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Sight and Sound in the Legal Writing Classroom: Engaging Students Through Use of Contemporary Issues

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Good teaching requires connecting with students, and connecting with students requires not only developing a methodology that keeps students interested and engaged but also being aware of what students' interests are. It is probably no secret that students in law school today are part of a technologically oriented generation. They are a generation that has grown up with technology at their fingertips and requires constant mental stimulation to remain engaged—both visual stimulation and aural stimulation. Thus, any law professor hoping to connect with her students cannot anticipate maintaining their attention without integrating some form of technology into the classroom, especially visual technology.

Over the years, I have integrated visual technology into the Legal Writing classroom and expanded beyond PowerPoint and into Internet videos. The videos I have used have ranged from tutorials to oral arguments to amusing videos that I have selected merely to keep my students entertained and interested.

Recently, I have begun to replace many of my fact situations with videos. Over the years, I have had a similar problem to that of many other Legal Writing professors—teaching students how to write a fact situation in law practice. Often the students are handed a “canned” fact situation that reads well and focuses on the very issues that the professor would like the students to focus on. When students are given this type of fact situation, they do not develop the skills to gather their own relevant facts and work on the appropriate

narrative skill that is necessary for good advocacy. As a result, I often will use videos from YouTube to represent the fact situation I would like my students to research. By using videos, I force the students to consider all aspects of what they are seeing and decide for themselves what is most important to emphasize and how it will be emphasized in their writing. Videos related to various torts are most beneficial, and I have also found that a touch of humor in the video is very much appreciated.

Another way in which I have used videos in the classroom is related to the legal issue stemming from the video itself. One way to keep students engaged in the classroom experience is to have them research and write on concepts that are pertinent to their interests. Currently, there are few things more important to students than their music, and the creativity explosion that has been engendered by the Internet has raised voluminous legal issues related to intellectual property, especially as they relate to music and music videos.

The ready technology available on any home computer enables almost any person even moderately tech-savvy to create her own videos or record her own music. Movies can be spliced, dubbed over, resubtitled, and set to music within a few hours' time. Similarly, vocals can be downloaded, modified, repackaged, and integrated into an entirely new artistic work. Computer composition programs can replicate others' work, and the composition can be used to create other artistic works. There is almost no limit to what can be done with splicing, adding, and reconfiguring in order for any creative person to put together a whole new genre of materials that are then posted on YouTube for the world to see.

These types of recreations are so prevalent that many law students would not suspect that there

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is the potential that many of them are actually copyright infringements. It is so common to hear an artist “cover”¹ another song, or a musician take a “sample”² from a song, or even watch a video set to popular music, that it is easy to believe that there would potentially be no repercussions. However, although the copyright act has not quite caught up with YouTube, there is always the potential of a legal action where someone else’s original creation is sliced and diced and winds up in another person’s artistic creation.

Because videos and music have become an integral part of students’ lives, and because it appears that the consequences of copyright law are a contemporary legal topic, I have taken to combining the three in various research problems involving the Fair Use Act.

The Fair Use Act (17 U.S.C. § 107) is a relatively simple federal statute that allows an individual to use portions of the work of another so long as it does not significantly use the other’s work or displace it in the marketplace. The four exact factors that courts will weigh are the following:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work (e.g., whether the work is a new creation of fiction, or is a reconfiguration of factual information, such as a documentary or news report);
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

4. The effect of the use upon the potential market for or value of the copyrighted work.

Not all factors of the test must be weighed equally;³ however, all of the factors should be explored to consider their potential impact on a case.⁴ Moreover, courts will protect satires (which often use the entirety of someone else’s work in the spoof) in more instances than non-satiric works, although not all satires will be protected merely because they are satires.⁵

Using the Fair Use Act as the basis of a research problem done in conjunction with YouTube music videos presents a variety of ways in which I am able to demonstrate the range of situations in which the Fair Use Act might apply. It also affords me the opportunity to force the students to think in depth about various scenarios while comparing and contrasting them.

As an example, when comparing two similar musical compositions using a Fair Use factor analysis, one need only concentrate on the notes and the various choruses in the songs. However, when combining a song with a video, the nature of the composition changes. The song itself may be similar to another song, but the message of the video in combination with the song itself might be vastly different than a second video in which the use of portions of a musical composition is being challenged.

The example I used as the basis for a research problem this past year was the similarity of the bass lines from the songs, “Ice, Ice Baby” by Vanilla

¹ A “cover” is a recording of a song that was first recorded or made popular by somebody else. For examples of popular cover songs, see <http://www.coversproject.com/>, a virtual database of cover songs.

² A music “sample” is a portion of one sound recording that is reused as an instrument or a sound recording in a different song. For examples of music samples, see <http://www.whosampled.com/>.

³ See, e.g., *Stewart v. Abend*, 495 U.S. 207, 238 (U.S. 1990) (holding that the fourth factor of the fair use test is the most important and central factor); *Soc’y of the Holy Transfiguration Monastery, Inc. v. Gregory*, 689 F.3d 29 (describing the fourth factor of the fair use test as “the single most important element of fair use”).

⁴ See *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 578 (1994) (holding that all four factors of the fair use test are not to be treated in isolation. “All are to be explored, and the results weighed together, in light of the purposes of copyright.”).

⁵ See, e.g., *Super Future Equities, Inc. v. Wells Fargo Bank Minn., N.A.*, 553 F. Supp. 2d 680, 689 (N.D. Tex. 2008) (analyzing whether a use is satire involves a determination of whether the publication could be reasonably understood as describing actual facts).

Ice⁶ and “Under Pressure” by David Bowie⁷ and Queen. In 1981, “Under Pressure” was released and included one of the most recognized bass lines in the history of music. In 1989, Vanilla Ice, who was regarded as one of the first rap sensations, released “Ice, Ice Baby,” which replicated, with only a slight variation, the bass line from “Under Pressure.”

When analyzing the music alone, students contemplate and are challenged as to whether a bass line consisting of seven notes with only two of them different makes for a substantial borrowing of material, or whether the analysis should be reduced to the mere math. Students also are challenged as to whether one must look at the whole of the two songs, in terms of the notes and lyrics, and even whether one must look at the types of songs that include the notes that were borrowed. Finally, students are challenged to consider whether something very slight can become so universally recognizable (e.g., the Apple logo, or the Nike Swoosh) that any integration of the element into another artistic composition equals an automatic copyright infringement.

Once students contemplate the underlying nature of the copyright infringement of the music, I ask the students whether the music videos change things. The Vanilla Ice video and the Queen video are vastly different from one another. Vanilla Ice appears as a rapper posed in various “gangsta” scenarios interspersed with boy band

type choreographed dancing.⁸ The Queen video is more of a social commentary and features footage of bombs, Cold War era paranoia, and a fast-paced world leaving many behind.⁹ I ask the students whether the differing natures of the videos negates the significance of the bass line that is used or whether the prevalence of the similar bass lines is still the most important aspect of assessing whether a copyright violation has occurred. The students are also challenged to consider whether, when determining if copyright infringements have occurred, a musical composition must be assessed independently of a video that incorporates music.

All of these aspects of assessing the law not only give the students a much broader way of seeing the various arguments of both sides of the issue, but also a context that relates to their day-to-day lives. They listen to their music a little bit differently, and look at some of the music presented in videos a bit more reflectively. The use of the research problem seems to accomplish what it is that we all strive for—presenting a lasting lesson in law and in life that changes or modifies a perspective not even considered prior to law school.

It is my opinion that intellectual property law is going to be one of the broadest fields that graduating students will have to deal with in their careers and perhaps provides the most opportunity in litigation and in drafting. Thus, the students learn about an area of law that many will find useful in their careers.

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⁶ Robert Matthew Van Winkle, known by his stage name as “Vanilla Ice,” is an American rapper. For more information, see his official website at <http://www.vanillaice.com/>.

⁷ David Robert Jones, known by his stage name “David Bowie,” is an English musician, actor, and record producer. For more information, see his official website at <http://www.davidbowie.com/>.

⁸ <http://www.youtube.com/watch?v=rog8ou-ZepE>.

⁹ <http://www.youtube.com/watch?v=eWCa8OGaR0U>.