



**COMMUNITY  
CLASSROOM**

ENGAGING STUDENTS AND TEACHERS THROUGH FILM



# COPYRIGHT CRIMINALS

BY **BENJAMIN FRANZEN** AND **KEMBREW MCLEOD**



## EDUCATOR GUIDE

Can you own a sound? As hip-hop rose from the streets of New York to become a multibillion-dollar industry, artists such as Public Enemy and De La Soul began reusing parts of previously recorded music for their songs. But when record company lawyers got involved everything changed. Years before people started downloading and remixing music, hip-hop sampling sparked a debate about copyright, creativity and technological change that still rages today.

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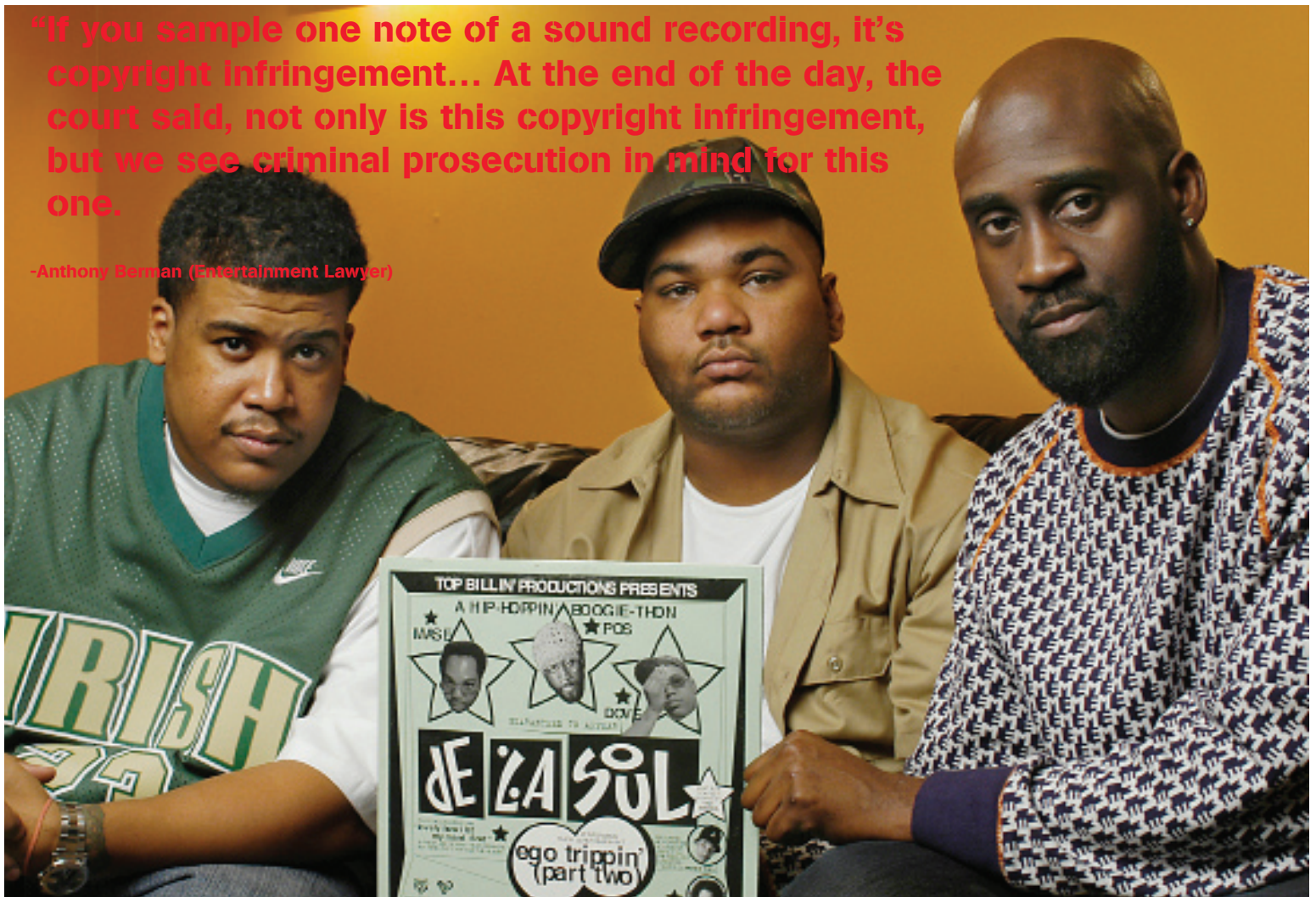
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# Activity 2

Can You Own a Sound?  
(90-120 min + assignments)

**"If you sample one note of a sound recording, it's copyright infringement... At the end of the day, the court said, not only is this copyright infringement, but we see criminal prosecution in mind for this one."**

**-Anthony Derman (Entertainment Lawyer)**



# Activity 2

## Can You Own a Sound? (90-120 min + assignments)

**Subject areas:** Social Studies, Civics, Government, Sociology, Language Arts, Economics, Ethics, Law, Business, Media Studies

### Lesson Purpose:

Copyright law developed over time to protect intellectual property of artists and creators. As sampling in hip-hop grew into both a cultural and economic force, the music business evoked copyright laws to protect the recordings they own. This lesson looks at the ways that artists borrow and appropriate in the creative process across mediums. Students will take a look at the issue from both sides and debate whether or not “copying” should be allowed.

### Objectives:

Students will:

- Learn about copyright law and the exception of fair use.
- Investigate artistic appropriation in visual art, film, and literature, as well as in music.
- Prepare and present a debate with their classmates.

**Skills:** Stating and supporting opinions in class discussions and in writing; analytical reading and viewing; note taking; interpreting information and drawing conclusions; critical thinking; identifying cause and effect; identifying relationships and patterns; creating various forms of media

### Materials:

- Computers with Internet. LCD projector or DVD player
- **COPYRIGHT CRIMINALS Discussion Guide**
- **COPYRIGHT CRIMINALS Film Module 2 “Can You Own a Sound?”**
- Whiteboard/markers, or chalkboard/chalk
- **Student Handout A:** Module 2 Note Taking Guide
- **Student Handout B:** Quotes
- **Student Handout C:** Debate Roles & Format
- **Student Handout D:** Debate Notes
- **Student Handout E:** Debate Peer Evaluation Rubric

**Note to Teachers:** For your own background information and preparation, there are good reference primers for copyright law and fair use on the Teaching Copyright website (<http://teachingcopyright.org>) and in the article “Copyright for Educators” on the KOCE (PBS) website (<http://www.koce.org/classroom/copyright.htm>). You may want to give additional “intro” lessons using these materials if your class needs more background and context.

### Procedures:

#### PREVIEWING ACTIVITY:

##### 1. Introducing Copyright Law & Music:

Ask the class if it is anyone’s birthday. If not, ask who will be having a birthday soon. Invite the class to sing “Happy Birthday to You.” After singing, read the articles “How Long Do Copyrights Last?” and “The Copyright



Term Extension Act of 1998” from the Sampling Law website (<http://superswell.com/samplelaw/main.html>) to the class. Have students respond to the following:

- I was/was not surprised to hear that “Happy Birthday to You” is copyrighted because...
- The composers of the song should/should not receive royalties because...
- Anyone should/should not be able to sing and use this song for free because...

## 2. Borrowing vs. Stealing:

Have students read “Something Borrowed” by Malcolm Gladwell from The New Yorker website ([http://www.newyorker.com/archive/2004/11/22/041122fa\\_fact](http://www.newyorker.com/archive/2004/11/22/041122fa_fact)). (Note: “The ecstasy of influence: A plagiarism” by Jonathan Lethem (<http://www.harpers.org/archive/2007/02/0081387>) can be used as an additional reading with similar arguments using different examples).

Discuss the following with the class:

- Gladwell gives many examples of artistic appropriation, from literature to journalism to music. Do you agree that many artists borrow as a fundamental part of the artistic/creative process? Should artists have the freedom to do so?
- Gladwell makes a distinction between borrowing that is derivative versus borrowing that is transformative. Is one wrong and the other right? How can we tell the difference and who ultimately determines that?
- What other examples of artistic appropriation can you think of?

## 3. The Fair Use Exception:

Instruct students to read about fair use as related to borrowing from copyrighted works on the Sampling Law website (<http://www.superswell.com/samplelaw/fairuse.html>). Discuss and clarify what fair use means and what is deemed fair use. Introduce the case of the Associated Press vs. Shepard Fairey, the artist who created the iconic Obama “Hope” poster which became ubiquitous during the 2008 Presidential campaign. The AP filed a lawsuit against Fairey claiming copyright infringement because he used an AP-owned photograph as a reference. Have students read and refer to this op-ed piece from *The Huffington Post* ([http://www.huffingtonpost.com/jonathan-melber/the-ap-hase-no-case-again\\_b\\_165068.html](http://www.huffingtonpost.com/jonathan-melber/the-ap-hase-no-case-again_b_165068.html)), which includes references and visual examples from other cases such as Blanch vs. Koons. Fairey also speaks about the case on his own website (<http://obeygiant.com/headlines/the-ap-obama-referencing#reference1>). Take a quick thumbs-up/thumbs-down poll to find out if the class thinks that Fairey did indeed infringe upon the AP’s rights to the image he used.

Discuss the following with the students:

- If you would find Fairey guilty of copyright infringement, explain why.
- If you would judge Fairey’s poster as falling under the fair use exception, explain why.
- Should Fairey have given credit to the photograph he referenced when he first distributed his poster? Why or why not?
- Should the AP pursue the lawsuit even if the photographer himself does not see Fairey’s use as illegal? Explain.
- Should the AP and/or the photographer be compensated for the use of the photograph as a reference? Why or why not?
- Is there any difference between a visual artist using a photograph for reference and a musical artist using a sample of a sound recording?

## 4. Provide Background Information on COPYRIGHT CRIMINALS:

Briefly introduce the film *Copyright Criminals*. Note how the film module will cover how artists have referenced and appropriate other works in music, visual art, and film. Have students read and discuss **COPYRIGHT CRIMINALS Discussion Guide** page 2, which features the filmmakers talking about how they encountered and dealt with copyright issues in creating the film itself. There is a related interview with the filmmakers on the *Independent Lens* website (<http://www.pbs.org/independentlens/copyright-criminals/makingof.html>). Have them also read “Copyright Overview” and “What is Fair Use?” on page 4 of the **Discussion Guide**.





**VIEWING THE FILM:**

**5. Viewing the Film Module:** Instruct students to take notes on **Student Handout A: Module 2 Note Taking Guide** as they view the **COPYRIGHT CRIMINALS Film Module**, recording the views of the different speakers in the module. After watching, give students time to note whether the speaker is for or against sampling and other forms of artistic appropriation.

**REFLECTING ON THE FILM:**

**6. Review and Discuss:** Debrief the module and notes by discussing them together as a class. Have students review the **Student Handout B: Quotes** before the discussion. Use the following guide questions:

- Should sampling someone else's music – even one note – without permission be an offense suitable for criminal prosecution? Why or why not?
- Who do you agree with the most in the film module? Who do you most disagree with? Explain.
- How did the early cases of sample lawsuits in the 1990s change the way hip-hop producers approached sampling in subsequent decades?
- How is race involved in the sample clearance/copyright industry?
- What is a fair rate to charge for sampling someone's music with permission?
- Should sampling be treated differently from covering a song in terms of copyright law and clearance? Why or why not? If so, how?
- What, if any, are the exceptions for when "copying" is acceptable?

**7. Debate Preparation:** Review copyright law and fair use with the class and explain that the students will debate whether artists should have the ability to "borrow" freely in the process of creation. Organize students into groups of four to six, with groups being either "PRO" artistic and creative freedom or "CON." The "PRO" side can also refer to the *Independent Lens* interview with legal scholar Larry Lessig (<http://www.pbs.org/independentlens/copyright-criminals/fair-use.html>), and both sides can benefit from the *Independent Lens* "Learn More" page (<http://www.pbs.org/independentlens/copyright-criminals/more.html#copy>). Distribute and review **Student Handout C: Debate Roles & Format** and have groups decide each member's role(s). Then, direct groups to prepare their arguments and statements using **Student Handout D: Debate Notes**. They should research and prepare examples to support their side: from the film or readings, or from further research.

**8. Assignment - Debate:** Arrange the classroom into a debate-audience format with two sides facing each other in front of the rest of the class. Review the expectations with the criteria outlined on **Student Handout E: Debate Peer Evaluation Rubric**. Moderate the debate by following the debate format. Debrief by discussing the persuasiveness of the arguments and whether or not there can be a compromise or a way for the system to allow and encourage creativity, while at the same time protecting the rights of the creators.

**Assessment**

Direct students in the audience to assess their classmates in the debate groups using **Student Handout E: Debate Peer Evaluation Rubric**. You can also use the same rubric to do a teacher evaluation of the debate groups.

**Extension activities for students:**

1. Host a round-table discussion with individuals who are local resources on the subject of copyright: artists, musicians, lawyers, musicologists. Prepare questions and record responses from these "experts."
2. Using visual art, music, literature, or other areas of artistic expression, create a piece that draws from and appropriates an existing work. Have the artist explain their intentions, how it differs from the referenced work, how and why they used the previous work, and how their experience was in creating the work.



3. Research the current state of copyright law. What groups or organizations want stronger copyright and intellectual property laws and why? How are they going about their cause? On the other side, what groups or organizations want greater artistic freedom within the law? How are they fighting to get it?
4. Research and prepare a presentation of artists who have referenced or appropriated other art in their works. Have the class evaluate whether or not the works are transformative or derivative. The class could develop criteria to make such a determination.
5. Research the creativity, legality and value of the DJ “mixtape.” Good starter articles include this piece on the RIAA raid of the Atlanta studio of DJ Drama in 2007 (<http://www.reuters.com/article/idUSN2135284520070123>), and this piece on “artist mixtapes” as a means to break into the industry (<http://www.reuters.com/article/idUSTRE60T0K820100130>). A good resource for a wide range of DJ mixes is Mixcrate (<http://mixcrate.com>).

### Recommended National Standards

#### MID-CONTINENT RESEARCH FOR EDUCATION AND LEARNING STANDARDS

##### Career Education

##### *Business Education*

- Standard 6. Understands how the legal system affects business
- Standard 34. Understands the role of ethics in the business world

##### Civics

- Standard 3. Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good

#### NATIONAL COUNCIL FOR THE SOCIAL STUDIES

##### V. Individuals, groups, & institutions

- V.a. Apply concepts such as role, status, and social class in describing the connections and interactions of individuals, groups, and institutions in society;

##### VII. Production, distribution, & consumption

- VII.b. Analyze the role that supply and demand, prices, incentives, and profits play in determining what is produced and distributed in a competitive market system;

##### VIII. Science, technology, & society

- VIII.a. Identify and describe both current and historical examples of the interaction and interdependence of science, technology, and society in a variety of cultural settings;

##### X. Civic ideals & practices

- X.d. Practice forms of civic discussion and participation consistent with the ideals of citizens in a democratic republic;

#### INTERNATIONAL SOCIETY FOR TECHNOLOGY IN EDUCATION

##### Standard 5: Digital citizenship

- Students understand human, cultural, and societal issues related to technology and practice legal and ethical behavior



**Student Handout A: Module 2 Note Taking Guide***Note which perspective (can be both):*

Speaker	Views on sampling and music	Against sampling	In favor of sampling
Greg Tate (music critic)			
De La Soul (music group)			
Jeff Chang (music writer)			
Siva Vaidhyanathan (media professor)			
Ken Freundlich (entertainment lawyer)			
Other:			
Other:			

*Reflect using this sentence stem:*

The speaker I agree the most with is \_\_\_\_\_, because \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Student Handout B: Module 2 Quotes**

*Well, I think that once people who held music copyrights got wise to how much money hip-hop was making, then it became kind of a feasting frenzy.*

-Greg Tate (music critic)

*If you sample one note of a sound recording, it's copyright infringement... At the end of the day, the court said, not only is this copyright infringement, but we see criminal prosecution in mind for this one.*

-Anthony Berman (entertainment lawyer)

*We never anticipated, like, getting someone to pay for James Brown going "eh-huh" and that's it.*

-Harry Allen (Public Enemy)

*For me, I felt like, wow, we're popular now. I'm getting sued by somebody I don't even know.*

-Mase (De La Soul)

*On 3 Feet High and Rising, they told us what the samples were on the record and we cleared them all. They didn't tell us about the Turtles one. And that's what usually happens is they say – oh, it's not – you know, we changed the speed. It's an unknown song. It's only this amount. Those are the ones that get you at the end.*

-Tom Silverman (Tommy Boy Records)

*Because we always felt like, you know, when you're creating, you create, you know? Whatever you decide that you want to use, you know, you use to create your own particular vibration your own way. And that to me was kind of like an unwritten code within the hip-hop world.*

-Hank Shocklee (Public Enemy)

*We kind of looked at music as an assemblage of sounds and we felt that you couldn't copyright a sound.*

-Chuck D (Public Enemy)

*Once people in the industry got wind of the fact that the courts were not interested in listening to young black men describe their creative processes, they had no tolerance for that, a new industry emerged – the industry of sampling clearances. That meant that groups like Public Enemy could no longer make their powerful sounds in the way they wished to.*

Siva Vaidhyanatha (media professor)

*When you are going through a rights clearing process you really need to identify all the different people who own all potential elements of that particular sample or musical element and make sure that they have agreed to what you want to do. And that can be very time consuming, because there's a lot of people involved in making music.*

-Mia Garlick (Creative Commons)

*Our Copyright Act was basically last rewritten in 1976. So, we're operating with a lot of antiquated assumptions about what musical creativity is.*

-Joanna Demers (musicologist)

*It is cheaper, easier, and more predictable, if you want to cover somebody's song entirely, than if you want to take three seconds of somebody's song. That doesn't make any sense. Why should an entire song be easier and cheaper to do than three seconds of somebody's song?*

-Siva Vaidhyanatha (media professor)



*Records like, It Takes a Nation of Millions to Hold Us Back and 3 Feet High and Rising, they're kind of like artifacts of an earlier time, records that couldn't exist today. They're just legally and financially untenable.*

-Harry Allen (Public Enemy)

*There are rules of the game, and it's copyright. You have to get permission. You know, I can't go and walk on your – I can't walk in your house and just sit down on your couch and go to your refrigerator and take a glass of milk out. I mean, there are rules.*

-Ken Freundlich (entertainment lawyer)

**Student Handout C: Debate Roles & Format****I. Roles**

Position: Pro/Con

*Step 1 – Decide who is going to take on which role:*

Round	Role	Name
1	Opening statement	
2	Point 1 + respond to counterarguments	
3	Point 2 + respond to counterarguments	
4	Point 3 + respond to counterarguments	
5	Final rebuttal	
6	Closing statement	
2,3,4	Designated "counterarguer"	

**II. Format**

4-6 Pro Students vs. 4-6 Con Students

6 rounds

Coin flip to see which group goes first

<b>Round 1</b>	Pro opening statement (1 minute)	Con opening statement (1 minute)
<b>Round 2</b>	Pro 1st point (3 minutes)	Con rebuttal (3 minutes)
<b>Round 3</b>	Pro 2nd point (3 minutes)	Con rebuttal (3 minutes)
<b>Round 4</b>	Con 1st point (3 minutes)	Pro rebuttal (3 minutes)
<b>Round 5</b>	Con 2nd point (3 minutes)	Pro rebuttal (3 minutes)
<b>Round 6</b>	Pro closing statement (1 minute)	Con closing statement (1 minute)

**Student Handout D: Debate Notes****My team is: Pro/Con****Opening Statement**

The presenter responsible for the opening statement will gather the main arguments into an introductory statement (a thesis statement). It does not give specific information; it only states, "The death penalty should be kept as a form of punishment because of A and B (state your two arguments)."

**Argument #1**

The assigned presenter for Argument #1 will give the first argument for the team. Give specific details and evidence based on your research that **proves** your group's position (pro or con).

Here is an example:

Reason	Milkshakes are unhealthy because they contain a lot of sodium.
Evidence	According to the nutritional fact sheet for In-N-Out Burger, a vanilla shake contains 390mg of sodium compared to a large fries which contain 245mg.
Interpretation	High sodium in your diet has been linked to high blood pressure, heart attacks, strokes, and other health problems later on in life.

Reason	
Evidence	
Interpretation	

## Argument #2

The assigned presenter for Argument #2 will give the second argument for the team. Give specific details and evidence based on your research that **proves** your group's position (pro or con).

Reason	
Evidence	
Interpretation	

## Possible Rebuttals

These two presenters will respond to the other team's arguments. These presenters must take notes as the other team is presenting their arguments and respond to every argument, using specific and detailed information to **disprove** them. You do not know which arguments they will use, so prepare several possible rebuttals to be ready.

Possible Argument from other team	Rebuttal

Argument (cont.)	Rebuttal (cont.)

**Closing Statement**

The assigned presenter for the closing argument will say the final words. State the closing arguments for the team, repeating the main reasons for your arguments 1 and 2.

**Notes (optional)**



**Student Handout E: Debate Notes**

My team is: **Pro / Con**

**Opening Statement**

This presenter will gather the main arguments into an introductory statement (a thesis statement). It does not give specific information; for example, it only states, "The death penalty should be kept as a form of punishment because of A and B (state your two arguments)."

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**Argument #1**

This presenter will say the first argument for the team. Give specific **details and evidence** based on your research that **proves** your group's position (pro or con).

Here is an example:

<b>Reason</b>	<i>Milkshakes are unhealthy because they contain a lot of sodium.</i>
<b>Evidence</b>	<i>According to the nutritional fact sheet of In-N-Out Burger, a vanilla shake contains 390mg of sodium compared to a large fries which contains 245mg.</i>
<b>Interpretation</b>	<i>High sodium in one's diet has been linked to having high blood pressure, heart attacks, strokes and other health problems later on in life.</i>

<b>Reason</b>	
<b>Evidence</b>	
<b>Interpretation</b>	

**Student Handout E: Debate Peer Evaluation Rubric**

Observe and score both teams.

Team: **PRO**

For each score you give the team, you must write evidence for why you think they deserve it.

Criteria (how well they did in the following:)	1 – Developing	2 – Proficient	3 – Commendable
1) Clarity of communication -Easy to understand -Clear -Volume level			
2) Validity of argument -Strength of their argument -Thoughtful, logical -Evidence, interpretation			
3) Professional presentation -Dressed well -Eye contact -Organized & prepared			
4) Opening / Closing -Covered scope & context -Summarize & inform			
5) Counterargument -Refute evidence -Strong challenges and counter-reasons			

Total Points for PRO team: \_\_\_\_\_

Team: **CON**

For each score you give the team, you must write evidence for why you think they deserve it.

Criteria (how well they did in the following:)	1 – Developing	2 – Proficient	3 – Commendable
1) Clarity of communication -Easy to understand -Clear -Volume level			
2) Validity of argument -Strength of their argument -Thoughtful, logical -Evidence, interpretation			
3) Professional presentation -Dressed well -Eye contact -Organized & prepared			
4) Opening / Closing -Covered scope & context -Summarize & inform			
5) Counterargument -Refute evidence -Strong challenges and counter-reasons			

Total Points for CON team: \_\_\_\_\_

**GUIDE CREDITS****CURRICULA WRITER****David Maduli**

David Maduli is an independent educational consultant who has contributed many curriculum guides and conducted various workshops for PBS programs. He has a master's in teaching and curriculum from Harvard Graduate School of Education and continues to work as a veteran Bay Area public school language arts and social studies teacher. He is also a DJ and a writer.

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**About ITVS:**

The Independent Television Service (ITVS) funds and presents award-winning documentaries and dramas on public television, innovative new media projects on the Web and the Emmy Award-winning weekly series *Independent Lens* on Tuesday nights at 10 PM on PBS. ITVS is a miracle of public policy created by media activists, citizens and politicians seeking to foster plurality and diversity in public television. ITVS was established by a historic mandate of Congress to champion independently produced programs that take creative risks, spark public dialogue and serve underserved audiences. Since its inception in 1991, ITVS programs have revitalized the relationship between the public and public television, bringing TV audiences face-to-face with the lives and concerns of their fellow Americans. More information about ITVS can be obtained by visiting [itvs.org](http://itvs.org). ITVS is funded by the Corporation for Public Broadcasting, a private corporation funded by the American people.

**About *Independent Lens*:**

*Independent Lens* is an Emmy® Award-winning weekly series airing Tuesday nights at 10 PM on PBS. Hosted this season by Maggie Gyllenhaal, the acclaimed anthology series features documentaries and a limited number of fiction films united by the creative freedom, artistic achievement and unflinching visions of their independent producers. *Independent Lens* features unforgettable stories about a unique individual, community or moment in history. Presented by ITVS, the series is supported by interactive companion websites, and national publicity and community engagement campaigns. Further information about the series is available at [pbs.org/independentlens](http://pbs.org/independentlens). *Independent Lens* is jointly curated by ITVS and PBS, and is funded by the Corporation for Public Broadcasting (CPB), a private corporation funded by the American people, with additional funding provided by PBS and the National Endowment for the Arts. The series producer is Lois Vossen.

**About PBS:**

PBS is a media enterprise that serves 354 public noncommercial television stations and reaches almost 90 million people each week through on-air and online content. Bringing diverse viewpoints to television and the Internet, PBS provides high-quality documentary and dramatic entertainment, and consistently dominates the most prestigious award competitions. PBS is a leading provider of educational materials for K-12 teachers, and offers a broad array of other educational services. PBS' premier kids' TV programming and Web site, PBS KIDS Online ([pbskids.org](http://pbskids.org)), continue to be parents' and teachers' most trusted learning environments for children. More information about PBS is available at [pbs.org](http://pbs.org), one of the leading dot-org Web sites on the Internet.

