

# Freedom of Expression®

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## Resistance and Repression in the Age of Intellectual Property

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## Freedom of Expression® Resistance and Repression in the Age of Intellectual Property

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## Overview and Previewing Activities

Many of our students live in a culture increasingly dominated by logos and other intellectual properties. This documentary, *Freedom of Expression*®, seeks to expand students' understanding of the consequences of living in a world where terms like "Fair and Balanced" and "Freedom of Expression" can be private property. Those who hold the copyrights also hold the power to sue others who would use these phrases for their art, music, or literary productions. The following activities have been developed to help you bring your students to an awareness of the amount of copyrighted and trademarked media in their environment.

### Activity 1

Begin the class by asking if it is anyone's birthday. If no one has a birthday on the day you show the film, ask who will be having a birthday soon. Invite the class to sing "Happy Birthday" for the privileged student. After completing the sing-a-long, have a conversation about how and when the song is sung, as well as ownership of the song and how it is policed.

### Activity 2

Have your students take "The Corporate ABC Quiz" (adapted from [www.quiz-em-all.com](http://www.quiz-em-all.com)) individually or as a class. What does it mean to our society that we are so influenced by corporate logos? What would happen if you decided to use these letters in an art piece? Should you be sued? Could you be sued?

### Activity 3

Begin class by telling a story of an event that happened to you the day before. Tell them you plan to include this story in the documentary of your life. Bring generic brand products with you to illustrate your story, but use brand names to describe these products.

Here is an example:

Yesterday I decided to make Jello® for my five year old, but she shrieked when she saw it and ran away! I had to cover the Jello® with this Reynold's Wrap®, so I could save it for another day. Before I knew it she came back, knocked the Tupperware® full of Jello® to the floor, and the only thing I had to clean it up with was Kleenex®!

Each time you name a brand, don't forget to show your generic visual aid. Ask the students what they thought of your story. Would they anticipate any problems with you producing this documentary? After all, this is *your* story and you own it, right?

# Introduction

## Key points (many of these topics are also covered in the Introduction of the book *Freedom of Expression*®)

- v The word “culture” can be used in a variety of ways. Perhaps its most important definition is a system of shared meaning-making between people that allows them to co-exist and differentiate themselves collectively.
- v This system of “collective memories,” and the images and signs that surround us, has for the most part come under the ownership of private corporations through copyrights and trademarks. Content owners and media companies are increasingly exercising control over people’s uses of the cultures that make up the world around us. One of the ways they do this is through requiring permission and/or payment for every single use of an image or song that is “exclusively owned” by a company.
- v Corresponding to this expansion of copyright is a growing effort by creators and educators to assert themselves and their rights to share, critique, and participate in cultural production and experience.
- v In a 2003 case, the Fox News cable channel claimed that political comedian Al Franken violated its trademarked phrase “Fair and Balanced” when he included it in the title of a book examining bias in media. The judge in the case ruled against Fox, calling the company’s legal action “frivolous” and describing Franken’s use of the term as having the “highest level of First Amendment protection.”
- v This was a good result for free speech, but what would have happened if Franken had been an unknown without the legal backing of a major publishing company? More often the defendant in a case like this would not have the finances to go all the way to court to prove their point. More importantly, the fear of being the victim of this kind of action means people are less likely to create challenging art or commentary.
- v Using copyright to silence and censor creators and ordinary people is not an abstract problem that only affects a handful of players. Today we live in a digital world where sharing copyrighted works, sounds and images is made much easier than in the past. Our rights to free expression in this technological environment are in danger of being compromised unless they are defended in some way.

## Discussion Questions

What do you understand the word “culture” to mean? How does this correspond to different definitions of culture, or how people use the word in the media?

What kinds of entities want stronger copyright and intellectual property laws, and why? Who is on the other side of this debate?

Why did Al Franken win his legal battle with Fox News? Should Fox be able to decide who uses the phrase “Fair and Balanced” or not? Why?

Is the Franken/Fox case indicative of all such claims by a copyright or trademark owner of infringement? Why is this case special, and what does it tell us about the kind of arguments being made by content owners?

## Links

For a list of definitions of “culture,” enter the phrase “define: culture” into the Google search engine.

United Nations Educational, Scientific and Cultural Organization (UNESCO). This body’s portal to its cultural diversity and heritage projects can be found at <http://portal.unesco.org/culture/>

For a commentary on the Franken-Fox case from the First Amendment Center see <http://www.firstamendmentcenter.org/commentary.aspx?id=11867>

For a transcript of the court hearing in the Franken case, see <http://www.alfrankenweb.com/foxcourt.html>

## Activity

For this activity, the class will re-enact the court case FOX NEWS NETWORK, LLC (plaintiff) v. PENGUIN GROUP (USA), INC., and ALAN S. FRANKEN (defendants).

Some of the issues involved in this case include:

- Fox News suing Al Franken and Penguin Group (his publisher) for the use of their trademarked phrase "Fair and Balanced" in the title of his book.
- The plaintiff asserted that consumers could be confused because Al Franken never specifically stated on the cover that the book was satire or humor. And that he was using the trademark of Fox News to sell his book and to unfairly increase profits.
- The defendant responded by stating that a book is allowed to criticize the holder of a trademark and is allowed to mock the trademark as well.

The class will need to be divided in half—one group will be the legal council for the plaintiff and another will serve as the legal council for the defendants. Although you will work as a group to construct your arguments, one representative will be chosen from each group to be the main spokesperson for each side of the argument.

The teacher will play the role of the judge.

# Free Speech in the Age of Copyright

**Key points (many of these topics are also covered in the Introduction and Afterword of the book *Freedom of Expression*®)**

- v The importance of copyright law – which protects music, films, images, books and other creative works – has grown in importance in recent years. Familiar cases that have drawn public attention include the video-sharing site YouTube, Google’s book search, and MP3 music downloading.
- v In the world before digital media, copyright law tended to apply only to large distributors or “mass media,” for example, owners of newspaper printing presses, book publishing companies, or radio and television broadcast networks. Today, copyright laws apply directly to all of us, because we are always copying and distributing information as we interact with it online.
- v Very few people argue that there should be no copyright protection *at all* for creative workers. The problem that is often overlooked in copyright debates is that intellectual laws are now being used as tools of censorship, and as ways of restricting the public’s access to vital information. This is achieved by making it harder to quote or sample from copyrighted works, which is necessary if one wants to critique them.
- v Much of our modern culture and sense of the world is now shaped by big copyright holders, such as Time Warner and Disney Corp. If these kinds of companies have the power to control what we say about them, then we lose an important aspect of our freedom of speech. It’s easier to stand up for 18<sup>th</sup> Century notions of First Amendment rights -- such as writing your opinion in a newspaper or speaking in public -- than it is to defend video documentary workers or fan creations on the Internet, but these freedoms are also important to democracy.
- v Copyright is essential to help creators profit from their work, but under the current system our natural instincts about how we use creative works are condemned as illegal “piracy.” This poses a danger to how we communicate with ourselves to understand and define our own shared cultures.

## Discussion Questions

What are the differences between borrowing or appropriating from a creative work, and “ripping off” or “stealing” from the work’s creator? What other terms can be used to define the same kinds of processes?

What are some of the recent cases that you have heard about? Do you use YouTube or other video sharing Web sites?

How has copyright law moved from being largely the concern of mass media companies to an issue that affects all of us?

How are copyright laws simultaneously protective of rights *and* harmful to free speech?

Why do we need access to information, media, and culture to live in a truly democratic society?

## Links

Lev Grossman in *Time*, "The Battle Over Music Piracy."

<http://www.time.com/time/magazine/article/0,9171,1625209,00.html>

*Cnet* news analysis of Google/YouTube "copyright quagmire," March 2007.

[http://news.com.com/2102-1030\\_3-6167281.html?tag=st.util.print](http://news.com.com/2102-1030_3-6167281.html?tag=st.util.print)

## Activity

"If they want to critique me, they've got to be able to quote me." Sut Jhally

Take an advertisement from a popular magazine (*Cosmopolitan*, *GQ*, *Elle*, etc.) and critique the advertisement. For this exercise, the class will need to be divided into small groups of about 3 - 5 students. Assign a spokesperson and note-taker for each group. After 5 minutes, ask each group to present their critique. Finally, ask the class what terms and images they used for their critique.

- What if they were to make this project into a book?
- Would they be able to critique the advertisements without using the copyrighted images and text of the advertisements?
- What about making a video critique and putting it on YouTube or other video-sharing websites?
- What would be the consequences of doing this?

# Fencing the Cultural Commons

## Key points (many of these topics are also covered in Chapter One of the book *Freedom of Expression*®)

- v Copyright is a governmentally mandated legal agreement between the public and creative workers and distributors. Creators are granted monopoly rights over their work in order to make money from it, and the other side of the bargain is that the public gets something in return: the right to copy and distribute that work once it enters the “public domain” or “commons.” This is how culture is built.
- v The public domain is a pool of cultural resources, including works by Shakespeare and Mark Twain, which we can adapt and borrow from without having to ask permission. It represents the collective cultural record that we depend on to understand who we are.
- v This is similar to the idea of the “commons,” which can be described as any good or resource that all of us have access to and which has been set aside for public use. This can include physical spaces such as national parks and town squares as well as works that can be copyrighted. The collection of images, sounds, and words that we share as a society can be thought of as the “cultural commons.” Membership in a culture is predicated on a familiarity with the cultural commons.
- v The original length of the copyright period in the US was 14 years, renewable once for a total of 28 years of exclusive protection. In the 20<sup>th</sup> century this period of “limited times” has been extended several times – to 56 years in 1909, to the lifetime of the author plus 50 years in 1976, to the lifetime of the author plus 70 years in 1998 under the Sonny Bono Copyright Extension Act.
- v Congress, and foreign governments, have passed these and similar extensions mainly because of heavy lobbying by the film, music, book and television industries. These extensions mean that works that would already have entered the public domain remain under private ownership.
- v Disney Corp has been one of the most aggressive companies to demand copyright extensions. The copyright on *Steamboat Willie*—the first appearance of the character Mickey Mouse, part of America’s cultural identity for almost the entire century—was due to expire and enter the public domain in 2003. However, the Sonny Bono Act pushed it back another 20 years. This is ironic since many of Disney’s early productions were based on works already in the cultural commons, such as *Snow White* and *The Jungle Book*.
- v The most recent test case against this steady expansion of copyright terms came in a Supreme Court case in 2002 over web developer Eric Eldred’s efforts to publish poems by Robert Frost on the Internet. Attorney Lawrence Lessig challenged existing copyright terms by focusing on the explicit words “progress” and “limited” used in the Constitution. The court ruled against Eldred on the grounds that since the laws still allowed copyright to come to an end at some point in the future, their expansions *were* constitutional.
- v One of the major problems with copyright extension is that works that are not big hits—for example, tens of thousands of lost or forgotten films from the 1930s and 40s—get locked up. Because it is often impossible to ascertain or locate the original copyright holders of “orphaned” works, and too expensive to risk infringing a copyright by re-releasing them, there is no economic incentive to restore them. Even the copyright holders of the classic Laurel and Hardy films acknowledge that, while extended copyrights earn them millions of extra dollars, it also means that whole decades’ worth of films on nitrate stock will literally

disintegrate because no one will risk restoring and releasing them. This would not be the case if they had been allowed to enter the public domain when they were originally supposed to.

- v The tradition of folk music is a good example of how prior works of art, music and culture can be turned into fresh and vibrant creations through reworking and borrowing. Much of the music of Pete Seeger and Woody Guthrie is built on fragments or portions of older works from the blues and hillbilly music traditions. Guthrie explicitly encouraged others to play and publish his songs, but the use of one of his songs in a political parody cartoon in 2006 brought a copyright infringement suit from the current owners of Guthrie's copyrights. Through the legal process it was discovered that the song was in the public domain anyway.
- v These examples point us toward an important question about copyright law: can we maintain a rich cultural commons, and therefore an effective sense of cultural cohesion, if we stop new material from entering the public domain?

## Discussion Questions

What is "the copyright bargain"? Who is it meant to benefit, and how has this changed over the years?

What are the main features of the public domain and commons, and why are they important to our shared culture?

Why have copyright terms been extended so many times over the course of the 20<sup>th</sup> century? How were these extensions justified, and by whom? What has happened to challenges to these extensions?

Why is it important to preserve forgotten films from the 1930s, or make the songs of Woody Guthrie available to the public? What is lost to us as a culture or society when these kinds of works are prevented from being seen or heard?

## Links

Digital Journal article, "Copyright and The Mouse" from 2004.

<http://www.digitaljournal.com/news/?articleID=4031>

MEF video mash-up of copyright info told by Disney characters, "A Fair(y) Use Tale."

[http://www.youtube.com/watch?v=CJn\\_jC4FNDo](http://www.youtube.com/watch?v=CJn_jC4FNDo)

Transcript of Eldred hearing at Supreme Court

<http://www.aaronsw.com/2002/eldredTranscript>

"Woody Guthrie on Copyright" at Corante-Copyfight: The Politics of IP

[http://copyfight.corante.com/archives/2004/07/27/woody\\_guthrie\\_on\\_copyright.php](http://copyfight.corante.com/archives/2004/07/27/woody_guthrie_on_copyright.php)

## **Activity**

Have students list books, images, and concepts that they consider "common" — something everyone in the culture would have access to or know about. Determine how many items from their lists are in the public domain versus how many are held by private copyright owners. How might this effect the future transmission of culture and identity?

# The Rise of Clearance Culture

**Key points (many of these topics are also covered in the Introduction and in Chapter Four of the book *Freedom of Expression*®)**

- v Multimedia technologies allow people to document their own cultural histories and everyday lives. However, there is the expectation that any creator wishing to make even the most fragmentary use of a copyrighted work must seek permission from the owner. This has given rise to a “clearance culture.”
- v A clearance culture operates under the assumption that all copyright holders have absolute monopoly power to grant or deny the use of any aspect of their work to any another person — for example a documentary filmmaker — that might wish to use or comment on it. This has a “chilling effect” on such people, and comes with several costs.
- v For example, the high prices demanded by copyright owners from documentary makers for fleeting uses of their properties are often prohibitively expensive, running into the tens or hundreds of thousands of dollars. This represents a restriction on the expression of those who cannot afford to pay these prices.
- v According to Lawrence Lessig, there should be a presumption that documentary makers should be allowed to make fragmented uses unless it can be shown that there was clear intent to exploit the commercial market for the original work.
- v A clearance culture is also bad for democracy, and democratic culture, because basic resources of information and modes of commentary are priced out of the reach of most people. This impedes their abilities to communicate with each other using the resources of the culture around them.
- v It is generally recognized by copyright reformers that the producers of original works should be fairly compensated for them, and that corporate entities provide a service by preserving aspects of our culture and its history. However, when those same figures use copyright to restrict access to that culture, they are restricting access to a shared cultural heritage, or what could be described as a public or common good.
- v Examples of cases in which documentary films have had problems with the clearance culture driven by aggressive copyright holders include the *Eyes on the Prize* film about the civil rights movement; any use of the song “Happy Birthday,” for example in the film *Hoop Dreams*; and the sound of a cell phone’s ringtone (the theme from the *Rocky* films) in the documentary “Mad Hot Ballroom.”

## Discussion Questions

What are the key features of a clearance culture? Who benefits from it and how? What are its costs, to individuals and to society at large?

The need to get permission from a copyright holder to sample or make use of an element of an original work is a problem for documentary filmmakers. Who else might be affected by this? How will this affect other kinds of groups and individuals in the near future? Do you make films now, or plan to? If so, how will this impact your creative work?

How and why have documentary makers been required to “shift reality a bit” to be able to make their films in a clearance culture? What effects does this have on the documentary process?

When the owners of the copyright to the song “Happy Birthday” or the theme to “Rocky” demand thousands of dollars for their incidental use in a documentary, what is it that they are protecting? Is this legitimate or is it “extortion” as described by one of the interviewees?

## **Links**

[www.chillingeffects.org](http://www.chillingeffects.org)

A clearing house for information on IP laws' impacts on all kinds of expression.

## **Activity**

In groups, have students make a list of images from this film that could be considered as needing clearance. Have the students discuss what it would mean for the production of this film if the producers had to "clear" every image.

# Suppressing Freedom of Information

**Key points (many of these topics are also covered in Chapter Five of the book *Freedom of Expression*®)**

- v Over the past quarter century or so, it has become normal to think of “the private” as preferable to “the public” when it comes to managing any kind of resource. The process of placing property rights over goods or spaces that were once public, claiming them for oneself, and then selling access to them to others, has been described as a trend towards “the enclosure of the commons.”
- v This corporate culture of expanding privatization not only threatens free expression, but other vital aspects of daily life such as fresh water supplies.
- v One example is electronic voting machines, which run on proprietary software and are built and serviced by private companies. Problems with these machines in recent elections have cast their security – and therefore the trustworthiness of the machinery of democracy – into doubt.
- v A voting machine company called Diebold tried to use copyright laws to suppress criticisms of its devices on the Internet, but after a long struggle lost its case on First Amendment grounds. The Diebold story marked the beginning of the Free Culture student movement, a wider public awareness of how copyright is being used to censor people, and a renewed discussion about Fair Use.

## Discussion Questions

What are the differences between “public” and “private” ways of managing resources, particularly cultural ones? Whose “property” are we talking about?

How do copyright holders “enclose the commons,” and how does this suppress free expression?

Why are some people concerned about private companies building and operating electronic voting machines? Why was it important that Diebold lost its case of copyright infringement against critics of its machines and their security?

## Links

<http://www.eff.org/Activism/E-voting/>

Electronic Frontier Foundation’s clearinghouse for information on electronic voting.

## Activity

Ask students to let you know if they have any complaints about the classroom. Is it clean enough? Do the lights work well? Offer them a panacea - you can solve all of their problems as long as they “privatize” the classroom. Play the role for a bit. Demand “rent” from students

sitting at desks or suggest advertising and in-class sponsorships. After all, you have to make money somehow! After you have played the role for a while, ask the students what happens when we transform the classroom from a public space into a private space controlled by your fictional corporation? What would happen to the curriculum if we invoked the advertising model?

## Fair Use and Free Speech

**Key points (many of these topics are also covered in Chapter Four and Five of the book *Freedom of Expression*®)**

- v One of the key safeguards against overzealous copyright holders, at least in the United States, is the Fair Use doctrine. This outlines exceptions to the absolute control that an owner can exert over a copyright, allowing others to make unlicensed uses of media for the purposes of criticism, news reporting, scholarship, research and parody. Fair Use exceptions are necessary so that the First Amendment right to free speech and the right to limited copyright protection can work together.
- v Generally speaking, fair use of a work means taking small pieces or elements in order to produce new critical or creative works. A good example is the parody of Roy Orbison's 1960's pop classic "Pretty Woman" by rap group 2 Live Crew. The owners of the original copyright sued 2 Live Crew for infringement, and the case made it all the way to the US Supreme Court in 1994. The justices ruled that, even though the rap version of the song was a commercial product, its status as a parody meant that the whole original song could be used without permission.
- v Another important work that could not have existed without Fair Use is filmmaker Robert Greenwald's critical documentary "Outfoxed" about the Fox News cable channel. In the film Greenwald compiles clips from Fox News to argue against its claims of being "fair and balanced" in its reporting. Fox would never have given Greenwald permission to make the film, so he archived thousands of hours of Fox News broadcasts and made his film anyway. Fox did not attempt to sue Greenwald because the critical nature of his film put it squarely within Fair Use.
- v Media professor Sut Jhally made a similar film using clips from MTV to discuss the kinds of sexual imagery used in music videos. When MTV found out about his film, which was being used solely for educational purposes, the company sent Jhally a "cease and desist" letter claiming copyright infringement. The row over the film led to the creation of the Media Education Foundation, which encourages the Fair Use of works in the ways intended by the law.
- v Only a handful of uses are protected by the Fair Use doctrine. For example, a compilation of video performances by Elvis Presley of his hit songs would not be a Fair Use because it lacks educational or critical value. This kind of derivative work is more along the lines of a "rip-off" of another's copyrights, a way of accessing and exploiting protected works without paying for them.
- v The Fair Use question becomes more complicated when applied to "edgy" types of cultural production, for example parody videos of politicians using songs, images or characters – such as the BBC's Teletubbies – under copyright protection. Other kinds of "underground" or "illegal" art also make use of works that the original creators or owners might not like or approve of. This is becoming especially prevalent with works distributed on the Internet.
- v It is important to remember that the Fair Use law, which is ambiguously written, is not actually a right. It is a legally defensible proposition that only a court can decide on. Essentially it is a right that can only be claimed if one is sued. Because of this there is very limited case law on Fair Use, especially with regard to educational uses, because many education institutions are unwilling or unable to pay for a prolonged court case.
- v The biggest problem facing creators today is that it is often too daunting and expensive to face down a legal challenge from a copyright owner. In addition, many distributors and

- producers refuse to touch work that claims any Fair Uses that might be challenged later, producing another kind of “chilling effect.”
- v With regard to global media, it is important to remember that Fair Use exists only in the US. Other countries have similar exceptions for educational or parody uses, but many others have no exceptions at all. As such, Fair Use can be described as a “local ordinance in a global information economy.”
  - v According to James Boyle, the problem today is less the law itself than it is private demands for excessive licensing fees, or the need for expensive insurance policies to protect against future actions by copyright holders. In response to this, documentary filmmakers developed and published a statement on “Best Practices in Fair Use” for their own community. This has increased filmmakers’ confidence about making Fair Uses that they might not have known about beforehand, and has made them less likely to censor themselves.

## **Discussion Questions**

What does the Fair Use doctrine allow under US law? Which types of uses are permitted under Fair Use and which are not, and why?

What are some of the examples of Fair Uses from this film? How has the documentary you are watching made Fair Uses of materials owned by others, and how have these been justified?

How has the Internet impacted the ways that culture is created and shared? Why is Fair Use important to new forms of cultural production such as viral videos and song remixes?

Is Fair Use a right or not? Should it be one? What are the problems associated with making a Fair Use claim in your own work, especially with regard to being sued?

How have the demands of private companies for total control over the uses of their copyrights been met by documentary filmmakers?

## **Links:**

Information on all aspects of Fair Use compiled by the NYU Brennan Center for Justice, Free Expression Policy Project.

<http://fairusenetwork.org/>

List of important Fair Use cases in US law.

[http://www.ipwatchdog.com/fairuse\\_cases.html](http://www.ipwatchdog.com/fairuse_cases.html)

## **Activity**

Divide students into small groups. Give each group a magazine and ask them to select five copyrighted images (your students' choices can include Disney characters, a specific brand logo, copyrighted phrases, and other similar material). Ask them to piece these images together in a way that creates meaning for them and their classmates. Have them use paper and tape if necessary to complete their project. When completed, ask each group to explain their art project. Is this Fair Use or is each group just "ripping off" the original authors of these images? Why?

## Fighting Back

**Key points (many of these topics are also covered in Chapters Three and Five, as well as in the Afterword of the book *Freedom of Expression*®)**

- v The expansion of the reach of copyright and intellectual property has given rise to a diverse and decentralized movement of creators, academics, lawyers and activists engaged in a struggle to defend the public's rights of expression.
- v A good example of fighting back is the traveling *Stay Free! Illegal Art* exhibition, made up of works that push the boundaries of fair use and copyright infringement because they have made unlicensed uses of copyrights or trademarks. Examples include parodies of Mickey Mouse and Starbucks' logo. Because the entire exhibition is deemed educational, Fair Use protects it, but if it was simply a normal art show the exhibitors could potentially be sued. One of the points of the show is to demonstrate that our ability to talk about new works is curtailed by copyright laws, and to encourage claims of Fair Use by other artists.
- v Another form of resistive practice is "culture jamming," a catch-all term for creative efforts to interrupt the traditional one-way relationship between a producer/advertiser and consumers. Culture jamming tactics include modifying billboards, creating mock advertisements and orchestrating media pranks, often right at the edge of legality: one person's "modified" billboard is another's "defacement" or vandalism.
- v Negativland is an experimental sound-collage music group credited with coining the term "culture jamming." In 1991 the group was sued by the Island record label for making use of melodies and images from the band U2. Negativland incorporated the lawsuit into the overall art project itself. Another group that culture jams is @TMark, also known as the Yes Men, who have carried out successful pranks against groups such as the World Trade Organization, toy-maker Mattel and even the musician Beck. According to Kembrew McLeod, who was able to trademark the term "freedom of expression," and defend his trademark against telecom giant AT&T, pranks are ways of reaching wider audiences about issues in ways that are educational as well as fun and attention-grabbing.
- v One of several new organizations working in the areas of copyright and free expression is Public Knowledge, a Washington-based lobbying body that advocates on behalf of the public domain to policymakers. Another is the Creative Commons project, an alternative copyright system in which people select the kinds of permissions they want associated with their work: from the standard "all rights reserved" to the more flexible "some rights reserved." Other groups include the Electronic Frontier Foundation, Downhill Battle (now called the Participatory Culture Foundation) and the student movement Free Culture.org. These groups and activists are forcing corporate copyright holders to explain why, in their view, their property rights trump free speech.
- v Once again, it is important to be clear that these and other organizations are not demanding that all cultural production should be completely free to use as we wish. On the other hand, they believe we should not have to beg or pay for *every single use* either. It is important to stand up for Fair Use because it is an exception to copyright that few people know exists, so not many people will complain loudly if it is taken away. At the same time we need to expand the public domain, and create new legal instruments to expand how we share and discuss culture without copyright holders and IP law blocking these efforts.
- v Today's generation is the first to grow up using digital technology since childhood, so the natural ways that its members express themselves and engage with culture will be through

these technologies. We see this with social networking sites, blogs, and text messaging. Instead of sitting at a typewriter and writing an essay, it will be normal to take the creative works that exist around us and rework them digitally. This is empowering because it allows students to speak in a way that potentially connects them with many more people than just their classroom teacher.

- v According to Lessig, the law should allow this. If it interferes, it is acting as a barrier to the ways that people are thinking and communicating today. One of the dangers this poses is that unfair or overly restrictive laws can cultivate a general disrespect for all the laws in a society.

## **Discussion Questions**

Who is “fighting back” against copyright expansion, and who or what are they fighting back against?

Both the Illegal Art exhibition and “culture jamming” are ways of challenging copyright hegemony, but how are they different? What are the differences between a work of art in a gallery and modifying a billboard to subvert its consumer message? Should they both enjoy legal protections, and if so should these be under the same laws?

Which organizations are taking a stand against copyright absolutism? What do they advocate and how do they get their messages across?

Why are questions of copyright and Fair Use particularly relevant to today’s generation of Internet users and digital culture participants? How do you see copyright impacting the kinds of communications and media you produce yourself, or might produce in the future?

## **Links**

Website for Washington advocacy group.

<http://www.publicknowledge.org/>

Information on the traveling exhibition founded by Stay Free! Magazine.

<http://illegal-art.org/>

Online home of the magazine of the same name, which covers all kinds of culture-jamming.

<http://www.adbusters.org/>

## **Activity**

"Pranks are a way of reaching wider audiences and dealing with serious issues, but in ... a fun way," Kembrew McLeod.

"If there is a right that you have that you never knew you had, you aren't going to complain when that right is taken away from you," Inga Chernyak, Student Activist FreeCulture.org

Ask students to form small groups of 3 - 5, and discuss what projects or ideas they could do within their school community to raise awareness of this issue. Have each group draw a plan of action for their particular idea. How about an "illegal" music showcase featuring local bands? How would this be done so as to get the message out about free speech, fair use, and culture in our times?