Approaches to fair dealing in an open internet space, and the value of a CC license as a copyright tool.

Outside of the protection of our Course Reserve or CMS systems, which provide a level of security that bolster any interpretation of fair dealing, we also have a role in promoting the responsible use of fair dealing beyond closed classroom settings. The following scenario looks at the importance of context and risk, along with the 'purpose' and 'factors' that help users decide upon the limits of sharing before permissions need be requested. Ultimately any discussion about copyright in this type of setting needs to be guidance as opposed to direction.

Instructor: I have an idea for a project that will incorporate popular cultural images and academic analysis in an openly accessible blog. I want to open up this project to fellow colleagues across Canada, and possibly the US, and know that permission needs to be acquired before I can make these entries public, should I get each submitter to clear their own permissions?

(Context: I had previously spoken to this person reviewing a potential book contract with a prominent publisher who applied the customary restrictive interpretation of any third-party materials to new published content and that discussion involved comparing our Universities Canada based guidelines and the lack of fair dealing limits use by the publisher)

Staff: That sounds like a great project. Can you tell me more about the intended audience and long-term use of the works that will be created by the blog? (Good to get these details on paper through email correspondence when possible.)

Instructor: Not sure where it will end up, but we want a space where we can collaborate on the interesting ties between what we see on television or movies and its roots in science. The ultimate goal is to be able to use this as a teaching resource but not limited our respective classes, we hope to share this resource with interested researchers and discipline enthusiasts.

Staff: I am happy to help point out and discuss the significant part of the Act, and any relevant information from past cases that looked at this type of sharing. In the end, the decision to make copies of another person's work will be your decision. (At this point, it is often helpful to encourage a telephone conversation to maintain discussion level interaction rather than putting details on paper that may apply to this situation but not the next)

In this case our previous conversation about perspectives of fair dealing was very helpful in identifying the different perspective that publishers, educational institutions and creator/users find themselves when creating new material. (As usual, we diverged into the slippery slope of the York case, but understanding each perspective helped this conversation). We were then able to consider all of the different 'industry standards' and apply these general rules to the specific type of intended use. The following were identified as the different possible uses:

    1) showing the image in class

2) making the image available to students registered in the course on a password protected site (D2L)

3) integrating the image in a document to be distributed or made available to others, e.g. within a paper in an education journal or as part of a repository of educational resources (for the latter, would it make a difference if access was restricted, i.e. if the sites password were only shared with people who teach the related topic?)

The first two scenarios were straightforward when applying our own institutional policy, paying close attention to the digital lock and circumvention rules; however, the third scenario was outside the guidelines and institutional responsibility. The first thought that comes to mind is "where can I find and direct contributors to open content?". While this is generally the safest avenue to take when creating new documents that will be posted online with no restriction, this is not the only option, or the most responsible for us to always rely. For this example, and many other similar questions, the Creative Commons licensing tool is an invaluable approach that stresses the value of identifying how a creator wishes the document to exist going forward, and underlines the fact that the creator is taking responsibility for using other's work in a significant way. After a creator has looked through the Creative Commons site and become familiar with the different licensing options available it is also much easier to frame the discussion as guidance rather than direction. The Creative Commons site is very user friendly and provides a lot of resources that guide creators in how to choose the best license that will work for the specific material.

https://wiki.creativecommons.org/wiki/Marking_your_work_with_a_CC_license