

From Compliance to Creative Rights in Music Education: Rethinking Intellectual
Property in the Age of New media

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Abstract

This article examines one possible approach to teaching music with regards to creative rights and copyright. The author shares theoretical ideas underlying changes in content, creativity, and culture brought about by the rise of new media and the Internet. Comparing examples of works made in the professional arena as well as student works, the article details kinds of creativity that will become increasingly prevalent. As these creative practices are intimately involved with new media, this brings increased attention to copyright in the classroom. The article reviews the predominant framework for teaching copyright, concluding that it favors compliance and centers on illegal downloading and digital infringement. A critique of the compliance approach finds four key weaknesses: first, that it is out-of-step with the norm/law gap; second, there is an inherent ambiguity in copyright that makes compliance difficult to achieve; third, it is not in harmony with contemporary creative practices teachers should be promoting, and; fourth, it has led to the omission of critical areas that belong in every child's education. In its place, the article argues for a creative rights approach, focusing upon creativity and innovation as the function and purpose of copyright. The article closes with three approaches for the enacting of a creative rights approach: recognition of student work, attention to the intellectual property dimensions of the curriculum, and the allowance of transgressive works.

Keywords: copyright; curriculum; new media; creative commons; music education; higher education

From Compliance to Creative Rights in Music Education: Rethinking Intellectual
Property in the Age of New mediaⁱ

Issues of intellectual property and copyright have slowly gained prominence in the classroom with the rise of the Internet. This rise has been heavily shaped by the rise of new media as a catalyst for change in content, creativity, and culture. The increasing online nature of education allows students and teachers put their work into the corporate and public spaces in ways that naturally bring copyright issues to the forefront.

The rising importance of copyright is an issue because copyright is complex. This complexity is exemplified in constant news of lawsuits in the media and the many guides published to assist music teachers in understanding copyright (Althouse, 1997; Frankel, 2009; Woody & Woody, 1994).ⁱⁱ Teachers looking for guidance have largely found a compliance-based approach promoted by corporations to limit illegal filesharing and piracy. Unfortunately the compliance approach inherently imports and creates serious problems for educators, primarily through a focus on consumption in place of creativity. This is a particular problem in music education across the curriculum because of the expressive nature of student work and the use of much work under copyright.

In this article I present a *creative rights* approach for music educators that makes creativity central. Issues regarding copyright and creative rights are taught through a focus on the rights students have and attention is paid to maintaining these rights. The article first reviews changing notions of content, creativity, and

culture to better establish practices that deserve safeguarding in the curriculum. The compliance approach is then outlined with several examples, and four shortcomings are presented. The creative rights approach is then presented, largely through examples teachers can use and adapt. Through an emphasis on student creativity via the use of new media, the ideas represented in this approach can serve as a catalyst for change in music education. There is cause for hope as teachers consider ways to foster music education that is both aware of digital catalysts and capitalizes on using them to organize experiences for students.

Creativity and New media

“Hope” is the title of the iconic image of Barack Obama created by Shepard Fairey during the 2008 presidential campaign. It is a stunning and powerful image, one that *New Yorker* art critic Peter Schjeldahl called, “...the most efficacious American political illustration since ‘Uncle Sam Wants You’” (2009, ¶ 1). This image is also known because of the copyright lawsuits that emerged when the Associated Press filed suit against Fairey, claiming his image was an unauthorized derivative work based on a photograph by Mannie Garcia for which the Press held copyright (Italie, 2009). Fairey countersued for a judgment of fair use (Neumeister, 2009).

Simultaneous with these corporate lawsuits, a plethora of amateur imitations of the “Hope” image began to fill the Internet. Fairey's image became an Internet meme, with versions depicting everything from Obama's opponents John McCain and Sarah Palin, to “The Dude” from *The Big Lebowski*, using the familiar color scheme and typeface of “Hope.” For those without Photoshop skills, there was a

website that aided users in uploading and creating their own versions (Tapper, 2009).

This story of “Hope” exemplifies the ecology of creative work in today’s digital world. A work is created, often built upon or derived from another work. Others reuse or remix their own versions, processes made more probable with digital tools and the Internet. Accessibility makes all works targets of corporate copyright interests.

This creative ecology also exists in music. Consider the hip-hop artist Lil’ Wayne. In 2007, Wayne released a mixtape album called *Da Drought 3*. This was an unofficial release, distributed via the Internet rather than a record label. The entire album consists of remakes of songs by other artists, created by sampling beats from other songs that were then looped and upon which he rapped new verses. For example, Wayne rapped over a sample Young Dro’s 2006 song “Shoulder Lean,” turning it into his own song “Live from 504.” He then took some of the lyrics from “Live from 504” and reused them in a new song, also unofficially released, built on a sample from the Beatles’ 1965 song “Help.” The DJ who created the beat for Lil’ Wayne’s version of “Help” augmented the sample with keyboards and a more prominent drumbeat. To listen to these different songs together illustrates an interesting path from the 2006 song by Young Dro to a 2007 version by little Wayne that was remixed again adding in a 1965 song from the Beatles.ⁱⁱⁱ

Lil’ Wayne released hundreds of songs solely via the Internet in 2007, often three or four new songs each day (Frere-Jones, 2010). This manner of distributing music led the critic from Pitchfork magazine to note, “He’s given away more

worthwhile free music online than most artists of his stature ever release officially” (Dombal, 2010, ¶ 4). Vibe Magazine's November 2007 issue featured Lil' Wayne on the cover and in an article, “The 77 best Weezy [another Wayne nickname] songs of 2007.” Wayne gave away these songs not merely as an act of altruism, but to try new ideas, connect with his audience, and workshop material for his next commercial release, which became the best-selling album of 2008 in the USA, *Tha Carter III* .

Both Shepard Fairey's “Hope” and Lil' Wayne's “Help” illustrate the incredible ease with which artists are now able to make and share new works using digital technology for creation and distribution. These works can then be taken up by others for remixing and sharing at an unprecedented level. It would be little more than a curiosity if this creativity was limited to works found in the professional marketplace, but the same creativity is happening in classrooms. Students today have access to tools that were once limited to professionals—tools that allow them to create digital artwork, make movies that are posted to YouTube, and record music using programs such as GarageBand. Once posted, these works are accessible broadly around the world, and a large number of students are already posting such material. The Pew Research Center's Internet and American Life Project reports that 38% of teens reported in the affirmative when asked if they “share something online that you created yourself, such as your own artwork, photos, stories or videos.” (Pew Research Center, 2009).

One example of student classroom creativity similar to Lil' Wayne's work comes from a music education technology class I teach (Thibeault, 2010b). In it, students record a poem from the public domain to learn microphone and basic

editing skills. One student, Genevieve, recorded Charles Baudelaire's poem, "Invitation to the Voyage." She posted her finished poem on the Internet, using a Creative Commons license that allowed others to reuse and remix her recording. Within a week, someone she never met had taken her poem, added a synthesizer track and quite a bit of reverb, resulting in a spacious and atmospheric version. A week later, another version was posted, this one sounding more like an R&B slow jam.^{iv} One of the mixes posted online was put up with the comment that the creator thought this new version might be a nice accompaniment to a film, inviting others to continue the process of making, remaking, and further building upon the work of others. It was a wonderful thing for me to see Genevieve's work take on new relevance through the online world, and to have others validating her efforts through the works' reuse.

Catalysts for Change: Content, Creativity, and Culture

The stories of Shepard Fairey, Lil' Wayne, and Genevieve capture a sense of creative work today, and they exemplify some of the changes educators must consider. In particular, they illuminate three critical areas of change brought about by new media, areas that deserve closer attention: content, creativity, and culture.

Content

The availability and abundance of content has fundamentally changed with the rise of the Internet and new media. Physical products that must be manufactured, transported, and marketed are being replaced by digital products that are easily scaled and instantly distributed. Lil' Wayne still releases music on physical CDs, but the success of his physical products was built upon the tracks he

digitally released and made instantly available to a broad audience at no cost. The arts, while emblematic of these changes, are one area of the much larger global flood of digital information (Gleick, 2011). In education, rising digitization is implicated in changes to scholarship (Jensen, 2007), and the rise of anywhere/anytime learning (Collins & Halverson, 2009) and the concept of ubiquitous learning (Cope & Kalantzis, 2010).

Where music students previously had to buy or borrow recorded music, most young people today watch and listen via YouTube, Pandora, Spotify, and other services that give them instantaneous access to most of the recorded output of humanity. Furthermore, access to content naturally leads to increased usage. According to the Kaiser Family Foundation's *Generation M2: Media in the lives of 8- to 18-year olds* (Rideout, Foerh, & Roberts, 2010), this age group spends nearly eight hours of each day with media, nearly a third of that time in a multitasking manner. Looking at music, this represents a 47-minute increase per day in just the five-year period from 2005-2009 (p. 2).

Creativity

Changes in content are connected to in changes in creativity through expanding the notion of creativity to include and legitimize acts of remaking and remixing. Shepard Fairey's "Hope" is an example of the kind of digital creation that comes from the adoption and adaptation of materials. Lawrence Lessig focuses on remixing as a foundation of the new creative economy (Lessig, 2008). Burgess and Green (2009) overview the ways that YouTube has challenged and changed notions of media use and blurred lines between producers and consumers. This kind of

digital remixing has been discussed since John Oswald's "Plunderphonics" essay (1985); but in recent years, the technology has become widely available. Even mid-level smartphones are loaded with tools of a recording studio and allow users to capture and remix websites, songs, and digital photographs along the lines taken by Genevieve.

Culture

In addition to content and creativity, the impact of new media is apparent when considering changes to culture that make it participatory. Lessig (2007) invokes a computer metaphor in tracking the move from a read-only culture to a read-write culture. For most of the 20th century, corporations produced content such as movies, albums, radio, newspapers. Individuals only option was to consume or not consume that content. One bought the Beatles' "Help" but could not remix it. Today, audiences are no longer passive recipients of works, but are active participants in digital realms, creating response videos and leaving comments, remixing and repurposing content, a phenomenon referred to by Henry Jenkins as the rise of participatory audiences who form the backbone of participatory culture (2006). Teachers and students increasingly understand that any finished artistic work is a potential jumping off point for new works, and that all culture can be rewritten and remade. Ruthmann and Hebert (in press) discuss the many ways that changes in culture are emerging in music from the online learning and social media emblematic of Web 2.0.

[insert figure 1]

Figure 1 depicts changes that have played a role in the rising attention paid to copyright in education. As described by Lessig (2004), copyright laws have been in flux over the 20th century, moving from limited and isolated coverage to pervasive and near-eternal protection. He also makes clear that the inherent ambiguity of copyright favors those who have the power to bring lawsuits and pay for lawyers. However, amateur creators continue to test the boundaries of creativity; and as creativity is amplified and expanded in the digital age, copyright has stepped in as a brake to slow accelerating changes, with a corollary compliance approach that threatens to similarly brake educational progress.

The Compliance Approach

Compliance is the predominant framework in materials used to teach about copyright and in materials and articles for practitioners. This approach attempts to discourage digital piracy and downloading through a focus on what constitutes infringement. A stark contrast is made between content creators, typically depicted as corporations or those who work for them, and individuals who are depicted solely as consumers. A host of organizations offer guides (for a list, see Frankel, 2009, p. 204), and corporations such as Microsoft have sites like Mybytes.com that feature quotes reinforcing compliance, such as this quote from Lil' Mo (MYBYTES, n.d.):

I'm glad for certain rules coming in effect because it limits how much people can actually "borrow" from your creativity before it's considered piracy, plagiarism, or copyright infringement.

We realize we can't change the world, nor can we stop everything. I feel as long as the culprits know you have your eye on them, then they will only go so far, and some things are in fun. But when someone totally transforms any of my work as if it were their own and distorts my originality, it's a problem.

(¶ 1)

Another example of the compliance approach comes from the Los Angeles chapter of the Boy Scouts of America, who partnered with the Recording Industry Association of America and the Motion Picture Association of America to create the "Respect Copyrights" patch (Anderson, 2006). The accompanying curriculum is designed to prevent piracy and ensure compliance, with no information communicated about the possibility that students themselves might be creators or about the fair use provisions of copyright law. It goes so far as to suggest that scouts run a tool, MPAA's Parent File Scan, that searches their computer for all media content for review.

Other available resources for teachers often take a compliance approach. These articles provide basic answers on what can and cannot be done with corporate copyright materials, and often feature scare tactics such as this pull quote from an article in *Teaching Music*, "We do send cease-and-desist letters on behalf of our members, which we have to a number of school districts and teachers" (Schlager, 2008, p. 41). The quote is presented alongside the image of a stack of legal books and a gavel, with the clear message that teachers in school districts might be accused of crimes, and the legal system may pursue them. In short, individuals are pirates, the authorities know it, and they will be pursued.

These few examples exemplify an approach that skirts around the complexity of copyright to focus on consumption and compliance. Teachers who seek clarity find resources with the compliance approach. The compliance approach places teachers as intellectual property cops, policing their students to ensure that the appropriate parties earn their profits and royalties.

Four Shortcomings of the Compliance Approach

Although the compliance approach makes sense at first, once teachers understand ways that creativity, content, and culture are changing, they will most likely realize that compliance is nearly impossible. Furthermore, there are many reasons teachers should not comply. This section of the paper explains four serious shortcomings: first, the large norm/law gap; second, the inherent ambiguity of copyright; third, dissonance with contemporary creative practices, and; fourth, how it leads to the omission of critical areas from the curriculum.

More than twenty years ago, warnings on videocassettes were already being ridiculed. The film *Amazon Women on the Moon* (Dante, 1987/2004) features a sketch, "Video Pirates," in which pirates laugh at the appearance of an FBI warning, at which the captain says sarcastically, "Oh, I'm so scared." The scene illuminates the gap between our social norms and the letter of the law. This gap, commonly referred to by legal scholars as the norm/law gap, has significant ramifications with regard to copyright.

John Tehranaian (2007, p. 548) writes that the average United States citizen who does not download movies or music illegally is still liable for copyright damages estimated at \$4.544 billion per year. He details socially acceptable but

illegal activities such as forwarding e-mail, sharing digital photos taken by someone else, and posting videos of expressive performances (such as singing “Happy Birthday” at a party) without explicit clearance. The size of the norm/law gap and the high penalties for infringement make clear an impossible aspect of compliance: even if we try to comply, nearly everyone is frequently in violation because the laws themselves are drastically out of sync with social norms and the digital tools with which we go about our lives.

A second reason compliance does not work is the inherent ambiguity of copyright law. Of course, some clear examples exist, such as the always illegal downloading of an album to circumvent payment, or the always legal creation of a wholly new song. Most of the time, however, legal experts disagree when attempting to determine whether a use is protected.

James Frankel’s book (2009) serves as an example of the futility of overcoming copyright’s ambiguity. Chapter five, “Copyright or Wrong: Permissible, Infringement, or Fair Use?” (pp. 99-124), includes fifty questions and answers for teachers. Unambiguous answers are available with only four of the fifty questions, while the remaining 92% are marked:

You will find that many of the answers have an asterisk next to them. That is because the question has two answers. While many situations seem like either an infringement or a fair use, subtle changes in the way the educator uses the materials can make the possible infringing use fair, and a possible fair use an infringement. (p. 99-100)

To expect teachers to be able to deal with subtle ambiguities around dozens of questions is asking perhaps too much, and it is far from clear that there is value when virtually all questions have ambiguous answers. Lessig, (2004) discussing how this favors those with resources and power, concludes, "The law was born as a shield to protect publishers' profits against the unfair competition of a pirate. It has matured into a sword that interferes with any use, transformative or not." (p. 99). Ambiguity means that even those fully compliant with copyright are nevertheless always vulnerable to an infringement suit, however spurious.

A third reason to argue against compliance as the frame for teaching copyright is the inherent tension between copyright law and creative practice that is emerging in the digital age. Copyright law often adjusts to new innovation; but at present, it lags far behind the kinds of digital creativity of people such as Lil' Wayne and my student Genevieve. Teachers may find that if they try to comply with copyright, they will find themselves cutting out the heart of today's creative practice, a serious disservice to their students.

The fourth and final shortcoming of a compliance approach concerns the curriculum. Publishers of music textbooks have always relied upon public domain songs (in the USA, often those published prior to 1923) as a substantial source of material. While much public domain music is of educational value, the costs of including more recent work has led most publishers to entirely ignore music under copyright. Speaking at the 2007 Mountain Lake Colloquium, Bennett Reimer told participants that his greatest regret was that the Silver Burdett textbook series, for

which he an author, had omitted popular music because it was too expensive to license.

There are significant consequences students who are presented materials that exclude the materials of their culture. On the campaign trail in 2008, Barack Obama, speaking about the importance of arts education, went off script with this telling aside:

I mean, you always had an art teacher, and a music teacher. You could be in the poorest school district in the world. Now, I'm not saying music was always exciting... Right? I mean, sometimes, you know, the teacher would be making you sing songs that, from like, the old show tunes. You know? I had one music teacher who made me, [sings] Oklahoma where the... And I was more into Stevie Wonder, so..." (*Barack Obama in Wallingford, PA, 2008*)

Compliance, then, is not only involved in a gap between society's norms and laws, but can be implicated in the tremendous gap between the music that students enjoy and the music that has been presented for learning. In his schooling, Obama experienced music education distant from his own likes—something his teachers probably did not intend, but which was nearly inevitable given the decision by publishers to constrain their offerings to exercises and music from the public domain.

The compliance to copyright, then, can be seen as not only as impossible to achieve but also as undesirable. If we imagine a classroom where compliance is achieved, we find a place where many social norms are excluded because of the norm/law gap, where teachers need to invest incredible amounts of time

understanding the ambiguities of law, where many of the most interesting ways to make art are not present, and where curricular materials omit much culture worthy of study. Clearly, to solely focus on compliance is problematic.

However if educators reject the compliance approach, there is a need for an alternative, a different way to approach teaching in the digital age. It is also possible to reject a sole focus on compliance while retaining aspects of compliance as a component of the approach to teaching copyright. What is needed is an approach more effective at reaching the heart of what teachers ought to teach, and to situate copyright as part of a broader vision of creative rights supporting creativity and innovation. The next section of this article outlines such an attempt, a creative rights approach.

The Creative Rights Approach

The creative rights approach begins with a reexamination of copyright's origins. It is surprising for many to learn that copyright law was established to promote progress. This was established in the U.S. Constitution which reads that Congress has the right, "to promote the progress of science and the useful arts by securing for limited times to authors and inventors exclusive right to their respective writings and discoveries" (U.S. Const. art. I § 8). Nicknamed the "progress clause", the purpose is clearly to promote progress by securing rights. In other words, the foundation of what teachers and students should know is that copyright originates in the desire to recognize contributions of writers and creators by giving them some control over their creations within a capitalist economy.

Instead of compliance and an FBI warning, teachers can discuss how copyright might function as an incentive for creators. For younger students this can take the form of talking in terms of property, but students further along in the curriculum will naturally find aspects of today's culture that seem to be hindered rather than promoted by copyright. It is also possible to explore alternative narratives of copyright in society. Mazzone (2006) coined the term *copyfraud* to draw attention to the flagrant false claims of copyright around works like public domain musical scores or government documents. Attali (1985) writes of the origins of copyright in France, where, "the purpose of copyright was not to defend artists' rights, but rather to serve as a tool of capitalism in its fight against feudalism" (p. 52). Similarly, Barron (2006a) relates the origins of copyright in the UK to the rise of the work concept along the lines articulated by Goerh (1992). This is intimately tied to the rise of music as a commodity in a capitalist system, something explored by both Attali and in a separate work by Barron (2006b). This rise has become even more complex with the use of digital sampling, with James Boyle (2008) providing a case study of the complexities of authorship in music through Ray Charles' song "I Got a Woman."

To begin with the purpose and function of copyright is to invite a conversation missing from the compliance approach, namely, one where all people may create and that their creations deserve and receive protection under copyright. Most students find resonance with the notion that they will be more likely to come up with great ideas if they are able to earn recognition and profit. It is also appealing

to begin with something simple and memorable, rather than the thousands of pages one must read to understand the current complexities of copyright.

To begin with copyright is also to recognize that one of the aspirations of contemporary education is to create innovators. Innovation and creativity are increasingly recognized as fundamental resources for modern economies, and central in the rising attention to what are called 21st century skills. To begin with the progress clause is to begin with the ideals and aspirations of society, to bring the classroom in line with the hopes for a more innovative economy and world. The final portion of this article presents three practical approaches that have been used for several years at the University of Illinois to enact a creative rights approach in the classroom.

Three Strategies for Enacting a Creative Rights Approach

Since 2005, I have worked with students to come up with ways to put a creative rights approach into practice in the classroom. These efforts have resulted in new ways to recognize student creative rights, and a different approach to thinking about intellectual property across the curriculum. Three key components have proven essential: recognition of student work, attention to the intellectual property dimensions of the curriculum, and the allowance of transgressive works.

Creative Work Permission Form

The most productive and profound way to teach copyright may simply be to recognize the intellectual property rights around creative works that students make in class. We accomplished this in class through the development and deployment of a creative work release form shown in Figure 2 (Thibeault, 2009). I became aware of

the power of this teaching tool when first inviting students to complete a form choosing whether or not to add their individual recording projects to a class CD in 2006. It was immediately apparent that the students were delighted that a byproduct of my asking them for permission was that they had power over the creative work they made. The form continued to evolve, and the present form allows students to choose from a variety of copyright license options, and also includes a basic description of the rights one offers to others in choosing each license. This is increasingly valuable as sites such as Flickr and YouTube give users similar options.

[Insert figure 2]

The simple act of asking students for permission recognizes that their work has value and that they have made something they own. To recognize that their creations are intellectual property is a step toward recognizing those rights when they belong to others, and this is the heart of a positive approach toward compliance.

Creative Rights Pyramid for the Curriculum

Once one begins to recognize the creative rights that students have around the work they make in the classroom, it naturally follows that attention is drawn to the larger curriculum. This is because not all curricular materials are equal with regard to copyright. One can do anything with a wholly original work, but many restrictions exist surrounding works under copyright. Although a student who sings a Madonna song has created an expressive rendition that has intellectual property

protections, since that student is working with a song already under copyright she can only release her rendition by engaging with royalty associations, paying a mechanical reproduction right to release recordings, securing permission to use that performance in a video, etc. By contrast, if a student sings a song that is original or in the public domain, their expressive rendition has intellectual property value but does not require further permissions to be used by the student.

Once one understands the value for students of works under less restrictive copyright status, it becomes possible to start to think of the curriculum as akin to a diet (Thibeault, 2011). Some materials allow unfettered reuse with ease, and are therefore more valuable in the promotion of innovation and creativity in the classroom. By contrast, materials that do not allow the students to further share the things that they derive should be viewed as less valuable. All things being equal, innovation is more easily promoted through the use of materials in the public domain or student original work.

[insert figure 3]

To visualize an optimal creative rights curriculum, I developed a diagram based on the USDA food pyramid, depicted in Figure 3. If we want students to be inventive, to do creative things, then it follows that the bulk of the materials they work with should be works without restriction from the public domain as well as original works. These are works they can record, reuse, remix, and wreck to their hearts' content. Student original works not only have no restrictions, but favors the

encouragement of students who are creators. This pyramid reminds teachers to provide ample materials for their students to be creating, to be writing their own songs, to be sharing their own materials in the hopes that this will lead them to be the innovators of tomorrow.

Works that have a Creative Commons license have fewer restrictions than copyright, but allow the rights holder to stipulate which aspects of copyright still apply. For instance, the rights holder can choose whether or not someone may reuse or share the work for commercial purposes, whether they may transform the work or merely share a copy, or they may simply possess a copy for free. This license originated in response to the expanding nature of copyright, as described by Lessig (2004).

There are many works under copyright that remain freely available, whether on YouTube or on websites of artists themselves. These are superior to works under copyright not freely available and that students may own or have a copy without having to pay for it. The smallest part of the diet should consist of works under copyright not freely available, works that students must purchase if they wish to have a copy, and around which they must seek permission if they wish to use in their own creations and re-creations. There are still many amazing works of art that, although under the most restrictive copyright possible, still deserve a place in the curriculum and the education of students. And it needs to be recognized that works under copyright can still inspire creativity and innovation as long as the works students create are not derivative in a legal sense that they do not merely retell a story and/or reuse or digitally sample a melody.

Unfortunately, in today's classrooms it is clear that students most often receive works predominantly under copyright, or works from the public domain but without receiving clear instruction that these works may be used and reused. The use of the pyramid serves as a reminder for students and teachers that other options exist, many of which make digital creativity and remixing uncomplicated from a copyright standpoint.

To provide an example how this worked in my class, we visited the Sousa Archives and Center for American Music and got a copy of one of the original sketches for a 1903 Sousa march, "Invincible Eagle". The students in my music education technology class learned to use notation software by digitizing the score and then creating an edition with modern instrumentation. We released this final digital score to the world (Sousa, 2009). We then used this material to create a variety of new products, which range anywhere from video games that included Sousa's music to visualizations of the score to an *a cappella* jazz song derived from the melody. All of this work was motivated by the fact that students knew that they could own and do with as they please to anything that they created.

Recognizing student creative work, and then examining the curriculum with the creative rights pyramid fostered an atmosphere where creative rights of students reigned. But these two areas leave one question to be considered, namely: Is there an educational justification or imperative for student work that ignores or violates works under copyright?

A Digital Sandbox for Creative Works

On first examination, sanctioning students to ignore copyright would seem counterproductive to teaching about copyright. To allow and encourage students to remix music or film under copyright, or to write stories using characters from books or novels such as the Harry Potter series would seem to thwart all efforts to teach respect for the rights of others.

There are two reasons, however, that making room for work that ignores or violates copyright. The first is simply to note that nearly all work done in the professional world begins this way: Hip hop DJs don't clear samples before they make a remix, they make many remixes and engage in the hassle of clearance only when there seems a compelling reason and likelihood that a sample can be cleared (Schloss, 2004). The second reason is that it may be the case that acts that might be violation if distributed may be of immense educational value. These reasons led to practices that differ from the previous two suggestions, the creation of a "digital sandbox" in the classroom for making works without considering copyright status.

As an example, when I assigned students to record public domain poems, one student wished to work with a poem that was released under Creative Commons, but using music under copyright. A song inspired the poem, and this student wanted to create some loops from the song to serve as musical accompaniment to her reading of the poem. She was able to contact the poet and share her final product, and she wrote in her reflection for the assignment the following (shared with her permission):

This project is really really important to me. Not just because I'll be sending the final product to the poet, but because this is one of the rare occasions

where I've been able to fuse 2 things that I love together: music and poetry.

This is the most excited I've ever been about an assignment. It doesn't even feel like an assignment to me.

Giving her room to make this work allowed her to make something that she claimed was the most excited she had ever been about an assignment. She clearly was passionate and motivated, and the final product achieved a marriage of speech and song that the members of the class found compelling. This is the kind of learning teachers strive for, and certainly it was critical for the student to work with this particular content. To adhere too closely to a compliance approach would have been to miss the excitement and the pleasure.

The Creative Rights Class of Tomorrow

This article has argued that creativity is now intimately involved with remixing and reusing in the digital age, and that this applies in the professional world as well as the classroom. Students will be doing more work emblematic of new media. And there are approaches that we can use to promote the creative rights of students rather than an emaciated approach focused entirely upon compliance. Not only do students post their own original content, but their works can enter into the larger economy. One extreme example is the class at Stanford University that worked toward making applications for Facebook, which netted some students as much as USD \$3,000 a day (Helft, 2011). While not wanting to turn a classroom into a corporation, to ignore the relevance of connecting the classroom to the greater world is a missed opportunity.

Teachers can think about the creative diet that is offered, promoting greater awareness of the rights surrounding materials as well as increasing the access to materials that have fewer restrictions. And we can encourage students to pursue learning in any way they choose as long as they keep transgressive works in a digital sandbox.

To frame copyright in terms of creative rights includes compliance, but it moves beyond the complexity of compliance to embrace the single task to increase innovation and creativity. This is in line with the origins of copyright, and the hope many place in today's educational system (Cope and Kalantzis, 2010).

Just as copyright law itself is an attempt to promote innovation and progress, attention to certain aspects of the curriculum can allow educators to promote the kind of creativity and innovation most valued by today's society. Rather than trying merely to teach students to comply, teachers can recognize that the digital classroom of today is a place connected with the larger world, connected with the larger marketplace, and a place where students can be innovators right now.

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Notes

ⁱ The author wishes to acknowledge many helpful comments from anonymous reviewers and from Channing A. Paluck, as well as from discussions in a writing group with Allen R. Legutki and Brent C. Talbot.

ⁱⁱ In discussing copyright, I draw primarily from work conducted within the United States. Many of the particulars of copyright vary from country to country, but there are broad similarities brought about in part by international agreements such as the Universal Copyright Convention signed in Geneva in 1952 and the Berne Convention for the Protection of Literary and Artistic Works of 1886. In addition, attempts have been made to focus on conceptual issues that apply in most modern industrial countries, rather than specific particulars.

ⁱⁱⁱ A short podcast accompanying an article on hip hop and new media (Thibeault, 2010a) presents short audio samples of these songs.

^{iv} In revisiting this example for this article, it appears that the original files have changed location or disappeared, a reminder of the ephemeral nature of the Internet. Short samples of Genevieve's work, and the derivative works, can be heard in the podcast which accompanies an article (Thibeault, 2010a).

	Old Media		New Media
Content	physical, scarce	————→	digital, overabundant
Creativity	individual, making	————→	collaborative, remixing
Culture	read-only	————→	read-write

Figure 1: Aspects of change as new media supplant old media.

Creative Work Release Form

By signing below, I hereby release my project to my colleagues and perhaps for worldwide distribution via Creative Commons license or Public Domain Declaration. I understand there is no compensation offered. I also understand that I am under no obligation to release my work, and that those choosing not to release their work will suffer no adverse consequences.

Project description:

Release date/date signed:

Quick Guide to Choosing a License

This chart can help you decide what someone can do with your work based on the license you choose.

	Copyright	Creative Commons BY-NC-ND 3.0	Public Domain
Own a copy	✓	✓	✓
(Physically) loan it to others	✓	✓	✓
Play it in an educational setting		✓	✓
Give others a digital copy		✓	✓
Post on the internet or otherwise digitally distribute		✓	✓
Sell copies			✓
Remix and Remaster			✓
Create new derivative works			✓
Create new works that don't acknowledge you as the original author			✓

Check One Box

Indicate your license choice

Print Name	Signature

©, no distribution	©, others can have a copy	Creative Commons BY-NC-ND 3.0	Creative Commons Public Domain

Figure 2: A release form reminds students of the rights that exist around various licenses for their creative work, and allows them to stipulate whether and under what conditions they will allow their work to be distributed.

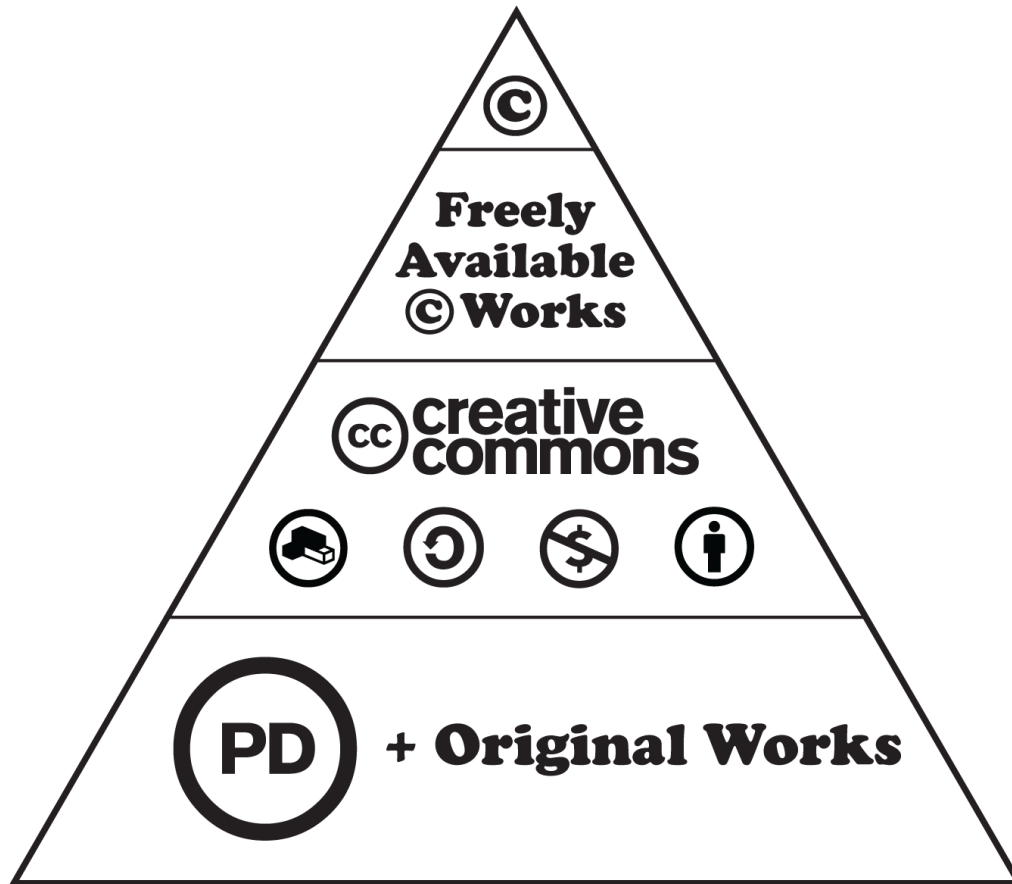


Figure 3: A creative rights pyramid creates expectations that the curriculum should favor materials with few restrictions for their use.