



LESSON PLAN

Level: Grades 7 to 8
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Up, Up and Away? (TM)

Overview

In this lesson students encounter the key concepts of intellectual property, learning the difference between copyright and trademark and coming to understand how these affect how media products are created and sold. The lesson uses the legal decision regarding the rights to the comic book hero Superman to help students understand the different ways in which intellectual properties can be owned, leased and sold. It begins with a discussion that examines students' understanding of intellectual property principles and then looks closely at the Superman case to introduce key topics and questions. This is followed by a series of activities that ask students to explore the key ideas they've learned and consider how intellectual property issues are relevant to them. As a summative activity, students hold a debate on intellectual property issues.

Learning Outcomes

Students will:

- understand the idea of *intellectual property*
- learn the difference between *copyright* and *trademark*
- learn the meaning and relevance of the *public domain*
- read a background text and answer questions
- form and express opinions
- participate in a formal debate

Preparation and Materials

Photocopy and review the handout *Up, up and away!*™

Procedure

What we know

Begin by asking students if any are familiar with the term *intellectual property*. If students are, ask them what they think it means; if they are not, ask them what they think it *might* mean (*property* referring to something that can be owned and sold, *intellectual* referring to something created by the mind, rather than something physical).



What is intellectual property?

Ask students if they can think of any examples of things that might be intellectual property. If students have trouble making suggestions, provide this list and ask which of the following they think might be intellectual property:

- A novel?
- A film script?
- A joke?
- A recipe?
- A character in a TV show?
- A painting?
- The lyrics to a song?

Of course, *all* of these are intellectual property. Explain that what we usually mean by *property* – physical things which we own – is called *real property* to distinguish it from intellectual property. In some cases a thing can be both intellectual and real property: the novel and the painting, for instance, are both intellectual property and real property. However, there doesn't need to be any real property for intellectual property to exist: a recipe or a joke can be intellectual property even if they're never written down.

Ask students why the idea of intellectual property might exist in law. Who benefits from it? (The owners of the property do.) Why does society in general benefit from the concept of intellectual property? (Giving creators control of their property encourages them to create more.)

Summarize for students what has been covered so far: intellectual property refers to the right to own and sell things that have been created with the mind, such as works of art (like a novel), important elements of works of art (like a character in a TV show) or ways of doing things (like a recipe). The concept exists to reward and encourage people who create these things. It follows, then, that most intellectual property will belong to the person or people who created it.

Or does it?

Who owns Superman?

Distribute the backgrounder *Up, Up and Away!*TM and have students read it and answer the accompanying questions. (If you wish, you may have the class read the backgrounder together and then do the questions in pairs, groups or individually.)

Questions about intellectual property

Discuss the questions with the class. The first four are comprehension questions; try to get examples from as many different students as possible to be sure they understand the key concepts. For the later questions, don't feel the need to bring the discussion of each one to any kind of conclusion or consensus: their main purpose is to raise questions and arouse opinions that will be relevant in the summative activity.



Class discussion

Ask students whether they consider the following to be infringements of intellectual property:

- 1) Drawing Superman (or another copyrighted character) in your sketchbook
- 2) Photocopying a comic book panel to use in a poster
- 3) Using Superman (or another copyrighted, trademarked character) in a short story
- 4) Scanning and uploading a comic book to a file-sharing site
- 5) Downloading a scanned comic book from a file-sharing site
- 6) Drawing a parody comic making fun of Superman
- 7) Adapting a comic book into a radio play for a class project
- 8) Making and selling a T-shirt with an image of Superman or his “S” on it
- 9) Using the plot from an old Superman comic in your own story

In fact, nearly every one of these is an infringement to some extent; some, like #1 and #9 are borderline cases and unlikely to be acted on by the intellectual property (IP) owners; others, like #2, #5, and #7, are clear infringements but still unlikely to be acted on; and some, such as #3, #4 and #8, are clear infringements and will be acted on by the owners if they find out. Only #6 is likely to not infringe at all.

Once you have explained this to the students, ask them why some of these are worse than others. Why, for instance, might it not be infringement to draw Superman in your sketchbook when it is infringement to put him on a T-shirt? Why is uploading a Superman comic worse than downloading it? Why is it probably permissible to use the plot from a Superman comic in your own work, but not to use Superman himself? Since adapting a Superman comic to another medium is a clear violation, why would it be unlikely to be acted on if it’s done for a class project? Why is a parody of Superman least likely to be an infringement? (Note: there’s no need to provide definite answers to these questions – they’re there to raise issues that will be returned to in the summative activity and the next lesson.)

Evaluation

Hold a debate on one or more of the following resolutions:

Be it resolved that:

- Creators should never lose their rights to their creations. Intellectual property should only be able to be leased, not sold.
- “Intellectual property” is an oxymoron. Only real property should be able to be owned and sold.
- Copyright should be perpetual, passing to the heirs of the original creator (or remaining property of the corporation that owns it) forever instead of passing into the public domain.
- People should not have to give up their intellectual property rights as a condition of employment. Work-for-hire should be abolished.
- Characters should not be intellectual property. Once a character has been created, anyone should be able to use it in their own work.



Up, up and away!™

Who owns Superman?

In March of 2008, a judge ruled that the wife and daughter of Jerry Siegel, one of Superman's two original creators, are entitled to reclaim a portion of the copyright to the hero. The copyright was previously wholly owned by DC Comics, which has published Superman since 1938. The result is that Siegel's heirs are now entitled to a share of any money DC makes from Superman in the United States, whether in the form of a comic book, a movie, a video game, and so on.

But wait: how is it that DC owned the copyright in the first place, if they didn't create Superman? Why could Siegel's wife and daughter regain the copyright when Siegel himself couldn't? And does that mean that they could now start printing their own Superman comic?

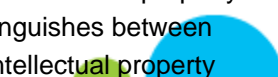
How can you own an idea? In fact, you can't. Not everything we can think of or imagine can be *intellectual property*. You have to take the time and effort to turn an idea into some kind of product. This does not have to be a finished product – a film script is intellectual property, even if the film doesn't ever get made – but it needs to show that the creator has made an original work. This is a key point, because in most countries, including the U.S. and Canada, *all intellectual property is automatically copyrighted*.

This means that it has become property that the creator owns. The creator now can control what is done or not done with the property – whether and how it is copied, adapted, sold, etc. – and can sell or lease any or all of those rights as he/she chooses. Each time something substantially new is done to the property, so long as it is done with legal right, a new property is created and a new copyright established.

To return to Superman, there are multiple copyrights involved. The character himself, with all his particular characteristics – more powerful than a speeding bullet, leaping into the sky with an “up, up and away,” fighting for truth, justice and the American Way – is one piece of intellectual property. Each individual Superman comic, or movie, or TV show is another piece of intellectual property, and each has its own separate copyright. What Jerry Siegel and Joe Shuster originally created was the *character* of Superman, as well as his first comic book; they owned those two items as soon as they were basically complete. In order for Superman to be published they agreed to sell the full copyright to Detective Comics, Incorporated, for the grand sum of \$130. Even in 1938 that was not a whole lot of money, but since Siegel and Shuster had legally sold the copyright, DC was under no obligation to pay any more. Both creators began to receive a small annual payment in the late 1970s, but this was done to avoid bad publicity rather than out of any legal obligation.

So why did the judge rule that Siegel's wife and daughter should regain part of the copyright? The answer is that even after you sell your intellectual property, you keep some rights forever. Under American copyright law the original creator of the property can sue for *reversion of copyright* after a certain amount of time has passed, which is what Siegel's heirs (who inherited his intellectual property rights) have done. In Canada the author only keeps what are called “moral rights”: the right to be identified as the original creator of a work, and the right to prevent the work from being used in a way that would damage his/her reputation.

Only the Superman character and the first issue, which Siegel and Shuster created before signing the contract with DC, are affected by the suit. All of the later comics and any characters introduced after that first issue will remain property of DC. Why can't the creators of those later comics make similar suits? Because copyright law distinguishes between original works that are sold, as with Superman, and what's called *work for hire*. *Work for hire* is intellectual property



created by an employee as part of his or her job, and it cannot be reclaimed in the same way – it remains the property of the employer or contractor for the full length of the copyright.

So will DC keep ownership of every issue of *Superman* and *Action Comics* forever? Not quite. Eventually all of them will fall into what's called *public domain*. A work that's in the public domain is one for which no copyright exists or can be established. This applies mostly to works created before modern copyright laws existed: Shakespeare's plays, for instance, or the Greek myths. Things that were once copyrighted can also fall into the public domain in a number of ways. The first is by choice of the creator, who can decree any of her works to be in the public domain if they choose – many government publications are in the public domain from the time of their creation to make them more widely accessible. The second is through the passage of time; after a certain number of years after the creation of a work (the exact number varies from country to country, and depends in some countries on when the work was created; in Canada copyright normally expires fifty years after the death of the work's creator.)

Even though DC has lost part of the copyright to Superman, they still own something just as important – his *trademarks*. Trademark, another kind of intellectual property, is a way of *selling* a product – a name, a logo, an image – and trademarks don't expire in the same way copyrights do. Instead they remain the property of the owner until and unless they can be shown to have become *generic* – fallen into common use to describe something other or more than the original product. Aspirin, for instance, was originally a trademark owned by the Bayer Company, but now has fallen into common use to describe any brand of acetylsalicylic acid. Many companies with trademarks in danger of becoming generic – Xerox, Google, iPod – invest a lot of time and money to try to prevent this from happening.

So who owns Superman? The copyright on *the Superman character* is now jointly owned by DC Comics and by Joanne Siegel and Laura Siegel Lawson. Most *works* featuring Superman – comic books, movies, cartoons, etc. – are still property of DC. The various *trademarks* associated with Superman, such as his costume, his logo, and all the distinctive phrases associated with him – “up, up and away,” “faster than a speeding bullet,” and all of the other phrases DC has carefully trademarked – remain property of DC until and unless they become generic. The Siegels could choose to have another company publish Superman, but they would have to give half the proceeds to DC; as well, they wouldn't be able to use anything created after the first issue – no Kryptonite, no x-ray vision, no Lex Luthor.

Eventually, of course, Superman will fall into the public domain, joining characters such as Sherlock Holmes, Tom Sawyer and Pinocchio who have lost their copyright. The comics, too, will lose their copyright as the years catch up to them, and eventually the various movies and TV series as well. In time Superman may become what his creators imagined: a peer to Hercules, Samson and other legendary heroes whose tales are told long after their creators' names have faded.

Key Concepts

Intellectual property

Anything that comes into being through invention or artistic creation. When an intellectual property is also *real property*, it is possible to own one but not the other – so that owning a painting (*real property right*) does not give you the right to make copies of it (intellectual property right).

Copyright

The right of an owner of intellectual property to control how that property is copied, altered, sold, etc. In most countries today copyright does not have to be registered, but the property must be (largely) finished – ideas cannot be copyrighted.



Public domain

Intellectual property for which no copyright exists is in the *public domain*. This means that anyone can copy, alter, or sell it without permission or payment to anyone. Material created before the development of copyright law is in the public domain; as well, property passes into the public domain after a certain amount of time has passed (the exact amount varies from country to country.) In some countries it was also necessary to re-register trademarks after a certain amount of time, but this is generally no longer true.

Trademark

A phrase, image, logo, etc. that is used to sell or identify a product or service. Trademarks must be established through use and they must be registered. Trademark is only violated if the owner can show that you are in some way profiting from your use of the trademark or degrading its value as a trademark. You could, for instance, choose to call your auto repair shop MacDonalD's Garage without fear, but if your sign featured a golden "M" you would be liable because you would be profiting from the recognizable quality of the McDonald's logo.

Genericized trademark

A trademark that has lost its protected status. This usually happens because a term which originally only describes a single brand (e.g. "Zipper") comes to be used to describe a broad category (toothed fasteners.)

Questions

1. Answer in complete sentences on a separate sheet of paper:
2. What are some *copyrights* that are associated with Superman? Give at least three examples.
3. What are some *real property rights* that might be associated with Superman? Give at least two examples.
4. What are some *trademarks* associated with Superman? Give at least three examples.
5. Who are some fictional characters that might be in the *public domain*? Give at least three examples and explain why you think no copyright exists for them.
6. Many phrases associated with Superman have been trademarked, such as "faster than a speeding bullet," "the man of steel" and "up, up and away!" Should trademark apply to phrases like these that have become part of the common culture?
7. Do you think authors should have *reversion of copyright rights* in Canada, the way they do in the U.S.? Why or why not?
8. What *moral rights* does an author have in Canada, even if they've sold their copyright?
9. Was it fair for DC Comics to be able to buy Superman for only \$130? Why or why not? Should they have had any further responsibility towards Superman's creators? If so, what responsibility should they have had?
10. Superman has been written and drawn by dozens of different people over the years. Many added important elements to the character, such as many of his super-powers, supporting characters and enemies, and even elements of his costume. Should they own a portion of the copyright? Why or why not?

