*Chapter 13*

# Copyright and the Right to Copy

*Annette Danto and Tami Gold*

## ABSTRACT

For the general public as well as individual artists, there are many questions about copyright law, individual rights of ownership, and fair use. Copyright is a legal term with ethical implications. We are looking at copyright through an ethical lens. Discussions with two copyright lawyers highlight the legal and ethical dimensions of copyright law and fair use.



Media-makers wear many hats—that of artist, poet, activist, and also that of someone who understands legal and ethical considerations. Copyright laws are rules that protect our own work as well as the work of others.[1] These laws protect intellectual and creative property produced by writers of short stories, musicians, photographers, graphic artists, filmmakers, and novelists. We want to encourage you to understand and respect the principles expressed in these laws.

Copyright law imposes legal obligations. As media-makers, we want our work to have the broadest exposure and largest audiences. Adhering to copyright laws is a way of ensuring this.

## COPYRIGHT-PROTECTED MATERIAL

When coming up with an idea for a project, many look to other sources such as short stories, plays, and novels for inspiration and ideas. Adaptations of others' works require permission before proceeding with production. Obtaining permission should happen before and not after the media project is created.[2] If you avoid securing the rights to others' copyright-protected material, and plow forward with your production, you will not be able to sell and distribute the completed project. In some situations, film festivals require a signed waiver attesting that you have acquired all the material in your film legally. If you have not done so, the film will not be screened publicly.

## BOX 13.1 FAIR USE

In its most general sense, fair use is any copying of copyrighted material done for a limited and "transformative" purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner. In other words, fair use is a defense against a claim of copyright infringement. If your use qualifies as a fair use, then it would not be considered an illegal infringement ("Charts and tools," n.d.).

Seeking permission also applies to documentary. Developing a documentary based on a specific historic moment might require archival material to tell the story effectively. You must find out, before beginning production, how to access the rights to license the footage, illustrations, and photographs necessary to tell this story. Perhaps the material is not available or the license fees are costlier than anticipated. All this needs to be researched during preproduction, as it will have an impact on your fundraising, budget, and ability to tell this story.

While there is no guarantee you will get written permission, it is your responsibility to understand these legal and ethical practices. You must go to the copyright holder(s) or publishers to request written permission to use the material.



As you begin to create your own work, you will understand the importance of ownership, especially as you seek credit and payment for your own creations.

In certain situations, you may not need to request written permission if the fair use doctrine applies. Before you claim fair use, make sure your use falls within its parameters.

Bending the requirements of fair use to avoid compensating artists is unethical. If we choose to use someone else's work, we need to identify whether or not it is copyrighted and then enter into a licensing agreement with the person who owns the license and copyright. If we choose to apply fair use, we need to do so legitimately and honestly.

An ethical concern for filmmakers is not only how we use copyrighted material from others, but also how people use our copyrighted material. In both situations there are laws, and there are ethics. The Box 13.2 is an example where the legal and ethical considerations are at odds. This illustrates a situation where a student cited fair use as justification for copying and re-editing a filmmaker's work. In this case, the student citing fair use did not take into consideration the impact on the filmmaker.

Respecting the work of other artists is an ethical fundamental. We can sometimes resolve copyright transgressions through


**FIGURE 13.1** Sometimes legal and ethical considerations are at odds. Credit: rnl.

 

## BOX 13.2 LIFE AND DEBT (2001)

Imagine discovering that someone re-edited your documentary into two separate versions and posted them on YouTube. This happened to documentary director Stephanie Black. Her 87-minute documentary, *Life and Debt*, was re-edited by a sociology student at a Midwestern college, then posted on YouTube with two alternative running times: 40 minutes and 20 minutes. The student received over 20,000 views in one month.

The filmmaker contacted YouTube directly and submitted a "copyright takedown notice" for the edited versions. YouTube informed the director that the student had responded to the takedown request stating: "I would like to counter the company that requested this. I believe the material should be considered 'fair use.' I used it for a sociology project, which makes the two videos in question 'educational content.'"

YouTube informed Stephanie Black that her only recourse to enforce "takedown" would be for the filmmaker (Black) to provide evidence within ten days that she filed an action seeking a court order against the counter-notifier to restrain the alleged infringing activity. Only once this lawsuit was filed, would they take down the YouTube postings.

**FIGURE 13.2** Photo Still from *Life and Debt*. Directed by Stephanie Black. www.lifeanddebt.org. Courtesy of Stephanie Black.

At that point Black decided to contact the student directly having been provided her contact information for the court order. She spoke with the sociology student who expressed surprise at the call, stating that she thought it was okay to re-edit an existing documentary if it was for educational purposes. The student claimed to have studied from a copyright textbook that, in this context, it was acceptable to copy and revise someone else's work. The conversation between the two led to the student agreeing to take down the re-edited YouTube versions.[3]

discussion and conversation rather than resorting to legal actions. It is good to keep the Golden Rule in mind: *Do unto others as you would have them do unto you*.[4]

## THE HUMAN DIMENSION

> You are collaborating most with the people in front of the camera . . . If you have tricked them into being in your film, that is a violation of media ethics.
>
> George Stoney (Danto, 2011)



Before you can proceed with copyright registration for your own work, you need to obtain necessary clearances from the people appearing in your media project.

Generally speaking, everyone you film (except for those appearing incidentally or in the background) should be asked to sign a Personal Release Form. This will protect you against legal issues and gives you permission to use the video and sound of the person for commercial and non-commercial purposes. It also gives the person who is participating in your film the right to decide if they want to be in this production. A Personal Release Form is a legal document.

On-camera personal releases are legally binding if the person who is agreeing to be part of your film states their name, contact information, date, and film title they are agreeing to be in. They must include that they are giving permission to the filmmaker to edit the footage however they want, as long as it remains loyal to the truth.

Release forms offer an opportunity to recognize the agency of the people in front of your camera. Respect their right to understand what it means to participate in your media project. Where and how will the film or documentary be screened? Are there any safety considerations related to protecting the identities of your subjects? The release form provides a window for human communication. Use this window to explain what it means to have one's story shared with the public.

While editing a documentary, filmmakers need to ask themselves: Did I fairly represent the people in my film? This is not only a legal consideration, but fundamentally for the filmmaker, an ethical one. Misrepresentation of truth and of a personal or political story can seriously impact someone's life. This cannot be minimized.

One thing filmmakers can do a better job of is explaining the implications of signing a release form. Participants are often unaware of what it means to agree to be featured in a

 

### BOX 13.3 ERRORS AND OMISSIONS LIABILITY INSURANCE

Errors and Omissions Insurance protects companies and individuals against claims made by clients (individuals and or companies) for inadequate work or negligent actions. For publishers, broadcasters, and other media-related entities, there is a specific type of E&O insurance that covers infringement of copyright, defamation, invasion of privacy, and plagiarism. All media-makers must certify in writing to the broadcaster, cable company, or any other type of corporation that intends to license your work, that all graphics, photographs, and other visual elements, every frame of video, and all music and sound have been properly licensed and that you have full legal right to use all the material in your documentary and or dramatic film.

film or documentary. It is the responsibility of the filmmaker and filmmaking team to carefully go over all aspects of what signing the release form means for the distribution of the work. Identifying someone on camera can, in certain instances, jeopardize safety and well-being. This is very true in cases involving abuse, neglect, or political violence. Protecting the well-being of your subjects is critically important, and an ethical responsibility that needs to be carefully considered while reviewing the release form and explaining it to the people involved.



## PROTECTING YOUR WORK

> Laws might be different from country to country but the ethical underpinnings of media practice remain the same wherever you are working.
>
> Andrew Lund, filmmaker and lawyer (personal communication, December 27, 2015)

Registering your media project with the U.S. Copyright Office is a good idea if you believe your work may be copied without your permission. There is another reason to register your copyright, which is to establish a chain of title. Distributors, studios, and networks all require registration for this purpose as well as for enhancing protection against infringers.

Registration is a simple and relatively inexpensive process.[5]

Your name should only be put in the copyright notice if you are the sole owner of copyright. If there are joint owners of copyright, both names should appear.

The copyright logo gives notice to the public that you own your video, short film, or web post. The logo should be seen at the beginning of the project or at the end. You should also include the logo on any and all packaging that contains your material.

## DISCUSSION WITH JAIME WOLF

Jaime Wolf is a founding partner of the law firm of Pelosi Wolf Effron & Spates LLP in New York City. He is a graduate of Yale University and the Columbia Law School, and is the

## BOX 13.4 INTELLECTUAL PROPERTY

Intellectual property in the United States has become increasingly more important in the last decade. The right to own the products of one's genius is not a new concept. With the arrival of the digital age though, it has become much harder to remain in control of one's intellectual property. Intellectual property rights protect preserving a work of art, and also preserve one's monetary gain.[6]

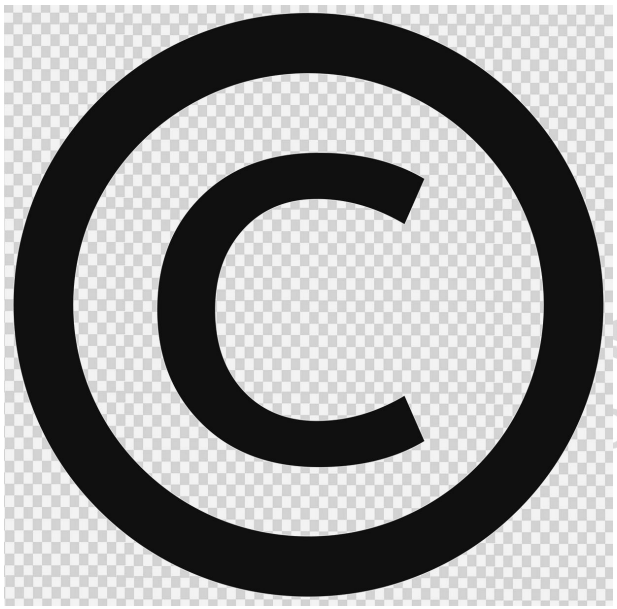

**FIGURE 13.3** Be sure to place a copyright logo on your media: © Your Name (date of first publication). Credit: iconswebsite.

vice chairman of the Board of Yaddo, a retreat for artists in Saratoga Springs, NY. He represents creative people and companies in a variety of fields.

**Why is copyright relevant to media-creators today?**

There has been a lot of chatter out there over the past decade about how copyright law has ceased to be relevant. While it's true that copyright laws—and copyright lawyers—have struggled to keep pace with technological advances, copyright law remains quite relevant.

A U.S. copyright registration remains an artist's most powerful weapon against people and companies that make infringing use of the artist's work. Many artists labor under the false notion that copyright registrations no longer serve an important purpose. That's

 

probably because a minimum level of copyright protection attaches as soon as an artwork is created. So artists have come to believe that they really don't need to take any action to protect their work.

**What are the specific advantages to a media creator of copyright?**

Copyright registration in the United States has significant advantages. The most significant is this: an artist cannot be awarded lucrative statutory damages and attorneys' fees in the United States unless s/he registered the copyright in the United States before the infringement took place (or within three months of the first authorized publication). Statutory damages can range from $750 to $30,000 for each infringement, and up to $150,000 per infringement if the infringement was "willful."

You may never bring a lawsuit in your life. But if you are an artist and you can wield a credible threat of enforcing these kinds of penalties, then that puts you in a very powerful position. If you just go with the flow and don't obtain a timely copyright registration, you would be forced to demonstrate "actual damages" from an infringing use. Actual damages are notoriously difficult to establish.

And, frankly, once an infringer's attorney hears that the artist didn't obtain a copyright registration, the artist's case is often not taken seriously at all.

Applying for U.S. Copyright registration remains quite affordable. It doesn't cost much to gain the maximum level of copyright protection your artwork. I encourage all of my clients to register their work with the US Copyright Office.



**What is the Digital Millennium Copyright Act and is it relevant to media creators today?**

Copyright registrations come in very handy when trying to enforce the provisions of the Digital Millennium Copyright Act (DMCA).

## BOX 13.5 HOW TO APPLY FOR U.S. COPYRIGHT REGISTRATION

There are two steps in the application for copyright registration—fill out the form; and send it in along with a check to the U.S. Copyright Office. You can also complete the application online. When your work receives copyright registration with the U.S. Copyright Office, you are making a public record. Information you provide on your copyright application is available to the public and will be available on the Internet.

Many filmmakers choose to register their works because they want to have their copyright on the public record and have a certificate of registration. Registered works may be eligible for statutory damages and attorney's fees in successful litigation. The practice of sending a copy of your own work to yourself is sometimes called a "poor man's copyright." But there is no provision in the copyright law regarding this type of protection. It is not a substitute for registration.

The DMCA law provides for a quick and easy way for a copyright owner to get infringing material removed online. There is no registration requirement to take advantage of the DMCA, but if the infringer decides to challenge the takedown you only have 14 days to bring a lawsuit or the infringing material can remain up until the matter is settled. Unfortunately, even if you spent a lot of money to expedite the registration process, there is no guarantee it will be completed in time, and for U.S. copyright owners, you can't sue without it. So it pays to have registered before launching an assault against an infringer under the DMCA.

Either way, a takedown notification or "cease and desist" letter will always have much more impact if it is backed up by an actual U.S. copyright registration. It shows that the artist knows her rights and is serious about enforcing them. This can send a powerful message to an adversary.

The DMCA essentially exempts online service providers ("OSPs") such as YouTube, Instagram, Tumblr, and many others from liability for copyright infringements caused by their users.

So if somebody rips off your video, photo, or article and posts it online without your OK, the OSP that runs the site on which it's posted will be exempt from liability if they take certain actions spelled out by the DMCA. For example, if the OSP receives a proper DMCA takedown notice of an infringing use on its network, the OSP must "[respond] expeditiously to remove, or disable access to, the material that is claimed to be infringing" (17 USC §512(c)(1)). By doing so the OSP will avoid being held liable for the actions of its users.



If you post something to an OSP and it's removed under the DMCA but you feel that your use of the copyright owner's content was done with the owner's authorization or constitutes "fair use," the DMCA provides an equally simple method for restoring your posting.

If you believe that you have a right to publish your allegedly infringing work, the DMCA provides for a "counter-notice" mechanism to put your page back up. A counter-notice, which you send to the OSP after they inform you that they've taken your page down is easy to fill out and file. After the OSP gets this counter-notice from you, it forwards a copy of your counter-notice to the copyright owner who sent the takedown notice and informs them that the OSP will restore access to the removed material in 10 business days.

Of course, if you file a counter-notice, you had better feel confident of your legal position. Otherwise, by causing the OSP to re-post your content, you may be virtually asking the copyright owner to sue you.

So the DMCA takedown notice is an effective way to combat content thieves. Compared to the money- and time-gobbling machinations required to obtain an injunction to remove infringing content from the Web, a DMCA takedown notice is a breeze. It's simple, speedy, and can be drawn up by a copyright owner without the help of a lawyer.

But if you're on the receiving end of a DMCA takedown notice, you may not be quite so sanguine about it. The OSP's takedown of your content will be swift and the result can be quite jarring. All record of "page views," "likes," and similar measures of your post's popularity may vanish in an instant.

Large media companies concerned about constant, widespread piracy of their content, have dedicated substantial resources to identifying online infringements and swiftly filing

DMCA takedown notices. Some assign clerical staff to the task. Others have gone so far as to program bots to sniff out presumed infringements and automatically shoot out takedown notices. This method seems to work well enough for the large media companies, but it [is] also purely mechanical. The notices take no account of whether the party posting the content has any right to do so.

Recently in the case of *Lenz v. Universal Music Corp.*,[7] popularly known as the "Dancing Baby" case, the 9th Circuit Court of Appeals (a very important court in California) held that a party filing [a] DMCA takedown notice must engage in a legal analysis of the alleged infringer's right to post the content. If, for example, the individual posting the copyright owner's content is engaging in a First Amendment-protected "fair use" (e.g., let's say they are using content for the purpose of parodying it), then the copyright owner is supposed to hold its fire.

It's too early to tell whether this legal analysis requirement will result in more nuanced usage of the DMCA weaponry. Cynics are predicting little change. After all, the 9th Circuit is asking the party who fervently wishes to torpedo an adversary's posting to weigh the adversary's rights. An outbreak of fair-minded analysis may not be on the cards.

**Do entertainment lawyers ever really think about ethics? In what ways do law and ethics intersect?**



Lawyers in the United States are bound by codes of professional ethics. These so-called "canons" of ethics are detailed rules governing how lawyers may practice law. The canons of ethics discuss how lawyers are supposed to deal with their clients, their adversaries, and their colleagues. Common problems such as how to handle potential conflicts of interest and what to do when a client fails to pay are explained in great detail.

But while lawyers have fairly clear rules for how to conduct themselves in at least a minimally ethical fashion, in my experience clients rarely turn to their lawyers seeking ethical guidance.

Most often we see clients asking their lawyers to assess the range of options presented by a particular situation. Put another way, instead of asking counsel "What should I do?" they ask "What can I do?"

When I am asked to provide a menu of options, do I take the opportunity to point out which options seem to me to be wrong or perhaps just ethically unsavory? Of course I do. Do clients always choose the most ethical course of action? Of course they don't, although I have been blessed with wonderful clients whose ethical compass needles most often point in what seems to me to be the right direction.

**When trying to protect one's intellectual property or creative work, what are the ethical issues a media-creator needs to be aware of?**

Working in the field of intellectual property is similar in many ways to working in the field of real property (i.e., real estate). Sometimes a person will ask a landowner whether she may cross the owner's property on foot, say for the purpose of bird watching. Other people

may want permission to cross the owner's property with a convoy of trucks for the purpose of hydraulic fracturing of a neighbor's land. The landowner must decide when it's in his interest to say "yes" or "no," and that decision may well include a calculation about the common good as well.

Similarly, the intellectual property owner must try to calculate the benefits and burdens of a particular situation, hopefully in the context of the common good. For example, visual artists are often asked for permission to use images they created in advertisements. The artist will need to decide whether the license fee being offered is worth their while. They may ask themselves whether being seen in the ad will benefit or harm their career. And they'll certainly want to see the proposed ad and understand who the advertiser is. If the advertiser is, say, an oil company that has recklessly caused immeasurable damage to the environment, the artist may decide she wants no part in promoting their agenda at any price.

I feel that it's important for journalists, filmmakers, and all other creative people to remember that the Golden Rule of "Do unto others as you would have them do unto you" applies in a very concrete way to intellectual property. That's because every creative person is potentially both an infringer and a victim of infringement.

## DISCUSSION WITH NEIL ROSINI



Neil Rosini's practice focuses on content clearance for broadcast, publication and online distribution, copyright, rights of publicity and defamation matters, content and software relating to website and mobile platform uses, and online privacy issues. He also mediates the entertainment industry including disagreements among artistic collaborators.

**Do ethical obligations largely overlap with legal obligations?**

In my view, the scope of your ethical obligation to stay within the law when it comes to copyright infringement depends primarily on what the law is. Generally, if what you propose to do is legal, then it's usually ethical (provided it doesn't have unjust effects on individuals or groups notwithstanding its legality, which seems relatively rare).

But what if the line of illegality is not well drawn, such as when a new technology arrives that the law has not yet fully addressed? In those instances, in my view, risk assessment rather than ethics comes to the fore. What do existing laws and past decisions have to say about the likely risk of doing x or y? Where do x and y fit on the spectrum of likely risk? Are you comfortable with that risk? If you make a choice that risks copyright infringement, but laws and court decisions don't say definitively that the choice you're making is illegal, then I don't think it's unethical to make that choice.

When Napster first launched, it made file-sharing possible among individual users that essentially eliminated the need to pay for recordings of music they obtained from total strangers. Although doing so applied a new technology that had not been tested in the courts, did the lack of that legal precedent make Napster legal—or ethical? At the time, I didn't think so because based on legal precedents that did exist, I didn't think it was

plausibly legal. It turned out it wasn't and judges who considered that technology did not wrestle much with the question. Napster acted both illegally and unethically.

Whether use of copyrighted works without permission is legal or not often is not so clear cut. In another example, Google launched a project to copy into a database, millions of copyrighted books in university libraries for the purpose, they said, of aiding research by making the texts available for massive word searches. This too was a new technology. When authors of books whose works were scanned into the database sued Google to prevent them from making those copies without first obtaining permission from (and compensating) the authors, it wasn't at all clear who would win that contest. So far, courts have found Google's database to be justified under law. Even if that were not the case, in my view it was not unethical for Google to have tested the law because its actions plausibly fit within legal bounds.

**What is Fair Use?**

Both the Napster and Google cases were decided against a backdrop of the limits of "fair use," which is a copyright law principle that permits the use of copyrighted works without permission and without compensation under limited circumstances. The fair use principle is derived from the purpose of having a copyright law at all: to benefit society. The thinking goes that society benefits from constant origination of new creative works and with human nature what it is, the best way to give creators incentive to create new works is to give them a legal monopoly during the term of copyright. Copyright's primary purpose is not to compensate creators, but by giving them an exclusive opportunity to earn money from their creations, copyright hopes to benefit society both during the term of copyright and after, when a work enters the public domain.



But copyright law also recognizes that to benefit society, the legal monopoly shouldn't be inviolate even during the term of copyright. Fair use eliminates the creator's exclusive rights under very limited conditions during the term of protection.

Copyright gives authors a remedy against infringers, helps authors earn a living, and motivates authors to create new works (thereby benefiting society). I think it's a keeper. This is not to say that "fair use" shouldn't become more and more expansive in a digital age as an exception to the general rule that the copyright owner enjoys a monopoly of rights. I think the Google case illustrates this: copyright law is still relevant, but the fair use exception in that case prevails.

**Should Google contact the authors or whoever holds the copyright? Is this a legal question or ethical one?**

In the circumstances of the Google library-copying case, and in most others, I think that any ethical obligation is coextensive with a legal one. If Google isn't legally required to contact authors (and according to the court's decision, it isn't), then I don't see any ethical obligation to do so. In fact, if Google had to haggle with millions of authors, it would be so impractical as to make the Google book archive impossible, undermining the purpose of copyright to benefit society.

## BOX 13.6 FAIR USE QUESTIONS FOR MEDIA-MAKERS

Media-makers who wish to put a clip in a documentary from someone else's film as fair use, should ask themselves the following five questions:

1. Why precisely is this clip being used? Be as rigorous as possible. The more limited the identified purpose, the more likely fair use standards will be satisfied.
2. Is the function of the clip in your documentary different from the purpose of the original work? If so, fair use will be easier to establish. This is sometimes referred to as the "transformative" test. For example, if the clip comes from a news report that documents an event, it would not be transformative to borrow the clip simply to document the same event. A different purpose would be served, however, if the clip is used to show that the event was the subject of news coverage; or that a particular public official was involved in the event; or as part of a historical sequence (e.g., to show how cultural attitudes changed over time); or to support an argument or thesis.
3. Can the clip be placed into a context of commentary or criticism in the documentary? Social, political, and cultural criticism might be the clearest category of transformative use. Show a short clip and then comment on it. (Even easier to defend: show a short clip while running audio commentary over the clip.)
4. What's the minimum you need to borrow to satisfy the limited purpose you've identified for using the clip in your documentary? The less material you take the better. This is not only a quantitative test (measured in the number of seconds borrowed) but also a qualitative test (don't take the best part of someone else's work if it can be avoided). For example, to establish that a particular actor appeared in a film, you don't need to borrow an entire scene or the best joke or the most famous dialogue; you probably don't even need the audio. You will be tempted to borrow more than you absolutely need in order to make your documentary more enjoyable. Resist that temptation.
5. Is the borrowed clip in your documentary principally for its inherent entertainment value? If so, that cuts against fair use. Also, do not use borrowed material for creative flourishes or in order to take advantage of someone else's distinctive editing. And keep the clip's original audio and video in synch. Supply your own entertainment value if you don't want to license it.

Reproduced with permission from Neil Rosini from his website: www.fwrv.com/articles/101008—fair-use-demystified.html


**FIGURE 13.4** Credit: master_art.



**It might have been a good case to understand the legal bounds, but is this the main factor in how the courts evaluated this case? Where does intellectual property come into play?**

In this instance, intellectual property = what copyright protects. As I understand the Google project, they don't make available an entire book if it's still copyright-protected. Instead, they allow the book to be word-searched and then make snippets of text available. The courts so far have found this to be a "fair use"—an exemption from the general copyright monopoly that still would apply, for example, to the right to publish a book or make a film from it. In Google's case they argued that what they did was a fair use that benefits society and deserves to predominate over the author's monopoly—and Google has so far won.

## SHARING YOUR WORK

### What is Copyleft?

The term "copyleft" is a play on the word copyright. It uses copyright law, but flips it over to serve the opposite of its usual intent. Copyleft is a type of rights-licensing that is based on the understanding that a more open sharing of intellectual property benefits the economy and society as a whole. A copyleft license ensures that the public has the freedom to use, modify, extend, and redistribute the work rather than restricting such freedoms. By using this license, the copyright holder grants irrevocable permission to the public to use the work in any manner that they please—with the very important caveat that all derivative works and uses must also be distributed using a copyleft license, that is, they must also be free and completely accessible to the public.

**FIGURE 13.5** Copyleft is a type of rights-licensing that is based on the understanding that a more open sharing of intellectual property benefits the economy and society as a whole. Credit: Yuriy Vlasenko.



## What is Creative Commons?

Creative Commons is a non-profit organization founded in 2001 that promotes the sharing and use of creativity and knowledge through free legal tools. The organization's objective is to create different types of licenses with the goal of increasing the amount of creative, educational, and scientific research available to the public for free.

Creative Commons has a set of copyright licenses and tools which add flexibility to the traditional "all rights reserved" designation established by copyright law. These tools give everyone from individual creators to large institutions a standardized way of taking a "some rights reserved" approach that reserves some of the protections of copyright while allowing other uses without the need of a license.

A media-maker can choose the specific terms of a license from a variety of options and control how their work is used. They can let the public have full access of the copyrighted material or place certain limits on how the public can use the work. The popular photo-sharing website Flickr, for example, allows members to use creative commons licensing for their images.

Creative Commons and copyleft have valuable implications when a media-maker decides that the content of the product is more important than ownership and/or profit.



**FIGURE 13.6** Creative Commons has a set of copyright licenses and tools which add flexibility to the traditional "all rights reserved" designation established by copyright law. Credit: Sarycheva Olesia.

## TAKE HOME POINTS

- When using material from any other source, always give the citation—always!
- When you ask original creators for permission to adapt a pre-existing short story, graphic novel, play, novel, make sure you keep a copy of all email correspondence showing that the creator/owner agreed to let you use the material.
- Always treat other media-makers work with respect—if the material is copyrighted, and if you want to use it, and if fair use does not apply, then ethical and respectful practice entails contacting the media-maker, and obtaining a license to use the material. This often means paying a fee.
- Take the time to familiarize yourself with basic copyright law, rules, and regulations.
- If we, as artists, find people using our work and not applying fair use legitimately, then this needs to be confronted. As filmmakers and media-makers, we would not want someone to bend the requirements of fair use as a way of avoiding compensating us as artists for our work.
- We are collaborating most with the people in front of our cameras. What are they getting out of participating in the project and do they fully understand the implications of

appearing on camera? Always thoroughly explain how and where the media will be screened as part of asking people to sign release forms.

## NOTES

1 Legal questions and concerns are geographically specific, so it is important to supplement the core ideas we discuss here with research pertaining to the country in which you are working. For example, American citizens traveling outside of the United States and American media producers distributing their work outside the United States, need to understand they are subject to that country's laws; not those of the United States. In terms of ethics, however, treating others respectfully is universal and not determined by geography.

2 Contacting the owner of the material and requesting permission to adapt the material requires some negotiation. The advice and guidance of an entertainment lawyer can be very helpful in negotiating this process. In New York and elsewhere, there are voluntary organizations such as Volunteer Lawyers for the Arts that provide free or low-cost legal consultations.

3 Personal communication with Stephanie Black, the director of *Life and Debt* (2001), on October 30, 2015.

4 This so-called golden rule is stated in a variety of ancient texts about behavioral precepts (including the New Testament, Talmud, Koran, and the Analects of Confucius). Among the earliest appearances in English is Earl Rivers's translation of a saying of Socrates (Dictes and Sayings of the Philosophers, 1477): "Do to others as thou wouldst they should do to thee, and do to none other but as thou wouldst be done to."

5 Go to www.copyright.gov for detailed information and instruction about how to copyright your work.

6 In the United States, the first form of intellectual property law was patent law. In 1790, Congress passed the first patent laws. These laws were modeled after European, patent common law. Before Americans had the right to their intellectual property, it belonged to the King of England. If colonists wanted the rights to their inventions, they had to petition the state or "the governing body of the colony" (Bellis, n.d.).

7 Lenz v. Universal Music Corp. 572 F. Supp. 2d 1150 (N.D. Cal., 2008).



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