

#MyZeitgeist 2013 Year in Review Project- Copyright and Fair Use Handout

In developing your #MyZeitgeist project, you may want to incorporate copyrighted materials, including photographs, music, film or video clips. You may want to use written excerpts and clips too. And you may want to use materials produced by media professionals (like the Associated Press, the New York Times, PBS News Hour, or ABC News) as well as media produced by amateurs (like quotes from bloggers, Flickr photos, or YouTube videos).

To help you decide when and how to use copyrighted materials as part of your own creative work for #MyZeitgeist, it's important to have a good understanding of copyright and fair use.

THE BASICS

The purpose of copyright law is to promote creativity, innovation and the spread of knowledge. The law does this by balancing the rights of both authors (copyright holders) and users.

Authors' Rights. Any creative work, in fixed and tangible form, is copyrighted. Anything you create (writing, video, images, music, etc.) is automatically copyrighted at the moment you create it. As a creative individual, you are protected by copyright law, which gives you rights to control how your works are distributed. As the copyright holder, you are responsible for detecting infringement. When other people distribute your copyrighted work without your permission, this may be an infringement of your legal rights. Violating copyright can have severe financial consequences but it can be expensive and time-consuming to pursue legal action.

Users' Rights. Under some circumstances, users can use copyrighted works as part of their own creative work. The doctrine of fair use (Section 107 of the Copyright Act of 1976) states that people can use copyrighted works without payment or permission when the social benefit of the use outweighs the harms to the copyright holder. To make a fair use determination, users consider all the factors involved in the context and situation of their use of the copyrighted material. Fair use is especially helpful when people want to use small amounts of a copyrighted work for socially beneficial purposes, like news reporting, teaching, research and scholarship. In the context of copyright law, the doctrine of fair use is one of the main guarantees of free expression. News reporters depend on fair use because of its obvious importance in disseminating information. Broadcasting professionals routinely claim fair use when they make

use of short clips from popular films, classic TV programs, archival images, and popular songs without payment or permission.

ATTRIBUTION AND GOOD FAITH

Some people mistakenly believe that they can use any copyrighted work in their own creative work as long as they “cite their sources” or use attribution to identify the author. But attribution is not required in order to claim fair use. Many broadcasters use short excerpts of copyrighted clips under fair use without attribution. Using attribution is sign of good faith in the fair use process, but it does not shield a user from copyright liability. That’s why it’s important to make a careful fair use determination using the process described below.

MAKING A FAIR USE DETERMINATION

Critical thinking is required to make a fair use determination. Ask yourself two questions:

1. **Transformativeness.** Is my use of a copyrighted work transformative? Am I using the material for a different purpose than that of the original? Or am I just repeating the work for the same intent and value as the original?
2. **Amount.** Am I using only the amount I need to accomplish my purpose, considering the nature of the copyrighted work and my use of it?

The law empowers users to make a fair use determination for themselves. PBS Zeitgeist recommends that when using copyrighted material in your video package, you put your answers to these questions in writing, using reasoning to support your ideas. Thinking about the issue from the perspective of both the copyright holder and your own point of view is important.

REVIEW THE CODES OF BEST PRACTICE IN FAIR USE

A number of creative communities have developed documents to help people understand how to use fair use reasoning. Review the Codes of Best Practice for Online Video [<http://www.centerforsocialmedia.org/fair-use/related-materials/codes/code-best-practices-fair-use-online-video>]. It identifies common situations where fair use clearly applies to the creation of new videos that are distributed online. You can use copyrighted material:

1. To comment on or critique copyrighted material
2. Using copyrighted material for illustration or example
3. Capturing copyrighted material incidentally or accidentally
4. Reproducing, re-posting, or quoting in order to memorialize, preserve, or rescue an experience, an event, or a cultural phenomenon
5. Copying, re-posting and re-circulating a work or part of a work for purposes of launching a discussion
6. Quoting in order to recombine elements to make a new work that depends for its meaning on the (often unlikely) relationships between the elements.

PERMISSIONS AND LICENSING

If you're using copyrighted material for the same purpose as the original or you are using the whole work or a large portion, you shouldn't claim fair use. Instead, you should ask permission from the copyright holder. For amateur creations (independent musicians, Flickr photos, YouTube videos), you can send the creator an email requesting to use their work. Request permission by stating your purpose and describe how you're using their work, along with your name and full contact information. When using commercial or professional work (AP photos, music), you can use the licensing process, which generally involves filling out a form or sending an email. When using copyrighted work under Creative Commons licenses, you can simply use the work.

FREQUENTLY ASKED QUESTIONS

Here are some examples of how fair use reasoning can be applied to specific situations.

1. **Can I use facts, information or quotes from a research report, blog, news story or website?** This depends on how you use it. Using small amounts of information, facts or quotes from copyrighted print materials is fair use. Identifying the source of the information shows good faith.
2. **Can I use clips from YouTube or Hollywood movies in my news package?** This depends on how you use it. Using movie clips in a news broadcast may be transformative since the clip is used in a new context. If the clip's original purpose was to entertain, but you are using it to inform, that's very transformative. However, if the original purpose was informative, and you're using it for the same purpose, that's less transformative. Be sure to use just the amount you need to accomplish your specific purpose.
3. **Can I use AP news photos in my news package?** This depends on how you use it. The purpose of AP news photos is to provide information about news and current events, and you're using the photos for the same exact purpose. That's not very transformative. If you're using the photo simply as an example or illustration, you may claim fair use. Otherwise, you should ask permission and use the licensing process.
4. **Can I use clips from popular music in my news package?** This depends on how you use it. The purpose of pop music is to entertain by creating a particular mood, feeling or emotion. If you're using the clip to accomplish this same goal, that's not very transformative. But if you're commenting or critiquing the music, that's a clear example of fair use. If you're using a short sample of a song as an illustration of a larger idea, you may claim fair use. But if you're merely exploiting the familiarity of the song to attract people's attention, then you should ask permission and seek a license.