

Ethical Use of Images

I **MAGES CARRY CORE** cultural and personal expressions and information, packaged in an engaging format that is easy to use and share. This ease can raise challenging ethical issues in academic, personal, and—for librarians—professional realms. You've likely faced questions or dilemmas about using images ethically. Maybe you weren't sure what to say when you noticed a student assuming that every image online can be reused in a multimedia project. Or maybe a faculty member asked you to teach students to use images ethically, but you didn't have an activity you felt confident leading. Perhaps you've encountered an ethical conundrum of your own. Solutions aren't always simple or immediate, and the process of exploring ethical issues can be daunting. Complex concepts and new terminology can be barriers to making ethical choices about image use, while a focus on technical and legal issues can cause one to lose a broad ethical view.

A working knowledge of copyright and fair use is essential to an overall understanding of ethical image use. Copyright may be familiar territory, as you've worked with students to quote and paraphrase text, access electronic reserves and course materials, or contribute electronic theses or dissertations to an institutional repository. Images present questions about copyright that you may be less confident addressing and may have less practice dealing with. The lack of comfort with image-related copyright can inhibit scholars' effectiveness in a world where multimodal scholarship has become the norm. You can be a resource for students and faculty grappling with copyright and new media, and



ACTIVITIES IN THIS CHAPTER

- 4.1: Understanding Image Copyright
- 4.2: Fair Use Debate
- 4.3: Interpreting Terms of Use
- 4.4: The Ethics of Image Sharing

facilitate an understanding of copyright and fair use that advances scholarship. You and your students will also want to know about new licensing models, such as Creative Commons, and the options available to you with open image content.

In this chapter we share basic information, tools, and resources for using images ethically and applying copyright effectively. For many of the topics covered here, there is not a clear right or wrong answer: the use of images involves judgment calls. As with other ethical issues in the scholarly communication process, choices about image use are best addressed with students through examples, discussion, and analytical exercises.

Foundational Questions

What Do I Need to Think about before I Use and Share Images?

Take a moment to consider copyright and ethics. Are you using an image someone else created? Will your image use impact other people? Think these questions through as you work with images in your academic projects and personal life.

What Copyright Specifics Apply to Images?

Update your knowledge of best practices around image copyright and licensing. What is a Creative Commons license? Is it okay to adapt an old painting in your new art project? Familiarize yourself with copyright basics and know what to look for in licenses and terms of use, and you'll be able to use images confidently in a variety of circumstances.

How Are Ethical Issues Relevant to My Image Use?

Ethical questions about image use crop up every day. You just posted a selfie, but a friend lets you know that she's unhappy that her face is visible in the background. Maybe you're working on a group project, and a collaborator wants to use an image that makes you feel uncomfortable. How do you figure out what to do? Understanding best practices will guide you toward an ethical course of action.

Are There Broader Societal Issues to Keep in Mind?

Creating, using, and sharing images can raise many societal issues in addition to personal questions of privacy and safety. What about image censorship? How does a society decide who is able to see what images, and when? Repre-

sentations can reinforce stereotypes and biases. How do we incorporate diversity into our image choices? Images can be powerful, and social issues often include visual components worth critical thought.

Images and Copyright

With the steady stream of images flowing across our desktops and devices, it can be all too easy to forget that images can be intellectual property, like text, video, and music. Before sharing or reusing images, pause for a moment and figure out how image copyright applies to your situation. The goal of copyright law is to further scientific discovery, culture, and new scholarship. Copyright law affords rights to both creators and users in support of this goal. Keep this framework in mind as you delve into copyright questions, and the details and best practices will make more sense. Images, like text, video, music, and other formats, are covered by copyright. Image creators and users have the same rights as creators and users of other types of cultural and scientific production.

In this section, we take a close look at the key concepts related to image copyright, including fair use, public domain, licenses, and open content. Our **Copyright Basics** chart highlights additional need-to-know information related to image copyright and ethical use; **Activity 4.1: Understanding Image Copyright** presents the basics in a quiz format.

FAIR USE

Fair use provides rights to the public to use copyrighted works in some circumstances while protecting the rights of image creators. Fair use safeguards free expression and prevents owners' monopoly over transformative uses of their work. Examples of activities that rely on fair use include news reporting, criticism, parodies such as *Saturday Night Live*, teaching, and research. Copyright law outlines the four factors that determine whether a use is fair:

Factor 1: The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes

Factor 2: The nature of the copyrighted work

Factor 3: The amount and substantiality of the portion used in relation to the copyrighted work as a whole

Factor 4: The effect of the use upon the potential market for, or value of, the copyrighted work

The four factors are used as a whole to determine fair use, and the relative importance of each factor varies according to the circumstances. Recently, courts have focused on two key questions that synthesize the four factors in deciding fair use. These questions focus on the idea of transformative use and on the amount of the original work used to achieve the transformative purpose:

- Did the use “transform” the material taken from the copyrighted work by using it for a broadly beneficial purpose different from that of the original, or did it just repeat the work for the same intent and value as the original?
- Was the material taken appropriate in kind and amount, considering the nature of the copyrighted work and of the use?

The four factors and key questions are a good place to start when analyzing whether your image use falls within fair use. But even with careful analysis, the best course of action is not always apparent. This lack of clarity often leads image users to unnecessarily err on the side of caution. Fortunately, communities across fields such as education, media, science, and the arts have developed codes of best practices to navigate and assess fair use as it applies to their common activities. Fair use best practices provide background, perspective, and vocabulary to illustrate the nuances of copyright and fair use through various professional and disciplinary lenses. As members of these communities embrace these codes, they clarify what fair use means in their work; over time, this activity reduces some of the ambiguities of fair use. Discover the fair use codes of best practices most relevant to image users listed in our **More to Explore: Fair Use Best Practices** feature. Use **Activity 4.2: Fair Use Debate** to help students think through fair use scenarios.

PUBLIC DOMAIN

Images in the public domain are free for all to use for any purpose. Some works originate in the public domain, such as most works created by the U.S. government and most works published in the United States prior to 1923. Copyright law sets a time limit on copyright, and works enter the public domain when their copyright expires. Creators can also release their work into the public domain. Try the tools and resources in **More to Explore: Copyright Tools** to determine whether a work may be in the public domain.



MORE TO EXPLORE: FAIR USE BEST PRACTICES

Code of Best Practices in Fair Use for Academic and Research Libraries (2012)

Who: Association of Research Libraries (ARL); Center for Social Media, School of Communication, American University; Program on Information Justice and Intellectual Property, Washington College of Law, American University

Focus: Accessing, storing, exhibiting, and providing access to copyrighted material

Code of Best Practices in Fair Use for the Visual Arts (2015)

Who: College Art Association (CAA), Patricia Aufderheide, Peter Jaszi

Focus: Using copyrighted materials for analytic writing about art, teaching about art, making art; providing online access to collections in memory institutions

Set of Principles in Fair Use for Journalism (2013)

Who: Society for Professional Journalists, Patricia Aufderheide, Peter Jaszi

Focus: Using copyrighted material as factual proof, for cultural criticism, to illustrate a news event, for historical reference, for generating public discussion of news, or to add value to evolving news

Statement on the Fair Use of Images for Teaching, Research, and Study (2011)

Who: Visual Resources Association (VRA), Gretchen Wagner, Allan T. Kohl

Focus: Preservation, using images for teaching purposes, using images for online study materials, creating adaptations of images for academic purposes, sharing images among educational and cultural institutions, and reproducing images in theses and dissertations

Documentary Filmmakers' Statement of Best Practices in Fair Use (2005)

Who: Association of Independent Video and Filmmakers; Independent Feature Project; International Documentary Association; National Alliance for Media Arts and Culture; Women in Film and Video, Washington, D.C., Chapter

Focus: Employing copyrighted materials for social or political critique, making an argument, or illustrating a historical sequence



MORE TO EXPLORE: COPYRIGHT TOOLS

Copyright Advisory Network: Resources

<http://librarycopyright.net/resources>

These tools from ALA's Office of Information Technology Policy include the Copyright Genie, the Fair Use Evaluator, the Public Domain Slider, and more. Access these tools directly or use the embed code to place them in a web page or research guide.

Copyright Services: Thinking Through Fair Use

www.lib.umn.edu/copyright/fairthoughts

This tool, developed by the University of Minnesota Libraries, uses a dynamic checklist to walk you through a fair use analysis.

Copyright Term and the Public Domain in the United States

<https://copyright.cornell.edu/resources/publicdomain.cfm>

This handy chart from Cornell University helps you determine the copyright terms for a work and determine whether a work is in the public domain.

TERMS OF USE AND LICENSE AGREEMENTS

Terms of use and license agreements are developed by image providers to define how the images they make available can be used. These terms and agreements supersede fair use and other copyright provisions. Using content provided under a license or terms of use typically implies your agreement to abide by that license or terms. Keep in mind that terms of use and license agreements may be more restrictive than fair use, so it is important to read and understand this information.

In online spaces, the terms of use may be located under an image or off to the side. You may have to click on a link that takes you to a page with this information. Terms of use may appear alongside Creative Commons language, a copyright symbol, or other indicators, depending on the rights status of the image. **Activity 4.3: Interpreting Terms of Use** provides an opportunity to practice looking at and interpreting terms of use statements for images. Of course, not all images are accompanied by terms of use or license agreements; use other strategies, such as a fair use analysis, to assess image availability in the absence of terms of use or a license.





Creative Commons

The nonprofit organization Creative Commons has developed a set of standard licenses that can be used with any work, including images. Creative Commons

licenses simplify and streamline the process of sharing and using images and other content. Licenses are assigned by image creators themselves.

Creative Commons licenses are based on four basic elements that clearly indicate how works can be used, shared, and adapted. These elements are described in the **Creative Commons License Elements** chart. These elements can be used alone or combined to create different licenses for image creators to assign to their works. The licenses are indicated by a combination of their symbols and abbreviations. Because these licenses are written in simple language, reading them is a great way to understand the issues surrounding image copyright and sharing.

Creative Commons License Elements

SYMBOL	ABBREVIATION	TYPE	WHAT IT MEANS
	BY	Attribution	You must give credit to the creator.
	NC	NonCommercial	You cannot use the work to make money.
	ND	No derivatives	You must use the work without altering it in any way.
	SA	Share alike	You can alter the original work, as long as you share it under the same kind of license.



COFFEE BREAK!

Choose a Creative Commons License

Identify an image that you created, or would like to create, and that you might consider using a Creative Commons license for. Briefly describe the image:

Now use the Creative Commons License Chooser (<http://creativecommons.org/choose>).

Is the license that the Chooser suggested the same one that you would choose? Read "About the Licenses" (<https://creativecommons.org/licenses>) to compare results.

How might you use this information in your work?

OPEN IMAGES

Open images are freely available online without restrictions on their use. Open media is an important component of open access in our contemporary academic environment of multimodal scholarship, teaching, and learning. Scholars increasingly need access to image content that they can reuse, reconfigure, and republish in open environments. Many cultural heritage institutions are embracing the values of open access and are providing unrestricted access to public domain works in their collections. Individuals are also assigning their work to the public domain by using tools such as the Creative Commons public domain mark or by contributing their work in spaces such as Wikimedia. We all now have many more options for accessing and using open image content than ever before.

Copyright Basics

Codes of best practices	Documents created by communities of practice to develop and recommend common practices and to help community members make informed decisions about copyright and fair use.
Copyright	Legal right of creators to control how their works are used by others. Images may be subject to multiple copyright claims, including claims by artists, photographers, designers, institutions, corporations, or others.
Copyright term	The period of time a work is covered by copyright. The copyright term is limited by copyright law.
Creative Commons	A nonprofit organization that offers a licensing system that provides a simplified way for people to share their work and identify how they permit others to build on and reuse it.
Educational use	Use in educational contexts or that directly relates to educational pursuits.
Fair use	A provision in copyright law that allows for the use of copyrighted works under some specific circumstances and for particular purposes such as criticism, comment, scholarship, or research.
Intellectual property	The products and results of creative or intellectual work, including designs, images, symbols, art, and architecture.
License agreement	An agreement between content providers or owners and users that determines how the content can be accessed and used. License agreements can be more restrictive than standard copyright provisions.
Open access (OA)	Content made freely available online without restrictions on access or use.

Open images	Images made available online without restrictions on distribution or reuse.
Public domain	Works not covered by copyright (because the copyright term has expired, the creator has released the work, or the work was never copyrighted) are in the public domain. The public then holds the rights to the work.
Restricted images	Images available only through payment or license systems, or images available only for specified restricted uses.
Terms of use	Descriptions of how particular databases, resources, or the images in them may be used.
Transformative use	A consideration used by the courts to evaluate fair use; refers to changes made to the original work, commentary, or value added.

Ethical Considerations of Image Use

You've likely heard news stories about lapses in judgment involving overzealous selfie snapping or unintended image sharing. Technology makes it possible for anyone to create and share images with relative ease and speed, which can contribute to sharing images without much prior thought about the potential impact. This section examines ethical considerations around image use, from recognizing the impact of altering images to balancing your rights with the rights of others when taking photos in the public sphere. An awareness of image censorship brings a broader perspective to these ethical issues, as does mindfulness of the relationship between our personal biases and how we see images.

IMAGE ALTERATION

Image editing technologies make it easy for students to alter and share images in new contexts. The alteration of existing images can lead to products of creative expression that represent new meanings and present new information. However, altering images can also drastically transform the meanings of images in ways that may be unintended. Presenting an image in a new context can also dramatically alter its meaning. For example, an image of a child smelling a flower in a field has one meaning if used in an ad for a summer educational program but another meaning if used in an ad by a nonprofit organization raising money for children who are victims of war. Students need to consider carefully how the meaning of an image can change when the image

or its context is altered. Chapter 1, “Interpret and Analyze Images,” delves into approaches for careful looking and informed image interpretation.

PRIVACY AND PHOTOGRAPHY

Public photography is woven into the fabric of our daily life experiences and informs our knowledge and conceptualization of history. From Henri Cartier-Bresson’s photos on the streets of Paris and Helen Levitt’s photos of children in New York City to contemporary street photographer Eric Kim’s work, photography provides a medium for vibrant artistic expression and crucial social documentation. Public photography has been a catalyst for social change, from photojournalist James “Spider” Martin’s photos of the civil rights movement in the 1960s to present-day social strife, abuses of power, and civil rights violations, often captured by ordinary citizens.

In the United States, it is a constitutional right to take photos of anything in plain sight in public places. The American Civil Liberties Union’s “Know Your Rights: Photographers” guides citizens through this right. Students will find this information helpful if they have an interest in street photography, social justice, or just taking photos on their phones when out and about. The National Press Photographers Association (NPPA) Code of Ethics guides visual journalists through the ethical considerations of taking public photographs, but private citizens will find these recommendations useful too. Guidelines include acting with consideration and compassion toward others, representing subjects honestly and without manipulation, and avoiding private moments of grief. The NPPA Code of Ethics is a useful conversation starter for the ethics and value of public photography.

Private photography is a different circumstance and can present challenges for students as they move between public and private environments. Private photography involves additional responsibility to the people in the photo, and it is important to consider their privacy preferences. A photo may start out as private, but once it is shared online it can be distributed and used in unanticipated ways. Because photos can contain a great deal of identifying information, they have the potential to compromise people’s safety and well-being when made public. Comments made about images online can be problematic, harming reputations or injuring a person’s dignity. Encouraging students to have conversations with each other about online image sharing can help raise awareness of potential pitfalls. **Activity 4.4: The Ethics of Image Sharing** provides an opportunity to develop sensitivity to privacy concerns and the implications of image sharing by working through case studies.



MORE TO EXPLORE: IMAGE ETHICS

Index on Censorship

www.indexoncensorship.org

An international organization that works to expose and raise awareness of attacks on free speech and artistic expression.

Know Your Rights: Photographers

www.aclu.org/know-your-rights/photographers

The American Civil Liberties Union's guide to taking photos in public places.

NPAA Code of Ethics

https://nppa.org/code_of_ethics

A code for visual journalists that serves as “an educational tool both for those who practice and for those who appreciate photojournalism.”

Photographers Without Borders

www.photographerswithoutborders.org/ethical-photography

Guidelines intended to preserve the rights and dignity of the people whose images are captured.

CENSORSHIP

Librarians are accustomed to thinking about censorship in the context of banned books and free speech. The American Library Association is a strong proponent of the First Amendment and supports initiatives related to the freedom of the press and the freedom to read, including Banned Books Week and Choose Privacy Week. Image censorship involves a similar set of concerns, although images and image censorship can take on additional immediacy and intensity in public life. Like the censorship of written materials, image censorship can have profound implications for individual expression, equality, access to information, and social justice.

Events reported in the news highlight issues involving image censorship. For example, image censorship in social media can expose gender bias. As Jenna Wortham described in the *New York Times* in 2015, artist Rupri Kaur posted on Instagram fully clothed images of herself with menstrual stains on her clothing. Kaur's photos were immediately taken down after a complaint, while sexually charged images of bikini-clad women on spring break remained

ubiquitous. A similar incident involved Facebook and images of women breast-feeding, as reported in a 2014 BBC piece titled “Mother Labelled ‘Tramp’ for Breastfeeding in Public.” Art and religion are other targets for image censorship. In 2015, Slate.com reported that after the attacks on Charlie Hebdo in Paris, the Associated Press took down from its website images of “Piss Christ” by Andres Serrano, a work of art with a long history of controversy and censorship. Media reports about acts of war have also involved image censorship. In 2014, the *New York Post* published a front-page image of journalist James Foley, moments before he was beheaded by ISIS. Other media outlets called this “appalling” and condemned the *New York Post* for this “outrageous” image. The Twitter CEO warned Twitter users that their accounts would be suspended if they reposted this “graphic imagery.”

Librarians need to be prepared to encourage student discourse on image censorship and be able to provide resources, information, and critical approaches to thinking about this issue. Any of the preceding cases provide a springboard for discussing image censorship with students. The nonprofit Index on Censorship is also a useful resource. An effective approach can be to present a case and a news article about it, ask students to discuss, then play a video or commentary that offers broader perspectives and additional discussion questions, such as David Greene’s August 2014 NPR interview with David Hernandez, assistant professor at USC Annenberg, about censorship, images, and technology. Students can then resume their discussion, noting any aspects they hadn’t considered previously.

REPRESENTATION AND DIVERSITY

How are people of different backgrounds, cultures, and identities represented in contemporary culture? How do we perceive those who are different from ourselves, based on the typical images we see of CEOs, firefighters, homeless people, doctors, or single mothers? A recent study of search results retrieved by Google Images suggests that stereotypical representations of occupations, for instance, are reinforced and exacerbated by the images we see in search results (Kay, Matuszek, and Munson 2015).

What can we do to counteract these stereotypes and broaden our picture of others? How can our personal image and viewing choices work toward social change, inclusion, and diversity? Research suggests that we can take action in our everyday lives to neutralize visual stereotypes and expand our ideas about what other people look like (Banaji and Greenwald 2013). It turns out that surrounding ourselves with images that are inconsistent with images we might typically see can diversify our conceptions of other people, act against our biases, and expand our understanding of other people and diversity.



COFFEE BREAK!

Change Your Screensaver

In *Blindspot: Hidden Biases of Good People*, Mahzarin Banaji and Anthony Greenwald (2013) suggest that the simple act of changing your screensaver to an image that works against stereotypes can help reset your biases. Banaji and Greenwald give the example of an image of a construction worker breast-feeding a baby.

Consider a personal bias about other people you may want to revise.

Find an image that counteracts this bias, and set it as your screensaver.

Next week, reflect on this image and its effect on your perceptions of others.

Next Steps

Ethical image use requires a broad understanding of the intellectual property landscape. To develop your skills in this area, try the following:

- Familiarize yourself with the resources highlighted in this chapter.
- Read various terms of use and license agreements to become familiar with how usage restrictions are commonly presented.
- Consider sharing your own images or assigning a Creative Commons license.

REFERENCES

- Banaji, Mahzarin R., and Anthony G. Greenwald. 2013. *Blindspot: Hidden Biases of Good People*. New York: Delacorte.
- Kay, Matthew, Cynthia Matuszek, and Sean A. Munson. 2015. "Unequal Representation and Gender Stereotypes in Image Search Results for Occupations." In *Proceedings of the 33rd Annual ACM Conference on Human Factors in Computing Systems*, 3819–28. New York: ACM.

Ethical Image Use Checklists

Work through these checklists to address the ethical concerns associated with reusing images or producing and sharing your own.

FOR AN IMAGE CREATED BY SOMEONE ELSE

Explore context.

- Identify the image source. Who is giving you access to this image and why?
- Identify who produced the image. What else do you know about this creator?
- Consider how the meaning of the image is affected by the context in which it appears. Does it appear elsewhere, and what does it mean there?

Notice and record details.

- Read terms of use, license agreements, and other use guidelines.
- Record the image title or caption, creator, date, source, and URL.
- Generate a citation or credit line.

Evaluate and make decisions.

- Determine if your intended use is permitted by the license or covered under fair use.
- Consider issues of privacy, safety, and the rights of others.
- Identify image manipulations you need to disclose to your audience, if relevant. Determine the best way to make this disclosure.

FOR AN IMAGE THAT YOU CREATE

Clarify your rights.

- Decide if and where you want to share your image.
- Determine how you want others to be able to use your work.
- If sharing, assign a Creative Commons license or create your own rights statement so others know whether and how they can use your work.

Address the rights of others.

- If required, seek consent of people in your images. Use a release form if appropriate.
- If required, cite or credit the work of others that you have built on.

Consider broader ethical issues.

- Double-check your use of others' work. Reread the rights statement or review your fair use analysis.
- If required, disclose your image alterations or manipulations.
- Respect the privacy and dignity rights of others when distributing or sharing images.



ACTIVITY 4.1

Understanding Image Copyright

LEARNING OUTCOMES

- Navigate intellectual property and copyright issues related to image use.
- Reflect on personal experience with intellectual property issues.

DESCRIPTION

Prior to conducting this activity, provide students with information about image copyright, fair use, Creative Commons, and privacy. Students complete the **Image Copyright Knowledge Check Worksheet** individually or with a partner, or you can incorporate the questions into a class presentation and ask students to volunteer the answers. See the **Answer Key** for the answers.

TIPS FOR SUCCESS

- Consider asking students to share personal experiences that the questions bring to mind.
- Share your own experiences—do any of the questions resonate with you?
- Deliver the questions with an anonymous poll or survey, then discuss the answers.

OPTIONAL EXTENSION

- Create bingo cards using the image copyright–related vocabulary from this chapter. To play the game, students check vocabulary mentioned during discussion.

VISUAL LITERACY STANDARDS CONNECTION

- ACRL Visual Literacy Standard 7, Performance Indicator 1

Image Copyright Knowledge Check

1. Images that are available online can be reused for any purpose.
A. True B. False
2. If an image is in the public domain, you can use it in a paper or project without citing it.
A. True B. False
3. To obtain copyright for a photo you took, you need to file paperwork with the U.S. Copyright Office.
A. True B. False
4. You are creating a web page and want to include a photograph that you took at a party. The photo contains close-ups of other people. Is it ethical to use this photograph?
A. Yes, I took it, so it is my photograph to do with as I wish.
B. Yes, if the people in the photograph explicitly say it is okay.
C. No, I can only post photos of myself, my family, and inanimate objects.
5. You are creating a video and want to incorporate a Creative Commons photo with an Attribution-NonCommercial 4.0 license. Under what conditions can you use the photo and distribute your video?
A. You can use the photo as long as you cite or credit it.
B. You can use the photo as long as you cite or credit it and do not use it in a commercial enterprise.
C. You can use the photo as long as you share your video under a Creative Commons license.
6. To use a Creative Commons photo, you need to read and follow the license, but nothing else.
A. True B. False
7. All of the following are elements seen in Creative Commons licenses except:
A. No Derivatives C. No Sharing
B. Attribution D. NonCommercial
8. Which of the following is not one of the four factors of fair use?
A. Effect on the potential market C. Purpose and character of use
B. Nature of the work D. Creator of the work
9. Which of the following best represents a transformative use?
A. Reposting on your website a cute photo of a puppy you found on the Internet
B. In an academic research paper, analyzing (and reproducing) images from the media used to raise awareness of human trafficking
C. Changing the colors on a data graph you found in a research article
D. Changing a word in a meme you found on BuzzFeed and reposting it

Answer Key: Image Copyright Knowledge Check

- 1. False.** Availability on the Web does not necessarily mean availability for reuse. Check the terms of use, Creative Commons license, or other rights statements before you reuse an image you find on the Web. The image is there for you to view in context but not necessarily for you to reuse.
- 2. False.** Public domain images are available for any use by anyone, but you still need to cite images you use that are not your own work.
- 3. False.** Copyright is yours when you create something new; no need to file paperwork. Now what will you do with that? Consider whether you want to share your image and what you want others to be able to do with it.
- 4. B.** Yes, if the people in the photograph explicitly say it is fine with them. Some people may object to having their image posted in online spaces, so be sure to check. Most professional organizations have people sign a release form to give permission.
- 5. B.** You can use and distribute the photo as long as you cite or credit it and do not make money from your video or use it in a commercial enterprise. There are different types of Creative Commons licenses, so read the license to determine how you can use the image.
- 6. True.** Creative Commons licenses tell you everything you need to know about whether and how you can use the image. Read the license carefully, follow all provisions, and you're set! The goal of Creative Commons is to make reuse simple.
- 7. C.** "No Sharing" never appears in Creative Commons licenses. Rather, "Share Alike" is an element of many.
- 8. D.** "Creator of the work" is not one of the four factors. The fourth factor is the amount and substantiality of the portion used.
- 9. B.** In an academic research paper, including and analyzing images in the media raising awareness of human trafficking. Commentary is usually considered to be a transformative use. Be sure to cite the original images to give credit and so others can investigate these sources themselves. Choice D might also be transformative, depending on the word you change. Investigate the meme, where it came from, and how it was created. Did your single word change create an entirely new meaning? If so, you might be within fair use guidelines.

ACTIVITY 4.2

Fair Use Debate

LEARNING OUTCOMES

- Analyze the four factors of fair use with real-world cases.
- Discuss and apply the two transformative use questions.

DESCRIPTION

Introduce the concept of fair use and present the two transformative use questions. Give students a worksheet describing one or two selected cases that concern fair use, such as *Cariou v. Prince* (Case Study 1) and Shepard Fairey’s Obama “Hope” poster (Case Study 2) in the **Fair Use Debate Worksheet**. Have students review selected cases in consideration of the four factors and transformative use as a whole. Show students the images in question. Then ask students, “Do you think the artist who used the image can claim fair use?” Consider using the Fair Use Evaluator (<http://librarycopyright.net/resources/fairuse>) or the Thinking Through Fair Use (<https://www.lib.umn.edu/copyright/fairthoughts>) tool to walk through the analysis. During discussion, ask students to share their reasoning. Then present the outcomes of the cases. Were there differences of opinion? Why?

TIP FOR SUCCESS

- Keep in mind that the four-factor test is applied case-by-case by federal judges, so there are no definitive answers outside the courts. Copyright infringement cases are often settled between the parties, leaving the fair use issue unresolved. Because it is open-ended, the fair use doctrine presents challenges to teachers, students, content creators, and even the judges who apply it. Nevertheless, teaching our students to grapple with the flexible nature of fair use encourages them to see themselves as citizens in a shared, participatory culture with the responsibility to make well-informed decisions regarding the use of others’ intellectual property and their own.

OPTIONAL EXTENSION

- Ask students to reflect upon and share their own stories and experiences related to fair use.

VISUAL LITERACY STANDARDS CONNECTION

- ACRL Visual Literacy Standard 7, Performance Indicator 1

The Fair Use Debate

CASE STUDY 1: CARIOU V. PRINCE

Richard Prince’s series of paintings “Canal Zone” (2008) used thirty-five images from French photographer Patrick Cariou’s book *Yes, Rasta* (2000). In 2009 Cariou sued Prince, New York’s Gagosian Gallery and its owner, and the catalog publisher for copyright infringement. In March 2011, U.S. District Judge Deborah Batts ruled against Prince on the basis that his paintings did not transform the photographs in a way that commented on the originals. That decision was largely overturned by the Second Circuit Court of Appeals in April 2013, with the exception of five paintings that were to be reevaluated for claims of fair use. However, both parties settled the suit and voluntarily dismissed the action.

Do you think that Prince can claim fair use? Why or why not? _____

Do you think Prince’s use of Cariou’s photographs was transformative? Why or why not? _____

What other information would help you decide? _____

CASE STUDY 2: SHEPARD FAIREY’S OBAMA “HOPE” POSTER

Street artist Shepard Fairey created the Obama “Hope” campaign poster in 2008, first claiming that he based it on a cropped photograph of Obama with actor George Clooney. Fairey later revealed that he had used a photograph taken by Associated Press photographer Mannie Garcia. The civil lawsuit *Fairey v. The Associated Press* was settled by the two parties and therefore never judged by a court on the terms of fair use.

Do you think that Fairey can claim fair use? Why or why not? _____

Do you think Fairey’s use of the AP photograph was transformative? Why or why not? _____

What other information would help you decide? _____

ACTIVITY 4.3

Interpreting Terms of Use

LEARNING OUTCOMES

- Develop familiarity with how terms of use statements are presented.
- Practice interpreting terms of use in different contexts.

DESCRIPTION

Show students several examples of images in different websites or image databases and show them how to navigate to the terms of use and copyright information. Look closely at the terms of use from Creative Commons, NASA, and the Library of Congress, and work as a class to interpret what they mean. If it would be helpful for your students, print out copies of the terms of use texts.

Students work in pairs or small groups to find two images on their own and locate the terms of use associated with those images. Students then complete the **Interpreting Terms of Use Worksheet** to record what they are permitted to do with the images that they find, according to the associated terms of use.

TIPS FOR SUCCESS

- Prior to conducting this activity, provide students with basic information about copyright, terms of use, and Creative Commons licenses.
- This activity is best done in pairs or small groups so that students can help each other interpret the terms of use for different images.

VISUAL LITERACY STANDARDS CONNECTION

- ACRL Visual Literacy Standard 7, Performance Indicators 1 and 2

WORKSHEET

Interpreting Terms of Use

Find two images using different image sources—Flickr, NASA, or Library of Congress American Memory. Locate the terms of use and answer the following questions.

Image 1

Source used: _____

Image title: _____

License restrictions: _____

- If Creative Commons, which license type? _____
- If in the public domain, how do you know? _____
- If "All Rights Reserved," how do you know? _____

Explore the license or terms of use and check each box that applies.

For this image, I am permitted to:

- Download it.
- Post it to a website.
- Use it for commercial purposes.
- Use it for a class presentation.
- Modify it.

If I use this image, I must:

- Provide attribution to the creator.
- Include a link to the license.
- Provide a credit line.

I still have questions about:

Interpreting Terms of Use

Find two images using different image sources—Flickr, NASA, or Library of Congress American Memory. Locate the terms of use and answer the following questions.

Image 2

Source used: _____

Image title: _____

License restrictions: _____

- If Creative Commons, which license type? _____
- If in the public domain, how do you know? _____
- If "All Rights Reserved," how do you know? _____

Explore the license or terms of use and check each box that applies.

For this image, I am permitted to:

- Download it.
- Post it to a website.
- Use it for commercial purposes.
- Use it for a class presentation.
- Modify it.

If I use this image, I must:

- Provide attribution to the creator.
- Include a link to the license.
- Provide a credit line.

I still have questions about:

ACTIVITY 4.4

The Ethics of Image Sharing

LEARNING OUTCOME

- Explore issues related to ethics, privacy, and etiquette with case studies about the online sharing of images.

DESCRIPTION

Small groups examine one of the scenarios listed in the **Ethics of Image Sharing Worksheet**. Students discuss the scenario with their group members and answer the related question(s). After groups discuss each scenario, review the scenarios as a class using the discussion prompts. Ask groups to explain their rationale.

All scenarios are inspired by incidents reported in the news and are constructed with fictitious names for ease of use in teaching and learning. The following are some of the topics that you may want to discuss with students regarding each scenario.

Scenario 1: Maria and Jada

This scenario is inspired by a question posted to Amy Dickinson's column in the *Tulsa World* on January 28, 2013, called "Is Posting Friend's Photo on Facebook a Double Standard?"

Who owns the photo—Maria or Jada? Should Maria have removed the photo? Should she repost it?

Maria may own the photo, but Jada has a right to ask that a picture of herself be removed from the Internet, and Maria should comply. Even if Jada has posted other pictures of herself, she has a right to object to a particular photo.

Scenario 2: Russell, Kim, and Miguel

This scenario is inspired by a legal case in Singapore involving blogger Wendy Cheng, also known as Xiaxue. The story was reported in the *Straits Times* (Singapore) on June 9, 2012.

Does Kim have a case? Should Russell have posted the photos of Kim and Miguel on his blog?

Russell does not own the rights to the photos or have permission to post the photos of his critics; therefore, Russell does not have the right to repost the photos on his blog.

Scenario 3: Althea and Jamal

This scenario is inspired by an article by Tatiana Boncompagni, a New York-based author and journalist. Her story, "Whose Picture Is It, Anyway?," appeared on the *New York Times* website on April 11, 2014, and in print on April 13, 2014.

Should Althea have posted the photos over her son's objections? Why or why not?

Althea can post the photos because she is Jamal's parent, but she should respect her son's wish (which is not unreasonable) and refrain from posting the photos.

Scenario 4: Ayesha and Miranda

This scenario is inspired by a piece featured on CBS Boston on November 20, 2012, called "Facebook Photo of Plymouth Woman at Tomb of the Unknowns Sparks Outrage."

Should Ayesha resign from her job? Why or why not?

What Ayesha did was disrespectful, and her actions had repercussions that she did not anticipate.

TIPS FOR SUCCESS

- Rather than reviewing the "rules" of online posting before discussing the scenarios, have students discuss the scenarios without prior instruction so that they can work through some of these issues on their own.
- As you discuss the scenarios, help students make a distinction between behavior that is technically legal and behavior that may not be ethical, courteous, or safe.
- Encourage students to make connections to their own experience. For example, most of these issues discuss images posted on Facebook, but to what other types of situations do they apply?

OPTIONAL EXTENSIONS

- Present students with other current news stories about issues related to image sharing and ask students to discuss their reactions.
- Instruct students to find a news story related to image sharing in online spaces. Ask students to summarize the story for the class and discuss the issues.

VISUAL LITERACY STANDARDS CONNECTION

- ACRL Visual Literacy Standard 7, Performance Indicator 1

The Ethics of Image Sharing

SCENARIO 1: MARIA AND JADA

After getting married, Maria posted her wedding photos on her Facebook page. The photos included different shots of the guests enjoying themselves at the reception. After seeing these pictures, Jada, one of the guests, contacted Maria and asked her to remove a photo that Jada was in, saying that she didn't like having her photo posted online. Maria complied with Jada's request and removed the photo. Later, Maria looked up Jada on Facebook and saw that Jada did indeed have a Facebook account of her own. Not only did Jada have an account, but she had posted lots of photos of herself and her family on her Facebook page! Maria felt irritated that Jada had asked her to remove a photo, when Jada clearly didn't object to having other photos of herself posted online.

Who owns the photo—Maria or Jada? Should Maria have removed the photo? Should she repost it?

SCENARIO 2: RUSSELL, KIM, AND MIGUEL

Russell is a college student who has a Facebook page and maintains a blog. Two other students, Kim and Miguel, made fun of Russell's blog on Facebook. To retaliate, Russell copied Kim's and Miguel's photos from their Facebook pages and posted them on his blog, with commentary about why Kim and Miguel were wrong. He also made fun of their appearances. When Kim saw the blog post with her picture, she demanded that Russell take down her photo, saying that he did not have a right to post her picture. Russell refused, saying that Kim had posted her photo on Facebook and that it was free to be reposted on other sites. Kim objected and threatened to sue the blog owner.

Does Kim have a case? Should Russell have posted the photos of Kim and Miguel on his blog?

SCENARIO 3: ALTHEA AND JAMAL

While on vacation with her family, Althea took some photos of her husband and two kids. Althea showed the pictures to her children and told them that she planned to post the pictures on her Facebook page. Her eight-year-old son, Jamal, objected, saying that he didn't want her to post his picture. When Althea asked him why, he said that too many people could see it and he found it embarrassing. Althea told her son that there was absolutely nothing embarrassing about the photos, but he was not convinced. Althea thought that her friends would enjoy seeing them, so she decided to post them anyway.

Should Althea have posted the photos over her son's objections? Why or why not?

SCENARIO 4: AYESHA AND MIRANDA

While on a business trip in Washington, D.C., Ayesha and her friend Miranda visited Arlington National Cemetery. The two saw a sign saying "Silence and Respect" that stood near the Tomb of the Unknowns. Because they were having fun, Miranda took a picture of Ayesha appearing to shout and raising her middle finger next to the sign. Ayesha thought it was funny and posted the photo on her Facebook page. News of the photo quickly spread, and many people were angered by her disrespect. One person even created a Facebook page demanding that Ayesha be fired from her job. The incident resulted in bad publicity for the company where Ayesha worked, and she was asked to resign. Ayesha said that she was just having fun and meant no disrespect.

Should Ayesha resign from her job? Why or why not?
