

Week 5: Remix and the Ethics of Digital Use

Our digital environment makes it easier than ever to find and share content of all kinds: photographs, music, artwork, etc. With a click of a button, we can download a copy of most media onto our devices, and we may even share it with our friends and followers on social networking sites. While the ease with which we can share and collect content has vastly improved thanks to digital tools, so too has the ability to steal content or use materials without permission, even claiming something to be our own when it isn't.

This week, we will explore how the law protects people's creations, and how common media consumption practices often go against a creator's wishes. We will look at how the law attempts to balance the rights of creators and users, ensuring that creators' have the right to monetize and control their works, while users have reasonable access to them. We will explore the law/norm gap - the idea that we are a nation of infringers; despite there being laws to protect creators' works, the typical person often violates their copyright rights through illegal downloading, sharing content without permission, etc. We will question the degree to which copyright laws restrict creativity, and the possibilities that remix culture provides. Finally, the role of copyright in social media networking sites will be explored by studying these sites' terms of service in order to see to what degree they protect creators' rights.

Questions to considered include:

- What must you consider when you use other people's work?
- What is the difference between taking inspiration from the creative work of others and using that work in some/any shape or form without permission or attribution?
- How does copyright and fair dealing manifest itself on social media?
- Have you ever infringed on anyone's creative rights?
- How is social media changing the conversation around copyrighted content and creative rights?
- What are some steps that we can take to ensure that the information we use and reference is done ethically?

Learning Outcomes

Upon completion of this module, you will be able to:

- 1) Understand the role of copyright in protecting creator's rights and for copyright exemptions to give users' certain permissions to use copyrighted material
- 2) Understand the potential for remix culture to encourage the creation of innovative works.
- 3) Understand how the terms of service on social networking sites define copyright and what can be done with the content you upload to your account.

Introduction

Instagram is a photo and video-sharing social networking service. As such, it is not uncommon for visual artists to share their work on the platform in order to display it and grow an audience. Oftentimes, users wish to share with their photos photos that do not belong to them (for example, a photo taken of them at a business function). Providing credit is not only as simple as asking for permission and identifying who the photo belongs to in the post (see how to do so by visiting this site: <https://blog.hootsuite.com/how-to-regram/>), but is proper etiquette; much work went into the creation of the content, and those responsible for the creation deserve to be credited. This is also a chance for your audience to connect with the original creator and explore their work, thus possibly enhancing their audience.

Unfortunately, this does not always happen; a user may take a photo and upload it to their account without giving proper credit. Read photographer Jake Kivanc's story of what happened when Canadian rapper Drake used a photograph featured on Kivanc's Instagram account without permission: https://www.vice.com/en_ca/article/ppvp3z/what-happened-when-drake-pouched-my-photo-for-his-instagram . How would you feel if you were Kivanc? Is potentially getting no credit on social networking sites just part of the experience of being active on these platforms? Is it worth using Instagram to share your photography? Could Kivanc do anything to make Drake give him credit?

With this in mind, it is now necessary to explore the legal principles protecting all sorts of property – including those materials we find online.

Intellectual Property, Copyright in Canada, Fair Dealing

According to the World Intellectual Property Organization (WIPO):

“Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

IP is protected in law by, for example, [patents](#), [copyright](#) and [trademarks](#), which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.” Source: <http://www.wipo.int/about-ip/en/> .

Let's reflect on this a moment. We encounter intellectual property on a daily basis – especially those of the literary, dramatic, musical and artistic variety: the television and movies we watch; the newspaper articles or books we read; the music that we listen to. All these creations came to life because a person or people were able to develop an idea and put it into a concrete form. Original literary, dramatic, musical and artistic works are legally protected under **copyright law** to ensure creators' have control over how their work is used and monetized. For an overview of what copyright is, view the following video: <https://www.youtube.com/watch?v=ljNS5p3cqls> .

Note that the [Copyright Act of Canada](#) is the federal statute governing copyright law in Canada. Within this, copyright law ensures economic rights and moral rights, which offer extensive protections for copyright owners:

“Copyright law provides creators with two broad groups of rights: economic rights and moral rights.

A. Economic Rights

Copyright law protects creators of original works by granting creators the sole right to produce or reproduce any substantial part of the work in any form, to perform the work in public or, if the work is unpublished, to publish the work or any substantial part of it. This means that copyright owners have the exclusive right to control the translation of a work into another language, the adaptation of a work into another form, the communication of a work, the recording of a work, and the public performance of a work.

B. Moral Rights

Even if the creator sells copyright in the work to someone else (i.e. control over the publication and reproduction of the work and the right to receive remuneration), he or she retains moral rights in the work. The work cannot be distorted, mutilated, or otherwise modified in a way that is prejudicial to the creator’s reputation or honour. Unlike economic rights, moral rights are personal to the creator, and thus cannot be sold or given away. However, moral rights can be waived by written agreement, e.g., not to exercise the rights. Specific moral rights include:

- the right to prohibit the use of a work in association with a product, cause, or institution in a way that would be prejudicial to the creator’s reputation or honour;
- the right to protect the integrity of the work in order to prevent modifications that would be prejudicial to the creator’s reputation or honour;
- the right to be associated with a work as its creator;
- the right of the creator to use a pseudonym in association with the work; and
- the right of the creator to remain anonymous.

Authorization to Exercise Rights

The copyright owner has the exclusive right to authorize others to exercise any of his or her rights. Anyone who authorizes the performance of an act that is the exclusive right of the copyright owner, absent a license to do so, infringes the rights of the copyright owner and can be held liable therefore. Authorization may be either express or implied. If someone made copying equipment available, and knew that it was regularly used to infringe copyright, and showed a manifest indifference to that infringement, then a court might well conclude that the person had implicitly authorized the use of that equipment for copyright infringement.”
(source: <http://copyright.info.yorku.ca/what-rights-are-protected-by-copyright-law/>)

Canada's copyright laws not only act in the interests of the creator, but also the user (that is, anyone who is consuming copyrighted content). We see this in the form of **fair dealing** (note: the US has a similar legal concept called fair use, but they are not identical).

"Fair dealing is a user's right in copyright law permitting use of, or "dealing" with, a copyright protected work without permission or payment of copyright royalties. The fair dealing exception in the [Copyright Act](#) allows you to use other people's copyright protected material for the purpose of research, private study, education, satire, parody, criticism, review or news reporting, provided that what you do with the work is 'fair'. If your purpose is criticism, review or news reporting, you must also mention the source and author of the work for it to be fair dealing." (source: <https://www.lib.sfu.ca/help/academic-integrity/copyright/fair-dealing>)

"Whether something is 'fair' will depend on the circumstances. Courts will normally consider factors such as:

- The purpose of the dealing (Is it commercial or research / educational?)
- The character of the dealing (What was done with the work? Was it an isolated use or an ongoing, repetitive use? How widely was it distributed?)
- The amount of the dealing (How much was copied?)
- Alternatives to the dealing (Was the work necessary for the end result? Could a different work have been used instead?)
- The nature of the work (Is there a public interest in its dissemination? Was it previously unpublished?)
- The effect of the dealing on the original work (Does the use compete with the market of the original work?)

It is not necessary that your use satisfy every one of these factors in order to be fair, and no one factor is determinative by itself. In assessing whether your use is fair, a court would look at the factors as a whole to determine if, on balance, your use is fair.

If, having taken into account these considerations, the use can be characterized as 'fair' and it was for the purpose of research, private study, education, satire, parody, criticism, review or news reporting, then it will fall within the fair dealing exception and will not require permission from the copyright owner. In addition, if your purpose is criticism, review or news reporting you must also mention the source and author of the work for it to be fair dealing." (source: <https://www.lib.sfu.ca/help/academic-integrity/copyright/fair-dealing>)

Please watch the following video to review the concepts of fair dealing:
<https://www.youtube.com/watch?v=2aJXdIXcB8c>

Given this, consider how fair dealing may work to your advantage. What could fair dealing allow you to do on your social media accounts? How can you use copyrighted material in your creative and professional endeavors?

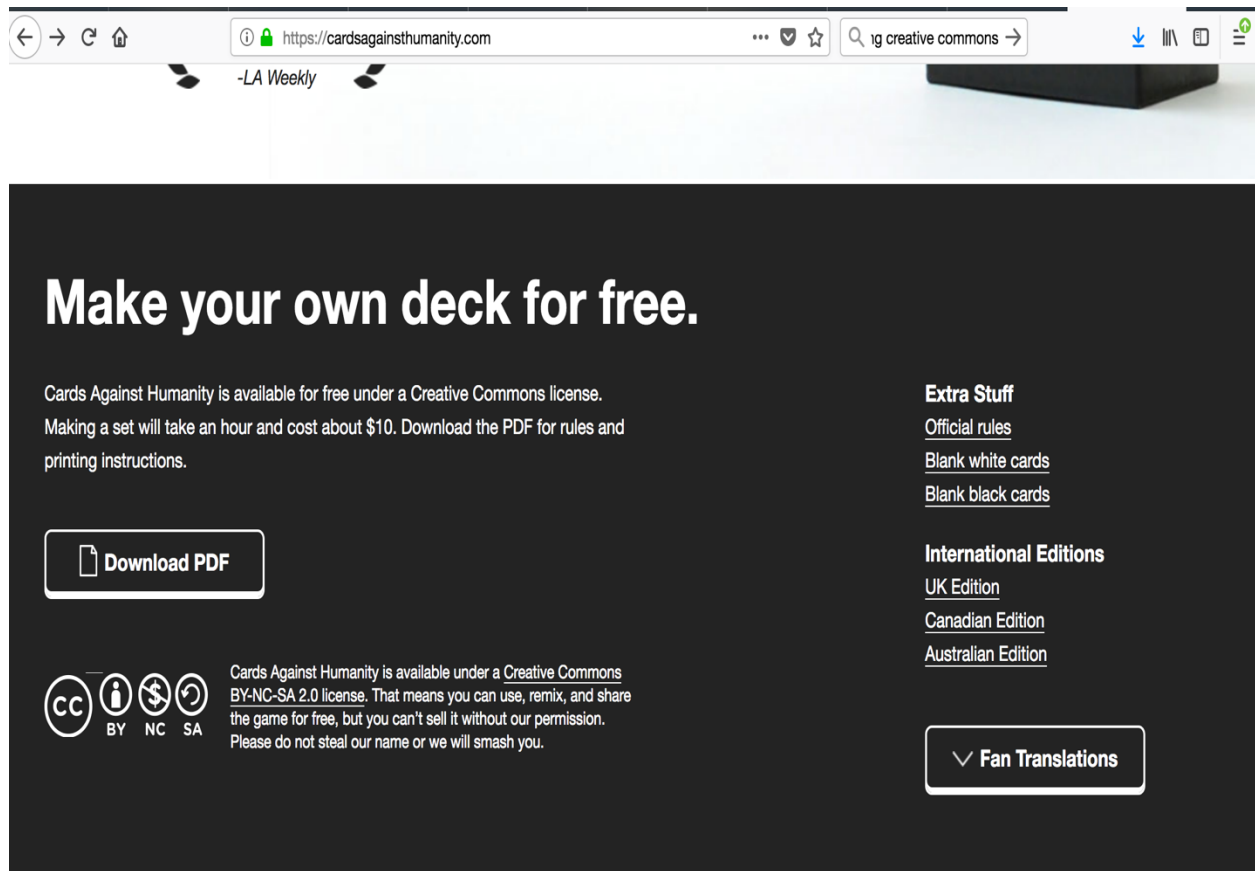
Note: an issue that arises with fair dealing is if monetization of the content is involved; in other words, fair dealing is permissible so long as you are not intending to profit off that work.

Copyright and the Incentive to Create, The Law/Norm Gap, and Remix Culture

Let's pause for a moment and reflect upon the effectiveness of copyright. It is imperative to consider the argument that copyright exists to give the incentive to create (read: <https://www.forbes.com/sites/timworstall/2016/01/07/copyright-is-about-incentives-to-innovation-not-justice-what-incentive-does-naruto-need/#3ebb3f7927c3>). When a creator knows their work is protected by law and that they can ensure they profit of their creation, it is thought that this will inspire that creator, and others, to continue to create. That said, while these laws are in place, there is a law/norm gap; read John Tehranian's article "Infringement Nation: Copyright Reform and the Law/Norm Gap" to learn more about how laws are not able to keep up to people's actual use of copyrighted materials (see Blackboard for reading). Reflect for a minute: using Tehranian's example of "John" logging one day's worth of illegal activities, think for a moment on how many copyright violations you may have conducted on the day you are reading this. What were they? Why do you do this? Did you illegally download or stream audio or visual? Did you share a photograph without permission?

There is a line of thinking that suggests that the enforcement of strict copyright regimes stifle rather than promote innovation. The argument can be made that remixing has long been part of our cultural history, and that embracing it ensures the fostering of creativity (watch Kirby Ferguson's discussion on the subject: <https://www.youtube.com/watch?v=zd-dqUuvLk4>). It has been proposed that a culture that fully embraced derivative works would encourage more individuals to improve upon the works of others. Read the following Wikipedia article about Remix Culture carefully to learn about an approach to copyright that fosters creativity: https://en.wikipedia.org/wiki/Remix_culture . Do you agree with Lawrence Lessig's approach to copyright?

As stated in the Wikipedia article, Lessig founded Creative Commons in 2001, which involved the release of a set of licenses meant to encourage remix culture. View the following video to learn more about what these licenses are, and how they can be used to encourage derivative works: <https://www.youtube.com/watch?v=4ZvJGV6YF6Y> . View the following link to learn just how many mainstream works utilize Creative Commons licenses: https://en.wikipedia.org/wiki/List_of_major_Creative_Commons_licensed_works . Take a look at the game Cards Against Humanity, which features a CC license:



As stated in the license, players can “use, remix, and share the game for free, but you can’t sell it without our permission...”

To learn more about selecting CC licenses, visit: <https://creativecommons.org/licenses/>

Consider using works with CC licenses in your social media use or any other creation. To find resources (i.e. audio, visuals) that have CC licenses, visit: <https://search.creativecommons.org/>

Copyright Infringement vs. Inspiration

At what point do we draw the line between copyright infringement and inspiration? Is it okay to borrow concepts from copyrighted works and monetize that? Read and watch the following links below that prompt us to reflect on this question. Where do you stand on this issue?

<https://www.business.com/articles/the-copyright-question-the-difference-between-inspiration-and-infringement/>

https://www.youtube.com/watch?v=Qvp9K2B_D4g

Copyright Policies and Social Networking Sites

It is imperative that we examine the copyright policies of popular social networking sites in order to determine to what degree they protect creators' rights. These sites allow for the posting of material that may be copyrighted. As you will see, the sites state that they do not own any materials posted to their site, and that copyright is still retained by the owner. However, you will notice that, by agreeing to post material on the site, you are agreeing to give the site a license to use the work; the user does not receive any monetary gain from this license.

Review the Terms of Services for the following social networking sites. For each site, note to what degree copyright is retained by the user, and if there are any 'catches' to uploading materials. Read as well the site's advice for dealing with copyright. Note: these terms may make reference to US laws and regulations, given that they are American sites, and users would abide by these terms.

 **Twitter Terms of Service**

Download: [Twitter User Agreement](#)

1. Who May Use the Services

2. Privacy

3. Content on the Services

4. Using the Services

5. Disclaimers and Limitations of Liability

6. General

Your Rights and Grant of Rights in the Content

You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours — you own your Content (and your incorporated audio, photos and videos are considered part of the Content).

By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed). This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals for the syndication, broadcast, distribution, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. Such additional uses by Twitter, or other companies, organizations or individuals, may be made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services.

Twitter: <https://twitter.com/en/tos>

Twitter's copyright advice: <https://help.twitter.com/en/rules-and-policies/copyright-policy>

3. The permissions you give us

We need certain permissions from you to provide our services:

1. **Permission to use content you create and share:** You own the content you create and share on Facebook and the other Facebook Products you use, and nothing in these Terms takes away the rights you have to your own content. You are free to share your content with anyone else, wherever you want. To provide our services, though, we need you to give us some legal permissions to use that content.

Specifically, when you share, post, or upload content that is covered by intellectual property rights (like photos or videos) on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy, and share it with others (again, consistent with your settings) such as service providers that support our service or other Facebook Products you use.

You can end this license any time by deleting your content or

Facebook: <https://www.facebook.com/terms>

Facebook's copyright advice: <https://www.facebook.com/help/1020633957973118>

Rights

1. Instagram does not claim ownership of any Content that you post on or through the Service. Instead, you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service, subject to the Service's Privacy Policy, available here <http://instagram.com/legal/privacy/>, including but not limited to sections 3 ("Sharing of Your Information"), 4 ("How We Store Your Information"), and 5 ("Your Choices About Your Information"). You can choose who can view your Content and activities, including your photos, as described in the Privacy Policy.

Instagram: <https://help.instagram.com/478745558852511>

Instagram's copyright advice: <https://help.instagram.com/126382350847838>

Having explored the terms of service and copyright advice of some major social media networking sites, reflect for a moment on the following: What measures do these sites put in place to protect copyrighted material? Are they enough? Are the terms for using these services fair, in your opinion?

Looking Forward

As you continue to actively participate in the online world, both for personal and professional purposes, consider how you interact with the materials made available to you by others. Be mindful of the legalities in place to ensure copyright is protected, and be ensure you engage

with other's works ethically. It is possible to have a fulfilling and creative experience online and on social networking sites, as there are several ways to acquire and use others' materials fairly: by asking permission and crediting, through fair dealing, and using material with CC licenses. On that note, if you have not already, be sure to look on Blackboard under Assignments → Assignment Resources to find information about how to properly cite resources you find in your papers for this and other courses.

This module also touched on what rights you possess in the content you post to social networking sites, what these platforms can do with your work, and how they will help to defend your copyright. Given this information, consider how this might impact what you will post online in the future, and whether the possible benefits of social media are worth the terms of service.

Summary

In this lesson, we have:

- 1) Defined the role of copyright in protecting creator's rights and for copyright exemptions to give users' certain permissions to use copyrighted material
- 2) Explored the potential for remix culture to encourage the creation of innovative works.
- 3) Examined how the terms of service on social networking sites define copyright and what can be done with whatever you upload to your account.