

Creating New Content Using Others' Work

Grades: Appropriate for grades 6-9

Time Required: 45-50 minutes

(Not including time for Student Collage Activity)

PURPOSE

To help students understand ethical and responsible methods for creating new content with others' work.

KEY CONCEPTS

- Creativity often builds upon and incorporates the creative work made by other artists.
- There are three ways we can use other people's creative work in our own, responsibly and ethically:
 - (1) fair use
 - (2) with permission—either direct permission or a Creative Commons licensed work, or
 - (3) public domain.



KEY WORDS

- **Creative Commons** (often abbreviated as "CC"): A popular licensing system that artists can use to give advance permission for their work to be shared and used in specific ways for free.
- **Licensing Agreement:** An agreement between an artist/owner and another person or group to use one of the artist/owner's creative works. A licensing agreement outlines how the work may be used, and if the artist wants to be compensated, how this compensation will occur.
- **Fair Use:** Fair use is an important part of copyright that allows people to use someone else's copyright protected work, without permission, in limited ways that are still fair to the owner/creator. For example, for teaching or school projects, or comments or criticism, or if we're making something completely new—transformative—using elements of the original, (like a parody). For determining fair use, the courts have established a 4-factor test.

- **Public Domain¹:** All the creative work that is not currently subject to copyright protection. This includes works for which the copyright has expired and works to which copyright never applied in the first place, such as government documents. Creative works in the public domain are free for everyone to use.

PREPARATION

- Prepare computer/TV Screen to show video
- Read through the lesson and preview the slides at www.copyrightandcreativity.org/middle-school.
- Preview all videos for this lesson to confirm that content in the videos is suitable for your class. Where possible, download videos, rather than stream.
- Videos are available at www.copyrightandcreativity.org/Lesson-4 and in [G-Suite](#). (Runtimes do not include credits.)

1.4 (Review)	"Permission NOT Required—The Limits of Copyright: Ideas & Facts, Fair Use, and Public Domain"	4:35	https://drive.google.com/open?id=136wQSogViPkrp1PNImAlXeBi5M4-Dqgf
4.1	Christian Marclay, "The Clock"	3:23	https://drive.google.com/open?id=1gVm-ELhkA0VQnhThyG6VBIJGq6nWOOc5
4.2	Jon Stewart, "The Sandlot"	4:56	https://drive.google.com/open?id=1Tt8ipazM9NXai46fQ23o2FvWjOe5-KTA
4.3	"Help! I Need Something: Finding Creative Work with (Almost) No Restrictions—Public Domain and Creative Commons"	4:42	https://drive.google.com/open?id=1Wu1f4ena06hZkap5dJ7_WdJJ2vWqXXE0
4.4	Creative Commons, "Wanna Work Together"	2:30	https://drive.google.com/open?id=191b-gBYnCP87i-X21ICRNHJBNYqr9FoK
4.5	Creative Commons, "A Shared Culture"	3:20	https://drive.google.com/open?id=19_PszPABfluRN3GJcqlBmr4WmY_1W_0t
4.6	"Vari-Colored Songs—Layla McCalla Kickstarter"	3:31	https://drive.google.com/open?id=17xG7goDe9Yd35pN-vCjq04RzdXXr-Kx3
4.7	The Orwells, "Who Needs You"	1:20	https://drive.google.com/open?id=1A8eOI3dsW7wkW1neFRfuyTzquXrZDJEI
4.8	iPad Air Ad, "Change"	1:00	https://drive.google.com/open?id=1CiIE7z68GHI2iEXIzXmhlHHnnamLtYnz
4.9	Survivor, "Eye Of The Tiger" (Not necessary to play the whole song.)	4:10	https://drive.google.com/open?id=1s8hVgzX_Kvw4qSsadPv9C1YhmqjifHeoT

- Decide if you will present Part 1 and Part 2 of the lesson in one sitting (about 1 hour) or in 2 separate sittings of about 30-minutes each.

¹ In these lessons, the term “public domain” is used to refer to all the creative works that are free to use because the copyright either has expired or never applied in the first place. In the United States, this includes creative work published more than 95 years ago (e.g., in 2020, all works published before 1925). For works created during the last 95 years but before 1978, copyright status is more complicated and depends on whether copyright holders took the proper steps to register and renew their copyrights. For works created since 1978, copyright protection is basically automatic and will not expire for many years. For more details or to determine if a specific work is in the public domain, see: <http://librarycopyright.net/resources/digitalslider/>. In addition to works for which copyright has expired, the public domain also includes works created by the government (documents, websites, photographs, and video). Finally, because copyright does not cover facts, ideas and discoveries, the term “public domain” is often used to refer to these categories, as well. **For purposes of these lessons, however, we use the term “public domain” to refer to the body of creative works not currently protected by copyright.**

- Make your own creative work that incorporates someone else’s creative work into it. This will be used as an example during the lesson. This can be really simple, for example:
 - a photo collage, using others’ photos (may include some of your own as well),
 - a video that includes a clip of another video,
 - a drawing or painting that uses elements of another piece of art, or
 - a song parody that uses the music and/or ideas of a current pop song.

NOTE: For parody to be considered a sure fair use, it must be a true parody (a witty song that pokes fun at or comments on the *original song*). Using a song to poke fun of something else is a satire and not as clear-cut a case of fair use.
- Read through the dialogues provided until you are comfortable allowing the students to respond to your questions.

INTRO: GATHERING CONVERSATION

Have you ever watched a great movie or heard a great song and been inspired to do something creative when you saw or heard it? *[Accept responses.]*

It’s great to draw inspiration from the creativity around us. But, what if you want to actually use part of someone else’s work in something you are writing or creating yourself? Did you know there are ways to do this without permission that are still legal and fair to the artist?

Can you think of a time when you or a friend or family member used someone else’s work in a new creation?

[Accept responses. List the following:

*quote from a book or poem in a book report,
 photos from websites used in a presentation for school,
 clips from movies in YouTube review videos,
 parodies of music, movies, or books,
 photos to illustrate blog posts,
 songs as soundtracks for slideshows or video,
 Images from a magazine or websites used in a collage, and
 fan fiction.]*

Here’s something I made myself.

[Show your own creation (e.g., a photo, parody song or movie poster, photo collage). Explain how you incorporated other people’s creative work into your own, new creation.]

There are three ways we can use other’s work, responsibly and ethically, in our own projects:

- (1) fair use,
- (2) with permission, and
- (3) public domain.

LESSON: Part 1—Fair Use

FAIR USE²

Has anyone heard the term “fair use” before? When? *[Accept initial responses. We talked about fair use in Lesson 1.]* Fair use is an important part of copyright that allows us to use copyright protected work, without permission, in limited ways that are still fair to the owner/creator.

Unfortunately, there is no hard-and-fast rule about what counts as fair use. There is a four-factor legal test that can be difficult to determine, but to simplify—a use is more likely to be a fair use if:

1. Your use is for commentary, news-reporting, criticism, parody, or a non-commercial purpose such as education. For example, using a whole song in a project you’re doing for school generally is a fair use. (However, if you take your school project and want to publish it to a large audience online, then you have more to consider.)
2. Where possible, you use only a small portion of the other person’s work and only as much as you need to make your point—such as a single paragraph from a much longer text or a short clip from a much longer video. (In some cases, it is still fair use if you need a whole creative work, like a whole photo or song, but in general the more you use, the less likely it is to be fair use.)
3. Your use won’t be able to replace the original in the marketplace—the owner/artist would still be able to distribute his/her work as he/she chooses. Put another way: buyers looking for the original would not be satisfied with accessing your work instead. On the other hand, if your use could potentially serve as a replacement for the original in the marketplace, it's less likely to be fair use.

PLAY VIDEO: (Review) “Permission NOT Required — The Limits of Copyright: Ideas & Facts, Fair Use, and Public Domain,” available at www.copyrightandcreativity.org/Lesson-4 or at the G-Suite link below.

1.4	"Permission NOT Required—The Limits of Copyright: Ideas & Facts, Fair Use, and Public Domain"	8:32	https://drive.google.com/open?id=136wQSogViPkrp1PNimAIXeBi5M4-Dqgf
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The classic examples of fair use are: quoting from books, movies, or poems in the context of reviews, commentaries, articles, book reports, and parodies. Have you done any of those? *[Accept responses.]*

Case Study: *The Clock* by Christian Marclay

Fair use can also fuel new creativity. Christian Marclay created a 24 hour film entirely from short clips of other movies, and then played it as an art installation in a museum. All of the clips are cut together to form a cinematic, 24-hour “clock.” Here is a clip. Watch for the time either in imagery, sound, or dialogue.

² Fair use is an important part of copyright law that allows the public to use copyrighted work without permission in certain situations that are still fair to the artist/creator. **Fair use** is a legal doctrine that is decided on a case-by-case basis and can be difficult to determine. As we try to simplify fair use for students, we have used the shorthand of saying kids may use content they “need” for educational purposes. However, fair use analysis always involves full consideration of the four factors, weighed together as a whole:

- What is the nature and purpose of your use of the copyrighted work? Why are you using the other person’s work? What is the purpose and type of use you are making of the other work? In particular, is your use transformative; that is, does it make a substantial change to the original? If yes, this will help your fair use claim. Is your use commercial? If yes, this cuts against a fair use claim.
- Is the amount you used appropriate and reasonable in light of your purpose? If yes, this will help your fair use claim.
- Even if you’ve only used a small portion, have you taken and used the “heart” of the work? In some cases, this will hurt your fair use claim.
- Could your use substitute for the original in the marketplace? (e.g., making copies of textbooks for students.) Even if it’s not a substitute, will it occupy markets that the copyright owner is entitled to (e.g., markets for sequels and other derivative works)? This will hurt your fair use claim.

PLAY VIDEO: Clip from Christian Marclay's The Clock, available at www.copyrightandcreativity.org/Lesson-4 or the G-Suite link below.

4.1	Christian Marclay, "The Clock"	3:23	https://drive.google.com/open?id=1gVm-ELhkA0VQnhThyG6VBIJGg6nW0Oc5
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What do you think of that?

[Accept responses.]

Do you think this use is original and creative enough to be a fair use?

[Accept responses. It is highly creative.]

Do you think Marclay's use of the film clips hurts the sales of the original films?

[Accept responses. No. This could NEVER substitute for the original movies, because the clips are so short, a very small percentage of the original film.]

Does it seem fair to you, from the perspective of the people who made those other films?

[Accept responses.]

Case Study: "The Sandlot" by Jon Stewart

Using fair use for criticism or commentary can be really creative too. Watch this clip of Jon Stewart as he uses video clips from other news organizations. Think about what he is doing in this segment.

PLAY VIDEO: Jon Stewart, "The Sandlot," available at www.copyrightandcreativity.org/Lesson-4 or the G-Suite link below.

4.2	Jon Stewart, "The Standlot"	4:56	https://drive.google.com/open?id=1Tt8ipazM9NXai46fQ23o2FvWjOe5-KTA
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Where did Jon Stewart get the other material from?

[Accept responses: other media outlets.]

What commentary or criticism are they making with this piece?

[Accept responses: Jon Stewart is criticizing the news media for its hype, etc.]

Summarize why the clip is an example of fair use:

- *It's a commentary; it criticizes bad news reporting.*
- *It uses only short clips.*
- *None of the clips would substitute for the original.*

All of this contributes to this being a strong case for fair use.

Activity: Self Portrait

Ask students to make a self-portrait using images they find online or in magazines. Ask students to cut out and arrange the images together to produce a new image of themselves.

What do you think of your self-portraits?

[Accept responses. Lead students to enjoy and be proud of their creative effort.]

Do you think this is a fair use of the original images? This is a fair use because:

- We have produced something new with a new meaning or purpose that differs from the artist's original meaning or purpose.

- Our new work will not substitute for the original in the marketplace. It won't undermine the ability of the magazine publishers, photographers, or artists to sell, license, or otherwise distribute their work, because the collage you made is *not* a substitute for the original images.
- Beyond those reasons, this is for a class lesson, so its purpose is educational and non-commercial.
- Note that we did use some whole photos, which could cut against fair use, but we have a strong argument that we used only what was necessary, because we needed whole photos to make the collage work.

LESSON: Part 2—Permissions and Public Domain

We just talked about fair use, but what if you're not in a fair use situation or maybe you're just not sure. Are there ways to use someone's work without having to wonder if you're infringing on their copyright?

You could ask for the artist's permission, but there are also a bunch of works that you are free to use without asking. Watch this video.

PLAY VIDEO: "Help! I Need Something: Finding Creative Work with (Almost) No Restrictions," available at

4.3	"Help! I Need Something: Finding Creative Work with (Almost) No Restrictions—Public Domain and Creative Commons"	4:42	https://drive.google.com/open?id=1Wu1f4enao6hZkap5dJ7_WdJJ2vWqXXEO
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Let's talk about permissions first.

PERMISSION

Artists and creators can give permission to use their work. They can do this using Creative Commons to identify in advance what they will allow. OR they can give specific, direct permission to a particular user.

Creative Commons Licensing

Creative Commons provides a licensing system that allows people all over the world to license their own works in advance for others to share and use responsibly and respectfully. This allows you to use a creative work (photo, song, video, software) according to the way the artist licensed it, and you don't need to ask permission. You also don't have to worry about how much you use as long as you follow the terms of the license. One place to find creative work that has been licensed to share for free is the Creative Commons website.

[Show the Creative Commons webpage: <http://creativecommons.org/about>]

PLAY VIDEO: Play one of the Creative Commons videos," available at www.copyrightandcreativity.org/Lesson-4 or the G-Suite link below.

4.4	Creative Commons, "Wanna Work Together"	2:30	https://drive.google.com/open?id=191b-gBYnCP87i-X21ICRNHJBNYqr9FoK
4.5	Creative Commons, "A Shared Culture"	3:20	https://drive.google.com/open?id=19PszPABfluRN3GJcqlBmr4WmY_1W_0t

[Show students the different licensing icons. Explain two or three icons specifically.]

Show the Flickr CC search options: <https://www.flickr.com/creativecommons/>]

Royalty Free Licensing

You can also pay a fee to license creative work from commercial sites, such as [iStockphoto](#) or [shutterstock](#) for images; [AudioJungle](#) or [PremiumBeat](#) for music.

[Click around one of these licensing sites and point out the watermark that shows a claim of ownership. In the audio samples, you will hear the soundmark over the audio track.]

When you pay for a photo, video, or sound file through a licensing site, you receive a clean copy that you can use in your own work, according to the license.

Activity: Sharing Through Creative Commons

Divide class into small working groups. Distribute Handout— LESSON 4: Handout, “Creative Commons Licenses.”

INSTRUCTIONS: Choose a creative work that you made (photo, song, video, poem, drawing, painting). Consider the CC licenses below. If you were going to post your work for others to use, which license would you choose? Why? Share with your group.

Direct Permission

Sometimes, if you want to use a work and it isn't a fair use situation or Creative Commons licensed, you have to ask the artist directly.

Here's a great example of an artist who wanted to use someone else's work in her own creation and asked for permission. Layla McCalla's album is a tribute to poet Langston Hughes and combines his poetry with her musical compositions.

PLAY VIDEO: Layla McCalla Kickstarter Campaign Video: “Vari-Colored Songs,” available at www.copyrightandcreativity.org/Lesson-4

4.6	"Vari-Colored Songs—Layla McCalla Kickstarter"	3:31	https://drive.google.com/open?id=17xG7goDe9Yd35pN-vCiq04RZdXXr-Kx3
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What do you think about her project? Is it creative?

[Accept open responses.]

Why do you think she wanted to use Langston Hughes' poems?

[Accept open responses:]

- *She was inspired by his messages.*
- *Everyone loves Langston Hughes.*
- *He was a brilliant poet.*
- *They had shared interests.*
- *Maybe she wanted to bring his poetry to new audiences, to increase his exposure.]*

It's important to remember, even when we want to copy someone's work for the purpose of honoring it, we still need to ask permission from the creator if the work is copyrighted and our use is not a fair use.

Case Study: "Who Needs You" by the Orwells + Apple's iPad Air II TV Advertisement

PLAY VIDEOS: Available at www.copyrightandcreativity.org/Lesson-4 or at the G-Suite links below.

4.7	The Orwells - "Who Needs You"	1:20	https://drive.google.com/open?id=1A8eOl3dsW7wkW1neFRfuyTzquXrZDJEi
4.8	iPad Air Ad - "Change"	1:00	https://drive.google.com/open?id=1CilE7z68GHI2iEXIzXmhlHHnnamLtYnz

In the iPad Air advertisement, Apple got permission from the Orwells to use their song. Apple may have paid a licensing fee or maybe the Orwells gave permission without a fee because the ad would give them new media exposure. Either way, Apple had to get permission to use the Orwells' song in an ad. Do you think this is fair? *[Accept responses.]*

How can an artist benefit from giving permission for someone else to use or copy his/her creations?
[Accept responses. Remind students of Layla McCalla licensing agreement with the Langston Hughes' Estate.]

Think of some situations where you might be interested in letting someone else use all or part of your work in their own creations.

Just for fun: look at the original song video again.

[Play again the short clip of the music video.]

This video has many images. Do you think they were all licensed or could some of them be from the public domain or examples of fair use?

[Accept responses. Discuss the following:]

1. *Portrait of Thomas Jefferson: Public Domain*
2. *Photos from 1800s: Public Domain*
3. *Elvis: could be licensed or fair use.*

Case Study: "Eye of the Tiger"

Sometimes when we ask permission, the artist says, "No." What do you think of that?

[Accept responses. Remind students that the purpose of copyright is to encourage more creative work by allowing authors and artists to benefit from and have some control over their work.]

How many of you have seen an old movie from the 80s, *Rocky III*? *[Accept responses.]* Do you remember this song "Eye of the Tiger" used in that movie? *[Accept responses.]*

PLAY VIDEO: *Survivor, "Eye of the Tiger,"* available at www.copyrightandcreativity.org/Lesson-4 or at the G-Suite link below. **Play only 30-60 seconds of the song.**

4.9	Survivor, "Eye Of The Tiger" (Not necessary to play the whole song.)	4:10	https://drive.google.com/open?id=1s8hVgzX_Kvw4qSsadPv9C1YhmqifHeoT
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The song was written specifically for that movie. But originally, Sylvester Stallone asked *Queen* if he could use their famous hit: "Another One Bites the Dust." Queen said, "No," so Stallone found a different method for getting the "perfect" song. If an artist says, "No," it does not mean the project is over. "No" just means the

project continues in a different direction. In this case, the direction-change produced a new, iconic song, “Eye of the Tiger.” What do you think about that?

[Accept responses. In this case, not getting permission caused new work to be produced.]

Activities

Choose one or both:

Permission Activity 1: Students seek permission from an artist to use their work:

1. Ask the students to choose a copyrighted song, movie, or image they’d like to use in one of their own projects.
2. Ask the students to write a letter to the creator of that song, movie, or book asking for permission. This exercise will work especially well if students are creating a proposal for a project they’re already working on.
3. Emphasize that obtaining permission will hinge on effectively persuading the creators that they should let the students use their work. The students should describe their project clearly, in succinct detail. The students should also explain how granting permission could benefit the artist (publicity, etc.), or propose some compensation model.
4. NOTE: The students may choose to contact celebrity artists, but they may also want to contact artists via Flickr or social media used by the artist (this may strengthen their chances for communication/permission).

Permission Activity 2: Role Play a Negotiation (Students Practice Licensing a Work)

1. Use **LESSON 4: Handout—“Role Play a Negotiation”** (or type your own examples) to show a list of famous artist/creators and one of their works (e.g. The Beatles — “I Wanna Hold Your Hand”; Suzanne Collins — The Hunger Games; John Lasseter—Toy Story 3. Cut the list into strips.
2. Use handout (or type your own) to show a list of organizations, companies, and other interested parties (e.g. Alicia Keys, Warner Bros, a recent candidate for president). Cut into strips.
3. Assign half of the room the role of “artist” and half of the room the role of “interested party.” Have them draw a slip from the “artist” and “interested party” piles respectively.
4. Ask the “interested party” students to think of a way they would like to use one “artist’s” work. For example, one student might represent Coca-Cola, who wants to use words and images from Suzanne Collins’ Hunger Games in a new advertisement; one student might represent Taylor Swift who wants to use images from Toy Story 3 in her new music video. Have the interested parties make “offers” for the work.
5. The artists can accept the offer (with justification for doing so), adjust the offer (negotiate), or refuse the offer.
6. Reverse roles.

Public Domain

When we need creative work that is free to use, we can also use work that’s in the public domain. What is the public domain?

[Remind students that they learned about the public domain in Lesson 1. All the creative work that is not currently subject to copyright protection is part of the public domain. This includes works for

which the copyright has expired and works to which copyright never applied in the first place, such as government documents.]

Creative works in the public domain are free for everyone to use.

Case study: 1812 Overture

The public domain is full of a rich history of art and music. Works from the public domain are used, and re-used, and remixed for new creative work by many people throughout history, and you are free to do the same. You don't need permission.

But, how do we find works in the public domain? It's really easy! There are several sites that catalog creative work that is in the public domain. You can search Google for these sites on your own. We'll look at a few so you know what to expect.

Show students 3-4 of the following sites. For each site, point out where the public domain information is located.

Public Domain Music

PD Info: <http://www.pdinfo.com/public-domain-music-list.php>

Classic Cat: <http://www.classiccat.net>

Public Domain Photos/Images

Flickr Commons: <http://www.flickr.com/commons>

Public Domain Films

US National Archives: https://archive.org/details/feature_films

Library of Congress: <http://www.loc.gov/rr/mopic/pubdomain.html>

Open Culture: http://www.openculture.com/free_hitchcock_movies_online

Public Domain Literature

Gutenberg project: <http://www.gutenberg.org/>

Wordsworth: <http://rmc.library.cornell.edu/collections/wordsworth.html>

Poe: <http://norman.hrc.utexas.edu/poedc/>

OPTIONAL: Explore with students the "Public Domain Slider" which determines if the copyright on a work has expired and the work has become part of the public domain:

Public Domain Slider: <http://librarycopyright.net/resources/digitalslider/>

Activity: Public Domain Search

Ask students to find images in the public domain to illustrate a paper they're writing for your class or one of their other classes.

Activity: Finding Creative work

(Fair Use, Creative Commons, Public Domain)

Split class into groups of 2-3. Assign each group to prepare a presentation on a topic relevant to your class curriculum (or a topic of their choice).

- *Each group must find 5 images to use in the presentation.*
 - *2 images from the public domain*
 - *2 images licensed for use through Creative Commons*

- 1 image protected by copyrighted
(NOTE: Your use of the copyrighted work for this classroom project counts as a fair use.)
- All borrowed materials should be attributed to the original creator (i.e. cite your sources)! Even though attribution is not required by copyright law, it's part of being an ethical student and avoiding plagiarism.
- All materials with Creative Commons licenses should follow the terms of the license, including attribution. Show the license icon with attribution.

Wrap Up

We can be inspired by all the creative work around us. When we use others' work to make our own new creative work, we want to be fair. Be a savvy digital citizen by asking yourself:

- Who owns this work?
- Is this a fair use situation where it would be okay for me to use it without permission?
- Should I contact the artist/owner for specific permission?
- Would it be better for me to find a work from the public domain or with a Creative Commons license?

END

If you are using these resources in the classroom, please let us know!

www.CopyrightandCreativity.org/feedback



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LESSON 4: Handout—"Role Play a Negotiation"

Instructions for Students:

You and a partner are going to role play a negotiation between an artist (owner) and an "interested party"—an organization, business, or person interested in buying the rights to use the creative work. One of you will be the artist, and one of you will be the interested party.

If you are the interested party, think of a creative way to use the artist's work. For example, maybe you're Coca-Cola and you want to use words and images from Suzanne Collins' *Hunger Games* in a new advertisement. Or, maybe you're Taylor Swift and you want to use images from *Toy Story 3* in your video. Make an offer for the artist's work: what will the artist receive in compensation? Will it be money or perks? A combination of both?

If you are the artist, accept or reject the offer (with justification for doing so), or negotiate to adjust the offer.

ARTIST/CREATORS	INTERESTED PARTY
(Someone who owns an original work that might be licensed by an "interested party")	(An organization or business or person interested in buying the rights to the creative work.)
The Beatles — "I Wanna Hold Your Hand"	Alicia Keys
Suzanne Collins — The Hunger Games	A large motion picture studio (Warner Bros, Pixar, etc.)
John Lasseter — Toy Story 3.	A small independent filmmaker
J.K. Rowling — Harry Potter Series	Nike
Bruno Mars — "Just the Way You Are"	Coca-cola
Beyonce — "Halo"	McDonald's
Katy Perry — "Roar"	Apple
[Choose your own.] _____	A candidate for President of the United States.
[Choose your own.] _____	The school principal
[Choose your own.] _____	Will Smith
	Oprah Winfrey
	[Choose your own.] _____
	[Choose your own.] _____
	[Choose your own.] _____