

# Copyright and Plagiarism

## Copyright & Plagiarism: A Guide for Students & Educators

Work that is submitted to the Scholastic Art & Writing Awards must not be plagiarized or violate copyright laws. If a submitted work is plagiarized and/or violates copyright law, the work will be disqualified from the Scholastic Awards. To avoid this from happening, please review these guidelines for submitting your work.

### Plagiarism is different from a Copyright Violation

- Plagiarism is an ethical violation. If you take another person's words, materials, images, etc. without citing them (i.e. if you pass someone else's work off as your own), the work is plagiarized and the submission will be disqualified. This applies even if you have only copied a part, rather than the whole, of another's work.
- In certain cases, plagiarism can lead to legal issues and monetary damages, but plagiarism itself is not a legal violation.



Mona Lisa, Leonardo da Vinci  
c. 1503-1509  
Oil Painting



Example submission  
Drawing

**Example:** Mona Lisa, Leonardo da Vinci compared to example submission

In this case, a student would have been required to cite Leonardo da Vinci's Mona Lisa painting when registering the drawing online for the Scholastic Awards. If a student submitted the drawing without citing the original painting, the submission would have been disqualified. The drawing is not likely to be a copyright violation because the copyright to the original Mona Lisa painting has expired and falls under the Public Domain (see below for an explanation of Public Domain). Note, however, that the student's drawing could be a copyright violation, if copied from a copyrightable photograph or reproduction of the original painting.

Even if the submission were cited correctly, Scholastic Awards judges would view this work unfavorably because it is not original.

## **Copyright Law: What is a Violation?**

A copyright is a property right.

- Just as someone owns a car and another person may not steal it, an artist or writer owns the rights to the creative expression of his/her own original work and another person may not “steal” it by copying it without permission.
- Copyrights to a work arise as soon as the work is fixed to a tangible form. For example, an idea for a painting is not protected until the idea is actually expressed on a canvas or in another tangible form. An artist or writer need not file anything in order for his/her work to be protected.
- Copyright protections were designed to encourage creativity and innovation, so that artists and writers could retain the rights to their original work without fear of it being copied.
- Most modern pieces of art and writing are protected by copyright law.

## **Public Domain**

- Works in the “Public Domain” are those that have expired copyrights or that cannot be protected by copyright (e.g., works of the U.S. Government – such as a copy of the U.S. Constitution).
- There is a common misconception that if a work is online, then it is in the Public Domain. However, this is NOT true. Just because a work is on the Internet does not mean that it is in the Public Domain. In fact, most images, songs, essays, poems, etc. on the Internet are copyright protected.

## **Substantial Similarity Test**

- Copying a protected work without permission is clearly a copyright violation, unless it qualifies under the Fair Use Doctrine.
- If there is no exact or “literal” copying, but the average person may notice “substantial similarities” between the submitted work and the protected work, it is possible that you are still violating copyright laws.

## **Fair Use**

- If courts decide that use of a copyrighted work constitutes Fair Use, it is not a copyright violation.
- However, Fair Use is often very difficult for a copyright defendant to prove and involves a multi-part, fact-sensitive test that courts apply (listed below).

## **Fair Use Clause**

When evaluating a defense of Fair Use, a court will examine the following factors, as codified at 17 U.S.C. s. 107:

- Purpose and character of the use;
- Nature of the copyrighted work;

- Amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- Effect of the use upon the potential market for or value of the copyrighted work.

## **Purpose and Character of Use**

Is the use transformative? If the new work uses the copyrighted work as “raw material” and transforms the original work by bringing new insights and understandings to the piece, it may be considered Fair Use.

- Changing the medium – for example, creating a painting based on a copyrighted photo – does not make it “transformative.”
- Making substantial changes to the original work could be transformative – does it add something new or alter the message? For example, is it a parody, mimicking the original?
- If the new work is used for commercial purposes, it may not be Fair Use.

## **Nature of the Copyrighted Work**

- If the original work is factual or informational, there is greater leeway for Fair Use; there is less leeway if the original is creative or expressive.

## **Amount and Substantiality**

- If the copying is excessive – that is, a large portion of the original is copied without justification – it may not be considered Fair Use.

## **Effect of the Use Upon the Potential Market**

- If the new work changes the market or value of the original work that the “creators of original works would in general develop or license to develop,” it may not be considered Fair Use. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 592(1994).

## **Total Concept and Feel**

- Courts will also consider whether the work changed the “total concept and feel” of the original work.
- If the work copied the “total concept and feel” of the original, it may infringe upon the copyright of the original.
- However, if your work was transformative– if you create something newly expressive and original, your work may qualify as Fair Use.

## **Consequences of a Copyright Violation**

### **Participation terms**

Before participating in the Awards, students sign a form stating that s/he will:

- Submit original content that does not infringe someone else's work or idea.
- Cite the original piece if the student's art or writing is based on, incorporates, or is derived from another source.

If the Alliance has reason to believe that a submission violates the participation terms, the student submission will be disqualified. In this event, the Alliance may refuse or revoke the grant of an Award, and take such other measures, including the recall or removal of the awarded work, as the Alliance deems appropriate. Bear in mind that this policy is in the interest of both the student and the Alliance, since the display or distribution of an infringing submission could result in financial liability for both the student and the Alliance.

### **TIPS: Preventing Plagiarism & Copyright Violations**

- Educators and students are responsible for educating themselves on plagiarism and copyright issues. This page is only a guide, and you are encouraged to consult additional sources to broaden your understanding.
- If you would like to legally use all or part of a copyrighted work in your own original piece, you must get permission from the artist or writer first. You must also establish under Work Sources that you obtained permission to use the work when registering for the Scholastic Awards online.
- If you have any doubt about whether a submission violates the copyrights of another artist or writer, assume that it does and choose not to submit that work.
- Be very cautious about using works that are posted on online community sites, such as DeviantArt. Even though these images are online, nearly all are copyright protected. You may only use a work if the original artist gives you permission and you cite the work in the submission.
- A basic rule of thumb is that if you use another person's copyright protected work, you need permission, except if Fair Use applies or if it is in the Public Domain.
- Determining whether Fair Use applies is very complicated and is up to courts to decide. The more you borrow, the less likely it will be considered Fair Use.
- If you're not sure whether Fair Use applies, assume that you need permission.
- You can still be held liable for copyright violations even if you didn't think you were violating another person's rights. Copying a protected image without permission is not always intentional, but it is unlawful.
- Always cite all sources, whether the source is protected by copyright or not.
- No number of words or percentage of a work can be safely assumed to render a work different enough to avoid copyright infringement of the original work.
- Sometimes even a small amount of copying can be considered infringement.

- Changing the medium of an original work can still be copyright infringement. For example, creating a painting based on an existing photograph would still violate the original photographer's copyrights unless the student received permission and/or if Fair Use applies.
- Educators: if a classroom assignment involves any copying of a protected work, even if it's just for the purpose of practicing and learning, please teach your students to write to the original artist to get permission to use the work if the work is to be copied, distributed or displayed for anything other than educational or classroom or purposes.

## Identifying Plagiarism & Copyright Issues

The Alliance for Young Artists & Writers uses online resources, search databases, and certain available software to investigate all art and writing that is considered for Awards. If work is identified as plagiarized or to constitute a copyright violation, any Award will be revoked, the work will be removed from display and/or publication and all scholarship consideration will be rescinded.

### Definitions

- Plagiarism – failing to cite sources and engaging in the act of passing someone else's work or ideas off as one's own.
- Copyright – a form of legal protection prohibiting others from copying one's creative work without permission.
- Fair Use – if use of copyrighted material is deemed “fair” based on the nature of the original work, how much of the original is copied, whether the new work is transformative, etc., it is legally permissible.
- Transformative – a new work that adds value, substantially changes, comments on, or gives a new expression or meaning to the copyrighted material. Transformative works may qualify as Fair Use.
- Derivative Work – a work that is “derived” from an existing work. For example, a picture based upon a photograph; a statue based upon a painting; or a song based on an existing novel. The author or creator of the existing original work is also protected by copyright against others' making derivative copies.
- Appropriation – deliberately borrowing images to make new art. Appropriation artists generally want viewers to recognize the original in their work.
- Parody – a piece that mocks the original by modifying elements of the original and/or mimicking its style may be permissible under the Fair Use Doctrine if it successfully differentiates the original.
- Satire – submissions that use existing work for the purpose of general irony, sarcasm, ridicule, criticism and commentary of society or anything other than the existing work

itself are not likely to be legally permissible under the Fair Use Doctrine. EXAMPLE: Dr. Seuss Enterprises, LP v. Penguin Books, 109 F.3d 1394, 1400-02 (9th Cir. 1997) (use of the style and phrasing of Dr. Seuss's "The Cat in the Hat" in a humorous work targeted at the O.J. Simpson trial and NOT at "The Cat in the Hat" itself was satire, not parody, and thus, did not qualify as a Fair Use).

## **Additional Resources**

### **General Copyright Law Information**

- Copyright Alliance  
[www.copyrightalliance.org](http://www.copyrightalliance.org)
- The United States Copyright Office  
[www.copyright.gov/records](http://www.copyright.gov/records)
- Cornell Copyright Information Center  
[copyright.cornell.edu](http://copyright.cornell.edu)
- The Copyright Society of the U.S.A.  
<http://media.csusa.org/links.html>
- History of copyright and registration basics geared for educators and students  
[www.loc.gov/teachers/copyrightmystery](http://www.loc.gov/teachers/copyrightmystery)
- Copyright basics and FAQ's. Help determining if work is still in copyright or Public Domain; Copyright Term and the Public Domain in the U.S.  
[www.copyright.gov](http://www.copyright.gov)

### **Public Domain & Fair Use**

- Article about Fair Use from Good Magazine  
<http://www.good.is/post/ask-a-lawyer-what-s-fair-in-fair-use/>
- Cornell Copyright Information Center  
<http://www.unc.edu/~unc1ng/public-d.htm>

### **Photography & Copyright**

- Professional Photographers of America (helps photographers protect and register their copyright)  
[www.ppa.com](http://www.ppa.com)
- Editorial Photographers (general information, a copyright primer & relevant links to further information)  
[www.editorialphoto.com/copyright](http://www.editorialphoto.com/copyright)

- Advertising Photographers of America (FAQ's and forms for registering copyrights located in their Business Manual link)  
[www.apanational.com](http://www.apanational.com)
- American Society of Media Photographers  
[asmp.org/content/registration-counts#.Ul6VvlBJM3I](http://asmp.org/content/registration-counts#.Ul6VvlBJM3I)

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