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Lesson: Copyright Law
Source: Original Lesson Plan
Materials: opinion poll handout
Time: 60 minutes
Date: 5/14/08

- I. **GOALS:** as a result of this class, students will:
 - a. Develop an overview of the fundamental elements of copyright law.
 - b. Recognize that copyright law can be used to protect their creative products.
 - c. Realize that violation of copyright law can result in civil and criminal liability.

- II. **OBJECTIVES:**
 - a. Knowledge Objectives: as a result of this class, students will be better able to:
 - i. Understand the source of copyright law.
 - ii. Understand the reasons why society has copyright law.
 - iii. Understand the basic elements of copyright law.
 - iv. Understand how copyright law protects an individual's creative products.
 - v. Understand the civil and criminal violations of copyright law.
 - b. Skill Objectives: as a result of this class, students will be better able to:
 - i. Identify the source of copyright law.
 - ii. Explain why society has copyright law.
 - iii. Apply the basic elements of copyright law.
 - iv. Use copyright law to protect their creative products.
 - v. Avoid violating copyright law.
 - c. Attitude Objectives: as a result of this class, students will be better able to feel that:
 - i. Copyright law plays a legitimate and valuable role in society.
 - ii. Copyright law needs to be respected.

- III. **CLASSROOM METHODS:**
 - a. Introduction (5 minutes)
 - i. Ask students (these questions are designed to get students to start thinking about copyright law and gauge what students know about copyright law before the lesson):
 1. What comes to mind when one hears "copyright"?
 - a. Write down students' responses on the whiteboard. Some examples include: movies, music downloading, Limewire/Napster.
 2. What are some famous copyrighted works?
 - a. Write down students' responses on the whiteboard. Some examples include: Mickey Mouse, Harry Potter, and a more obscure example, the "Happy Birthday" song.
 3. What happens to a person who violates someone's copyright?

- a. Write down students' responses on the whiteboard. Some possible answers include: pay civil damages (as in many file-sharing cases), pay a fine, serve jail/prison time.
- b. Initial Discussion (5 minutes)
 - i. Use music sampling as the first discussion topic (most students know and have heard of music sampling and this may help hook them into class discussion). This discussion is designed to plant in students' minds the following ideas: copyright law protects a person's creative efforts by preventing others from using them without permission; without copyright protection, a person might be discouraged from creating new products.
 - ii. Music sampling is where one musician takes an existing piece of music and uses it in a new song. Many hip-hop artists rely on the technique of sampling to create new music. Ask students to imagine a song by a popular hip-hop artist that samples a famous song by Elvis or the Beatles.
 - iii. Ask the students: 1) is it "right" to take someone else's music and put it into your own? 2) how would you feel if someone took the music you created and used it for his own purpose, whether it's in another song, a TV show, or movie? 3) is this legal? Why or why not?
 1. Show students the cease-and-desist letter from Capitol Records. This is an excerpt from a cease-and-desist letter that Capitol Records sent to the musician Danger Mouse. Danger Mouse sampled many different songs from the Beatles' "White Album" and mixed those samples with different portions of Jay-Z's "Black Album" to create the "Grey Album." Capitol Records owns the copyright to the "White Album" and sent Danger Mouse the cease-and-desist letter because he failed to obtain permission before sampling the "White Album."
 2. This letter illustrates that one cannot sample or take another's copyrighted music freely, and that doing so subjects the sampler to serious legal consequences.
 - iv. **Hypothetical #1:** Lil' Wayne, a popular rap artist, samples a guitar riff from "Spirit in the Sky," by the 70s musician Norman Greenbaum, for a song in his upcoming album. Lil' Wayne, however, did not ask Greenbaum for permission. Has Lil' Wayne committed copyright infringement because he did not ask for permission to use a piece of copyrighted music? **Answer:** Yes. The law is strict on the matter of sampling. You must get a license/permission in order to sample copyrighted music.
- c. Lecture (25 minutes)
 - i. Source and purpose of copyright law:
 1. **Source:** The Copyright Clause of the US Constitution, Article I, Section 8, Clause 8: "to promote the progress of science and useful arts, by securing for limited times to the authors... the exclusive right to their respective writings...." (put this up on the whiteboard before class). Pick someone to read this clause.

2. **Purpose:** open up for discussion: 1) based on the language of the Copyright Clause, what do you think was the drafters' intent in creating copyright law? (focus on "useful arts"; "limited times"; "exclusive right"); 2) the purpose of copyright law is to create an economic incentive that encourages people to create arts that will benefit society at large.
 - a. Without copyright law, anything you create, like a song, is free for anyone else to take and copy. You will not get compensated for it. Doesn't the ability of others to copy your music freely discourage you from creating it in the first place?
 3. Copyright law is predominantly federal, and it is codified at 17 U.S.C. § 101 (the Copyright Act of 1976).
- ii. What can be copyrighted?
1. Literary works; musical works (including lyrics); dramatic works (including the accompanying music); pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.
 - a. Make sure to explain that for music, there are two layers of copyright involved: the composition (sheet music, lyrics) as represented by the © and the actual sound recording as represented by circle P (replace the C in © with a P).
 2. To receive copyright protection, a work of authorship must be original and fixed in a tangible medium of expression. Original does not mean novel; it just means that it is not copied from someone else. Originality also requires a modicum of creativity. For example, a phonebook that consists of an alphabetical listing of people's names and telephone numbers cannot be copyrighted because it lacks creativity. Feist Publications v. Rural Telephone Service, 499 U.S. 340 (1991). However, a phonebook that has a creative way of listing the names and phone numbers may be copyrighted.
 3. Ideas and facts cannot be copyrighted. Expressions of ideas and facts can be copyrighted.
 4. Government works cannot be copyrighted. For example, the laws of Washington state, like the Revised Code of Washington, cannot be copyrighted. Similarly, judicial decisions cannot be copyrighted.
 5. **Hypothetical #2:** George Lucas, an aspiring filmmaker, one day writes down in his notebook ideas for the main characters in an upcoming movie. Lucas' notebook contains this entry: the main characters will be a young man; a princess; and an evil leader. Steven Spielberg, a friend of Lucas, steals the notebook and makes a movie with those characters. Lucas sues Spielberg for copyright infringement. Has Spielberg committed copyright infringement?

Answer: No. While fictional characters can be copyrighted, they must have sufficient detail and distinguishing characteristics in order to be copyrighted.

- iii. What does one have to do to receive copyright protection?
 1. As soon as a person creates a work that is original and fixed in a tangible medium of expression, copyright protection begins; the person does not have to file any paperwork with the Copyright Office for copyright protection to exist.
 2. Work for Hire doctrine: if the work is for hire, the employer or other person for whom the work was prepared is considered the author and owns the copyright, unless there is a written agreement to the contrary.
 3. **Hypothetical #3**: Vincent is a glass-blower and is an employee of the famous glass artist Dale Chihuly. One day, Vincent blows a piece of glass in the shape of a chandelier. He is very proud of the glass sculpture and wants to make copies of the sculpture to sell to other people. Dale Chihuly, Vincent's employer, says that he owns the copyright to the glass sculpture, even though he did not create it, and therefore Vincent is not allowed to make copies and sell them to others. Is Chihuly correct that he, as the employer, owns the copyright to Vincent's chandelier? **Answer:** Yes. Chihuly, as the employer, owns the copyright to what his employee creates under the work for hire doctrine.
- iv. How long does copyright last?
 1. Life of the author plus 70 years.
 2. After copyright expires on a work, the work enters the public domain, free for anyone to copy or use. For example, when the copyright on the Simpsons expires, anyone can use the Simpsons for their purposes (like making a Bart Simpson t-shirt).
- v. What are the exclusive rights under copyright?
 1. The copyright holder has the right to: 1) reproduce the copyrighted work in copies; 2) prepare derivative works based upon the copyrighted work (for example, the Harry Potter movie is a derivative work of the Harry Potter book); 3) distribute copies; 4) to perform publicly; 5) to display publicly; 6) in the case of sound recordings, to perform publicly by means of digital audio transmission (such as internet or satellite radio).
 2. When you do any of the above without getting permission first, you are violating copyright law, and the copyright owner can sue you. This is what happened with some people that downloaded music for free with services like Napster.
 3. There is also criminal liability for violating copyright law. For example, the government may sue you for criminal liability if you make copies of a DVD (which have retail value exceeding \$1,000) and sell them.

4. **Hypothetical #4:** Matt Groening, the creator of the Simpsons, is thinking about creating a new animated series. He is a big fan of the Harry Potter series by J.K. Rowling and decides to create an animated version of Harry Potter. Rowling, however, is not a fan of the Simpsons and refuses to give Groening permission. Even though Groening knows that he does not have Rowling's permission, he creates the animated version of Harry Potter. Has Groening violated copyright law? **Answer:** Yes. Creating a derivative work based on copyrighted work without obtaining permission first is copyright infringement.
- vi. Fair use defense
1. Copyright does not mean that no one can use copyrighted works without asking for permission. Congress has carved out several exceptions where one can use copyrighted works without obtaining permission first. This is known as "fair use" (or, as one copyright law scholar has put it, "You say copyright, I say F.U.").
 2. One can make copies of and use copyrighted works for purposes such as criticism (like a movie review), comment (like a newspaper editorial), news reporting, teaching (playing a clip of the Beatles for educational purpose without permission is legal), scholarship (like a research paper), or research. These are all examples of fair use.
 3. Parody is also considered fair use. Parody is an imitation of something for criticism or comedic effect. Think of Weird Al. His songs imitate famous songs for comedic effect (like his version of Michael Jackson's "Beat It"). Thus, Weird Al, in copying a Michael Jackson song in order to make fun of it, is not violating copyright law.
 4. **Hypothetical #5:** 2 Live Crew, a rap group from the late 80s/early 90s, made a song called "Pretty Woman," which sounds identical to "Oh, Pretty Woman," a song by the 60s rock musician Roy Orbison. When Roy Orbison found out about the song, he sued 2 Live Crew for copyright infringement. Has 2 Live Crew committed copyright infringement? **Answer:** No; 2 Live Crew has made a parody of the copyrighted work.
- d. Opinion Poll/Discussion (20 minutes)
- i. Conduct student opinion poll and then conduct discussion based on the results of the opinion poll.
- e. Class Recap (5 minutes)
- i. Get two or three students to tell the class something new that they learned from today's class.
 - ii. Ask if students have more questions about copyright law.

IV. EVALUATION:

- a. Participation in class discussion.
- b. Participation in opinion poll.

V. ASSIGNMENT:

- a.** Write a one-page essay about your thoughts on copyright law: is copyright law necessary? What advantages does it confer on society? What are the disadvantages? If you could change one thing about the current state of copyright law, what would it be and why?

Cease and Desist Letter from Capitol Records (Excerpt)

Re: The Grey Album and Misappropriation of Capital Records, Inc.'s Sound Recordings

To Whom It May Concern:

We are counsel to Capitol Records, Inc. ("Capitol"), the exclusive U.S. licensee and/or owner and distributor of musical sound recordings featuring performances by The Beatles. We write concerning your announced intention of distributing an unlawful and unauthorized sound recording known as The Grey Album on February 24, 2004. This infringing album contains extensive samples from recorded performances by the Beatles, including... "Helter Skelter," ... Distribution of The Grey Album constitutes a serious violation of Capitol's rights in the Capitol Recordings – as well as the valuable intellectual property rights of other artists, music publishers, and/or record companies – and will subject you to serious legal remedies for willful violation of the laws. We accordingly demand that you cease any plans or efforts to distribute or publicly perform this unlawful recording.

Circle the answer that most closely corresponds with your opinion.

1. The Recording Industry Association of America has sued Brittany, a middle-school student, for downloading songs off of the Internet. She has downloaded 1,000 songs from the Internet, and the RIAA wants her to pay \$750 per song, totaling \$750,000. Do you agree that Brittany should have to pay what the RIAA demands?

Agree

Undecided

Disagree

2. Congress is thinking about passing an amendment to the Constitution in order to remove the Copyright Clause and make copyright protection of creative works illegal. Do you agree that it is a good idea to eliminate copyright law?

Agree

Undecided

Disagree

3. Some copyright scholars have argued that the current duration of copyright – life of the author plus 70 years – is too long and should be reduced. Do you agree that the current duration of copyright is too long and should be reduced?

Agree

Undecided

Disagree

4. Fair use creates circumstances when one can use a copyrighted work without obtaining permission first. Some copyright holders think that fair use is too generous and give people a way to get around copyright protection. Do you agree that fair use is too generous and should be eliminated?

Agree

Undecided

Disagree

5. The Supreme Court has stated that a key purpose of copyright law is to give people an economic incentive to create artistic works that in turn will benefit society at large. Do you agree that copyright law benefits society at large, even though copyright is designed to prevent people from freely accessing, obtaining, and using copyrighted works?

Agree

Undecided

Disagree

Opinion poll cases

1. Scenario based on various news stories about the RIAA's lawsuits against people who have shared or downloaded music files online.
2. Scenario is the author's own creation.
3. Eldred v. Ashcroft: plaintiff challenged the Copyright Term Extension Act, which extended the duration of copyright to 70 years. The Supreme Court ultimately held that the Copyright Term Extension Act was constitutional.
4. Scenario is the author's own creation, based on 17 U.S.C. § 107, which codifies the fair use exceptions.
5. Eldred v. Ashcroft: the Supreme Court explained that an important purpose of the Copyright Clause is to give people an economic incentive to produce creative works.

Cases for the Hypotheticals

Hypothetical #1: Bridgeport Music, Inc. v. Dimension Films: the copyright holder to the sound recording has the exclusive right to “sample” his own recording. As the court stated, “get a license or do not sample.”

Hypothetical #2: Nichols v. Universal Pictures: the court stated that fictional characters may be copyrighted, but copyright protection depends on how developed the characters are; the less developed the characters, the less they can be copyrighted. Accordingly, if the characters are abstract without any further identifying or distinguishing characteristics, they cannot be copyrighted.

Hypothetical #3: Community for Creative Non-Violence et al. v. Reid: As a general rule, the author of a creative work owns the copyright to that work. However, under the work for hire doctrine, if the work is for hire, the employer or other person for whom the work was prepared is considered the author and owns the copyright, unless there is a written agreement to the contrary.

Hypothetical #4: Anderson v. Stallone: When someone creates a new work using the copyrighted works of someone else without permission, that is copyright violation. In this case, a screenwriter wrote a screenplay using the Rocky characters developed by Sylvester Stallone. Court held that the resulting screenplay, a derivative work, infringed on Stallone’s copyrighted work.

Hypothetical #5: Campbell v. Acuff-Rose Music: court held that there was no copyright infringement because 2 Live Crew’s “Pretty Woman” was a parody of Orbison’s “Oh, Pretty Woman.” A parody is a work that imitates another work in order to criticize or make fun of it.