporate control, have diminished the value to society of the works. He would argue that my ability to write this chapter, by using and expanding on his ideas, is a small demonstration of the power of the commons.

The web, in general, is a great example of a commons, but both Lessig (2001) and Bollier (2003) argue that the commons is under attack with respect to information. Although the Internet started as a boon to information freedom, corporate and private interests are threatening the commons. Bollier says,

> The recurrent theme of enclosure is the conversion of commons into markets. Something that was available to all as a civic right is being privatized and commercialized. This not only pushes prices higher and forces people to obtain permission to use works that were previously free, it shifts ownership of resources from the American people to private companies. (p. 10)

Kiehl-Chisolm and Fitzgerald (2006) argue for a model of open access, giving everyone the right to access scientific and educational information. Lessig does not argue that there should be no property rights. Rather, he believes that those property rights need to be balanced with a flourishing commons. Lessig (2001, 2004) makes a strong philosophical case for his ideas, but if he stopped there, we would only be richer as students of philosophy and law. Fortunately, he has expanded his ideas to a practical application as one of the founders of Creative Commons. Creative Commons provides the tools and advocacy to make it possible to have flourishing commons in electronic media.

The Creative Commons

Creative Commons provides a mechanism for content creators to give permission in advance for others to use their work. Copyright applies the phrase “all rights reserved” to your work. Creative Commons applies the phrase “some rights reserved” (the Free Software Foundation advocates the phrase “all rights reversed”).
The symbol for copyright is the letter c in a circle. The symbol for Creative Commons is the letters cc in a circle (Figure 7.1).

![Creative Commons symbol](http://creativecommons.org)

**Figure 7.1** Creative Commons symbol, used under Creative Commons license (from http://creativecommons.org).

To find out if something is licensed under Creative Commons, look for the cc in a circle and/or the phrase “some rights reserved.” If you see one or both of those things, you can generally click on them to get details about the type of license that has been assigned to the work. Go to http://creativecommons.org/about/licenses to see a variety of images you might see associated with a Creative Commons license. Figure 7.2 shows a sample Creative Commons License:

![Creative Commons license image](http://creativecommons.org)

**Figure 7.2** Examples of Creative Commons license image, used under Creative Commons license (from http://creativecommons.org).

This license has the cc in a circle followed by BY to indicate that users of this work must provide attribution (they must cite the source), and the NC to indicate that this can only be used without further permission for noncommercial purposes.

Do you create things to make money? I’m sure some of you do. I do. Although I had other reasons to write this book, making money from it was not at the bottom of the list. Do you create things without any intention of profiting? I’m sure all of you do. You write lesson plans. You take pictures on vacation of pretty scenery. You write explanations of concepts that are difficult for your students to understand. If colleagues asked you if they could use these things, most of the time you would be flattered and readily agree. You might already share some of this material freely on the web. The problem is that if others want to use your creations (in any ways beyond fair use), they are supposed to ask for permission. Remember, once you create something, it is automatically copyrighted. You might not mind a few quick emails asking for permission, but why be bothered? Creative Commons is a way for you to give permission in advance.
Even better, Creative Commons lets you retain the rights you want and give permission in advance for uses you don’t mind. For example, you might not mind a teacher using your lesson plan in her classroom, but you might not want someone else to make money from it by publishing it in a book of lesson plans. In that case, you can give permission for noncommercial uses while not allowing commercial uses. Creative Commons allows you to choose the rights you want to retain by selecting the appropriate license. The terms can include the following conditions:

**Attribution.** All Creative Commons licenses require users to give attribution—that is, credit the source.

**Commercial.** You can decide whether users can use your work for commercial gain. This is not simply for selling your work but for using it in any commercial way. For example, a decorative picture on a monetized blog (one that has advertising to make money for the creator) is commercial. A picture used to make a point in a business presentation is commercial. A background photograph for your business card is commercial.

**Modifications/Derivatives.** You can decide whether to allow others to create derivative works from your works. That is, you can decide if they can modify or adapt your work or require them to distribute it as it is. This could include, for example, using an image editor to change a picture, rewriting the words to a song, using a song as synchronized background in a presentation, rewriting portions of a handout for their students to adapt it to their purposes, or creating a new work based on your original, such as a sequel to a book.

**Share Alike.** If you allow modifications, you can decide whether works based on your work must use a comparable license. Creative Commons is partly based on the GNU General Public License (GPL) from the Free Software Foundation, a licensing system that is mainly used for computer software. Share Alike (a Creative Commons attribution) is a cornerstone of GPL, forcing software developers who use resources from the community to put their derivative works back into the community. Making Share Alike an option instead of a requirement in Creative Commons is one source of tension between the Free Software Foundation and Creative Commons (Ciurcina, 2006).

For educators, you will find material that gives away some or all of those conditions, and you might choose to release material with some or all of those conditions.
Using the Commons

As a teacher using technology, you might want access to a number of things, such as pictures, music, videos, and text.

As you have learned from the fair use guidelines, if you want to use copyrighted pictures without permission, your rights are very limited. If you are creating a multimedia project, you can use a limited number of pictures from the same creator, you can load your project on a limited number of computers (far fewer than enough for your whole class), and you can use the project for a limited time. If I spend many hours creating something, I want to be able to use it with my students in whatever way I see fit for as long as it is still useful. The following are some tips for finding different types of media that are licensed with Creative Commons.

Pictures

Pictures with Creative Commons licensing are the easiest form of media to find. Here are some sources:

Advanced Flickr Search

www.flickr.com

Go to Flickr and type your search term into the search box. After clicking the search button, you will see thumbnails of pictures for your search term. At the top of the screen next to another search box, you will see the words “Advanced Search.” Click to get advanced search options. Scroll down to the bottom to see the Creative Commons section.

You have three checkboxes:

☐ Check the first box, “Only search within Creative Commons–licensed content.”

☐ If you are creating something that you are considering using in a commercial way, you should check the second box “Find content to use commercially,” but this option will limit the number of results.

☐ For many of your purposes, you will also want to check the third box, “Find content to modify, adapt, or build upon.” This gives you broad power to do what you want with the content, including changing it and building it into multimedia projects.
Hit the search button at the bottom, and you will see pictures that you are free to use. When you see the picture, look on the right side of the screen for the words “Some rights reserved.” If you click on those words, you will see details of the Creative Commons license that has been applied to that picture. All licenses require attribution (you must give credit to the content creator). You will know whether commercial uses are allowed, based on the choices you selected in Advanced Search. You will also know whether or not you are allowed to modify, adapt, or build upon what you find, based on your choice in Advanced Search. Finally, you should be looking for whether you are required to “share alike.” If the license specifies share alike, then anything you create with that content must be released with the same license. If you are not willing to share your work freely, then make sure that you don’t select content that uses a share-alike license.

**Google Image Search**

http://images.google.com

Go to Google Images and click on “Advanced Image Search.” Under usage rights, you can choose not filtered by license, labeled for reuse, labeled for commercial reuse, labeled for reuse with modification, or labeled for commercial reuse with modification. For educational purposes, your safest choice is labeled for reuse with modification. This will find some pictures from Flickr and from other sources. When you find pictures in this way, be sure to go to the original source to find out the details of the licensing. Often you will readily find the specific Creative Commons license associated with a picture, a notice that the picture is in the public domain, or a notice that the picture is licensed with the GNU Free Documentation license (see www.gnu.org/licenses/gfdl.html). Other times you might not find a license; when this happens, it is best not to use the work.

**Wikimedia Commons**

http://commons.wikimedia.org

Go to the website and search. When you click on the thumbnail of a picture, you can scroll below the picture to find the details of licensing associated with it.
Other sources

There are other sources of pictures that have given permission without ascribing a specific license. Many of them allow educational use of their pictures. See, for example, http://pics4learning.com and http://classroomclipart.com. Adam and Mowers (2008) provide other options for searching for copyright-friendly content.

Music and Sounds

Although pictures are the easiest media to find in copyright-friendly format, the web contains a great deal of music and sounds. Here are some sources:

Opsound
http://opsound.org

Many songs and albums, organized by genre

ccMixter
http://ccmixter.org

Many songs and albums, organized by artist

Jamendo
www.jamendo.com

Many songs and albums

ArtistServer
www.artistserver.com

Many songs and albums; check for specific licensing

Free-Loops.com
http://free-loops.com

Loops and sound effects; watch for different licensing for different sounds
Freesound  
www.freesound.org  
User-uploaded sounds; watch out for inappropriate content

Videos

Videos licensed with Creative Commons are harder to find than other types of media. TeacherTube (http://teachertube.com) contains language in its license agreement that all videos uploaded are licensed under Creative Commons; this wording is buried in the license agreement, so those who upload videos might not be aware that they are assigning a Creative Commons license, and of greater concern, they might not be the owners of the material they upload. Before using video from TeacherTube, you should check to see that the person who uploaded it is the creator of the video. You might also find a limited selection of videos at the following sites:

http://wiki.creativecommons.org/Video  

Always be sure to check the licensing for any video that you find. Note that if you want to show pieces of video for educational (not entertainment) purposes in your classroom, you have some rights to do that under fair use if you show the minimum necessary for your educational purpose.

You will need copyright-friendly licensing if you are planning to incorporate the video into your own work.

Text and Other Sources

Many general search engines allow you to search for content by the type of license. Some include media only, while others include text as well. Here are some good starting points:

CC Search  
http://search.creativecommons.org  
Search a variety of Creative Commons content; always double-check license.
Google

www.google.com

Perform a regular search and look for the Options button at the top right of the screen (it looks like a gear) and choose “Advanced Search.” Scroll down to the bottom of the screen and choose from the drop-down usage rights menu.

SpinXpress

http://spinxpress.com/getmedia

Search by media type and license type.

Wikimedia Commons

http://commons.wikimedia.org

Browse by category.

Participate in the Culture of Sharing

Creative Commons works, in a practical sense, because thousands of people have chosen to share millions of creative works with others. Becoming part of that community of sharing strengthens the community. Kranich (2003) says, “Without a sophisticated information commons in every community, we cannot ensure the public’s right to know” (p. 24). That is, you should consider licensing your own work with a Creative Commons license. See Johnstone (2003) for an overview of the process of sharing material while retaining your own rights to it, or simply go to http://creativecommons.org/choose/ and select a license to place on your work.

The rise of Creative Commons has been great for educators, but other trends are causing problems. The commercialization of the Internet has been an issue for free material, but now the trend is to monetize everything. Someone who might write a blog to share educational tips is now likely to try to set that up as a source of revenue by selling advertising on the blog (this takes only a few minutes with tools such as Google AdSense). I don’t begrudge anyone the right to make money, but for most creators of educational blogs or sites, the potential profit is close to zero, while the potential good to make the work freely available is large. The cultural trend of monetization closes creators off to sharing freely.
Another trend that is problematic is the trend to lock information behind passwords. Most colleges and universities (as well as many K–12 schools) have course management systems available, such as Blackboard and Moodle. These are great tools for organizing online material. The problem is that, by default, the material you share is only open to students registered for the course. Some schools, such as MIT (through the Massachusetts Institute of Technology OpenCourseWare project—see http://ocw.mit.edu) are taking intentional steps to make as much material as possible open (and with the new edX collaboration with Harvard University, they are looking to make entire courses available for free online). Most schools, however, and the teachers and professors who teach there, use the tools provided to them without concern for the culture of sharing. This is why it is important to be conscious of the culture of sharing and make free as much of your own material as possible. This starts with simply making the material available to others and not locking it behind firewalls and passwords. Additionally, using sites, like Flickr, that have built-in mechanisms for assigning Creative Commons licenses gives others access and the right to use your material. Alternatively, you can add a Creative Commons license to any material you put on the web by getting the license material from http://creativecommons.org.

In Flickr, you can either adjust the permission for an individual photo (or group of photos), or you can set your default to include a Creative Commons license. When you see an individual picture, you can look for the copyright notice under “Additional Information” on the right side of the screen. Click “Edit.” Then choose the specific license you want, based on the restrictions you want to place on the photo (deciding whether you want to allow commercial uses, allow modifications/derivative works, and whether others are required to share alike). That’s it.

However, you can make it easier for yourself by setting up your personal preferences to default to a Creative Commons license. If there is any picture that you don’t want to share (or want it to have a different license), you can always use the above procedure to assign copyright. To change your default setting (so that all new uploads will have Creative Commons licensing unless you specify otherwise), go to your account and click on the “Privacy and Permission” tab. Scroll down to the “Defaults for New Uploads” section and click “Edit” next to “What license will your content have.” From there, you can add one of the Creative Commons licenses as your default setting. This won’t change any photos you have already uploaded, but it will impact any new photos you upload.

If you don’t use a system that has Creative Commons built in, then you can visit the Creative Commons website, and click on the link for “License.” Decide the type of license you want, and add the additional information about where to find the content
and how to contact you about additional licensing. You will be taken to a page that gives you a choice of icons to use and some HTML code to embed on your site. Don’t worry if you are not an HTML guru. Most web systems (such as blogs) have a simple way to view the HTML or add HTML. All you have to do is paste the HTML code into an editor that understands HTML, and the license will appear on your site. Further instructions can be found at the publishing tutorial on the Creative Commons website, http://wiki.creativecommons.org/Website/Publish.

The only caveat is that a Creative Commons license is not revocable. That is, once you release something with Creative Commons, you can’t take it back. You are under no obligation to continue to distribute it with a Creative Commons license, and you are free to distribute additional copies with an “all rights reserved” copyright associated with it, but the copies that are already floating around will retain the Creative Commons license. For most of your purposes, this will have little impact. You might choose to create handouts for a class and release them under Creative Commons. As the handouts grow, you might find that you want to publish the handouts as a book with all rights reserved. Yes, your Creative Commons handouts might still be floating around, but you can take down your own website and point browsers to your book.

We all create content. For the most part, we would be thrilled if someone thought our work were good enough to use and would happily give it away as long as we get credit for creating it. Creative Commons formalizes and simplifies this process, so we can make our content available to others easily. It is easy to do and benefits the community of learners.

Creative Commons and Student-Created Work

While we take it for granted that teachers create content, let’s remember that students also create content. Most students enjoy sharing their work, especially when teachers tell them it’s worth sharing—not only with others in the classroom but with students around the world who can access their creations online.

When dealing with student-created work, teachers need to be very careful to inform parents and get parental consent if the teacher is going to be the one sharing the work online or even with other students. When students hand in work to teachers, teachers do not own it—they are not the copyright holders. Many school districts have blanket
forms that parents sign at the beginning of the school year to allow (or to opt out of) sharing student work in a variety of ways. While this might seem like a silly formality, remember that Creative Commons is not about usurping the rights of copyright holders but about giving copyright holders the ability to expand the allowed use of their works. Also, remember that Creative Commons does not override plagiarism. All Creative Commons-licensed work requires attribution. With or without Creative Commons, more and more resources are available to students online, and teachers need to be smart about creating assignments that challenge students to build upon, analyze, and connect ideas and not merely regurgitate them.

Conclusion

As copyright and controls become stricter, the need for mechanisms to keep some content free becomes greater. Creative Commons is one such mechanism, and it is one that has reached a tipping point, making a variety of content widely available for educational use. Educators still need a working knowledge of copyright laws, including fair use and its limitations, but using traditionally copyrighted material is no longer the first option. Furthermore, to keep the momentum going, educators should be licensing their own material with culture of sharing mechanisms, such as Creative Commons. The culture of sharing described in this chapter is an important antidote to the restrictions of copyright and the ethical dilemma faced by educators who want to follow legal and ethical standards while using material that others have created.

Exercises

1. Create a one-page guide to copyright law for your students.
2. Create a one-page guide to copyright law for other teachers.
3. Pick a topic and find 10 pictures with Creative Commons licensing that help to explain that topic. Use a tool like Microsoft’s Photo Story 3 or Apple’s iMovie to create a short video about the topic, using the pictures you found, narration that you record, and background sound that you find with Creative Commons licensing. As an alternative, create a digital story (see, for example, the Center for Digital Storytelling at www.storycenter.org

4. Create your own copyright law. Decide what you think would be fair for others to use of the works you create and for you to use of what others create. For this exercise, only think about what you think would be fair, not what the law actually says. As an alternative, work in a group and take different roles (such as author, teacher, student, music publisher, struggling musician, librarian, and others) and ask the role-players to discuss what they think would be fair from their own perspectives.

References


