Media Policy & You: Crash Course Media Literacy #9

Crash Course: Media Literacy
https://youtube.com/watch?v=TVaZnxYKKdM
https://nerdfighteria.info/v/TVaZnxYKKdM

Have you ever shared a GIF from your favorite movie or Instagrammed some meme you found online?

In that moment, did you ever think about where that content came from and if you were allowed to use it? Did you consider that it may actually be illegal to share it?

Or at least in some legal no man's land? Probably not, and it's ok, we're not calling the cops on you. A lot of what we consider everyday internet culture – retweets and memes and viral videos – is built on this kind of casual, everyday sharing.

We forward links and remix photos and songs... But what happens when what we're sharing is someone else's property? Or could harm somebody?

The internet gave tons of people access to tools for communication and media creation. But it also opened up many legal loopholes and muddied the waters of rights and regulations. In our last episode, I talked all about the big, macro companies that rule our media world.

Today we're focusing on how new media is changing our real world lived experiences, down to the letter of the law. [Theme Music] The media economy is ruled by profits, yes, but also by the governments and industry organizations who set out to regulate it. Just as the big media companies need to follow certain rules, so do media consumers (that's you). Over the past few years many media-related laws have had to adapt dramatically to changing times and incredible leaps in technology.

One such law you've probably heard a lot about is copyright. Copyright gives creators of media the exclusive rights to their creations. They can copy, modify, distribute, or show off their works however they want.

Others need to get permission to use them. This helps creators make money from and get credit for their work. But a copyright isn't a total monopoly on a work.

Thanks to the notion of fair use, the public can exercise its first amendment rights by using others' work without permission. That is, as long as it transforms the work in some way. In fact, there are four factors courts use to determine whether a use is fair.

First is the purpose and character of the work. Many educational uses of media, like showing a film in class, are protected under fair use because they're not for commercial purposes. Other protected uses are criticism, commentary (like parody), research and scholarship.

Second is the nature of the copyrighted work. Copyright law is meant to encourage creative expression. You can't copyright facts, but you can copyright something you imagined.

Creative media like a movie or a song, something that takes imagination, is more difficult to use fairly. But with fact-based media, like news articles or a documentary, there are more options for fair use, like education or parody. Third is the amount of the piece used from the copyrighted work.

If the use employs a tiny proportion of the copyrighted work, it's more likely to be deemed fair. Fourth is the effect of the use on the market for the copyrighted work. So, streaming a bootleg version of Titanic isn't fair, because it directly competes with lawful streaming services.

But your version of Titanic that replaces all the characters' voices with chipmunk sounds – that's unlikely to "compete" for the attention of people looking to watch the original. But, Fair Use isn't the only way that media is allowed to be adapted by the public. There's an expanse of media works that are available in the public domain.

This is the set of all works whose copyright has expired and are free to use by anyone. Characters like Robin Hood and Sherlock Holmes are in the public domain. So between Copyright, Fair Use, and Public Domain – you have the three pillars of Intellectual Property in everyday media.

Seems pretty cut and dry, right? Well, it kinda was before the internet. Before many more people had the ability to use copyrighted material at the speed of light.

During the 1990s, established media corporations, like the music industry, began to get real upset about the way the internet was challenging the status quo. Media was getting copied and shared and moved around faster than ever before – and they wanted to stop it. This all culminated in the 1998 Digital Millennium Copyright Act or DMCA.

You might have heard of the DMCA. It does a LOT of things, but one obvious thing it does is give copyright holders the ability to make claims against content on digital platforms. In fact, once it was enacted, The Record Industry Association of America even targeted young internet users who downloaded copyrighted materials with lawsuits.

And if you've ever seen a YouTube video vanish beneath an "infringing content claim" – that's thanks to the DMCA. So in this brave new world of digital media and pop music anime lip sync mashups, how DO you know if your use is fair? Let's head into the Thought Bubble to find out.

Let's say you want to make a montage video of your two favorite characters from your favorite TV show: Archie and Veronica from Riverdale. (Apologies to Barchie or Beronica shippers.) You pull together cute clips from the show and pop on your favorite Taylor Swift song – Love Story, obvs – in the background. Now is it fair use? First step: what's the purpose and character of your work?

Your purpose is to get all the likes, but also to prove that Varchie is the OTP. You're not in it for the money and the video itself is commentary on Riverdale. Ok, that could pass.

Second: what's the nature of the copyrighted work? The TV show and the song are definitely creative and not fact-based, so yeah, that's a strike. Like I said, it's harder to use an imaginative work like a movie or a song.

Third: How much did you use of the show and the song? You definitely only used clips of the show, a couple of seconds each of a whole season of TV. That would probably get a pass. But you did use the whole song – that's not cool. Strike two. Finally: what effect would your work have on the market for the works you used? Since someone couldn't reasonably watch your clip video instead of watching the full Riverdale series on TV, that's probably fair use. But someone could just listen to your video instead of buying that Taylor Swift song. Sorry, no matter how perfectly "Love Story" encapsulates Archie and Veronica's relationship, you're not transforming the song. In fact, you're using it in a pretty normal way, like in a movie – except movies pay to use a song on the soundtrack. So while the montage of clips you made may be transformative, the use of the song wouldn't be considered fair use. As you can see, the notion of "fair use" isn't cut and dry. It's like a puzzle that changes for every person who tries to solve it. Thanks Thought Bubble! The thing that makes the DMCA, and intellectual property generally, interesting is that it shows laws trying to play catch up with how media has changed due to technology. And

many of the old definitions and approaches start to grind when used in this new media ecosystem. Some challenges to media laws are more high-stakes than Taylor Swift montages. Get your giggles out now, kids, cause I'm about to talk to you about "sexting." So. Urban Dictionary defines "sexting" as...oh. Oh my. Ah. Let's just say that sexting is like...when two people really like each other, and so one of them draws the other naked. Now they have that drawing, and when they look at it...they uh – you get what I'm saying. It's no surprise that nowadays, young people might use their phones to "communicate" in relationships, rather than paper and charcoal. The only problem is: what about the law? First. Most states in the US define the age of consent. If two teenagers above the age of consent want to meet up in the back of a car – there's nothing illegal about that. BUT in the US there are also laws against the production, possession, or distribution of child pornography – ANY visual depiction of explicit content involving someone under 18. Good laws. Important laws. Super important and good laws. The problem comes from figuring out what happens when the legal sexual relationships between two teenagers – over the age of consent, but still under 18 – when those relationships start to involve, you know, sexy pictures. Because technically – according to U. S. law – that can be classified as child pornography, and there are already many examples where young people have been charged as such. And these laws are meant to protect children from sexual abuse. Federal laws carry mandatory minimum sentencing of five years in prison and registry as a sex offender for related charges. These are huge consequences! Because of this, some states have recognized sexting as a widespread practice and have reduced charges accordingly. But there's still a grey area, however, between federal and state laws and local jurisdictions – including whether police are allowed to search a teen's phone. The point is, these are laws that were made before our current media moment, colliding with what has become everyday practice. And the outcome often comes down to a discussion or a judgement call – often by people who are, let's say, not the most plugged in with "kids these days." It might not be the most fun to talk about. But these gaps – between current media practices and traditional laws – are already impacting people's lives. From copyright laws to sexting and cyberbullying, our online lives have posed some serious challenges to our legal system. And many of these questions are still up for debate. But maybe none of these have been as tough to deal with as the issue of online privacy. Privacy refers to the access, collection and sharing of personally identifiable information. Online that includes our browsing habits and history, plus the personal information we share with all the websites and apps we use. Traditionally, privacy has determined what information was allowed to be used in court cases. Some private information was protected from unlawful search and seizure. But of course, the internet threw a wrench in that, too. If you use a social media in the public setting, where anyone can access your posts, is that public or private? What about if you use the app in a private setting, for just your friends and family? What if you share your private thoughts on an anonymous, public blog? On top of these shifting notions about what constitutes privacy online, protections for accessing that data are even less clear. When and where law enforcement can request or demand access to phones, computers and social media accounts is often a grey area. And when they do, what are their rights to privacy? Gen Z will be the first generation to live their lives on smartphones from such a young age. Think of all the data they're sharing about themselves before they're able to walk home alone, let alone drive or vote. Will that data follow them around, forever? How would you feel if your first AIM screen name or all the Snapchats from your awkward years followed you around forever? One response to this problem will take effect in Europe in May 2018. The European Union's General Data Protection Regulation (or the GDPR for short) is a big, big deal. This legislation will impact all of the European Union, affording a stricter right to protect yourself online. Part of this law, the Right to be Forgotten, will make it easier to get rid of personal information that's been collected about you and make clear what that data is, too. But since this legislation affects multinational corporations like Google and Facebook, the ramifications won't be stuck on the other side of the pond. The industry titans are expected to follow suit across the globe to ensure they remain compliant. Clearly, we've entered a new paradigm where our technology is outpacing legislation. As laws and regulations continue to develop around our fast-paced digital world, the only solution is to stay vigilant. Know what data you're sharing. Be careful of downloading or sharing others' work online. And remember that your words and your images have meaning, and can be used against you. Next time on Crash

Course: Media Literacy we'll talk all about how bad actors can use those vulnerabilities against us through propaganda and misinformation. You'll need the skills we learned today to dive into the dark side of media. Until then, I'm Jay Smooth. See you next time. Crash Course Media Literacy is filmed in the Dr. Cheryl C. Kinney Studio in Missoula, MT, and it's made with the help of all of these nice people and our animation team is Thought Cafe. Crash Course is a Complexly production. If you wanna keep imagining the world complexly with us, check out some of our other channels like SciShow, Animal Wonders, and The Art Assignment. If you'd like to keep Crash Course free for everyone, forever, you can support the series at Patreon, a crowdfunding platform that allows you to support the content you love. Thank you to all of our patrons for making Crash Course possible with their continued support.