The CCCC-IP Annual:
Top Intellectual Property Developments of 2010

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Table of Contents

Clancy Ratliff

Introduction to the 2010 CCCC-IP Annual

Like every year in recent memory, 2010 presented new developments in intellectual property and copyright: new situations and updates to ongoing ones. This year's Conference on College Composition Communication Intellectual Property Annual -- our sixth issue -- features several articles that track ongoing matters, such as the Georgia State case, the Digital Millennium Copyright Act, and even the tricentennial of the Statute of Anne, which was the first copyright law. It also shows us interesting new cases such as the infringement of a food blogger's copyright and its public aftermath and the appropriation of Hurricane Katrina survivors' oral histories as "found poetry." These articles are only some of the great work in this collection. On behalf of the CCCC Intellectual Property Committee, I hope you'll read this year's annual and come away from it more informed about some of the previous year's additions to the intellectual property landscape.

Devon Fitzgerald

What Gets Lost in Found Poetry?
Saltwater Empire and Hurricane Katrina Survivors' Oral Histories

In late 2009, UK Poet Laureate Andrew Motion came under fire after publishing a poem titled *An Equal Voice* in which he used quotations from Ben Shephard's out of print text, *A War of Nerves*, an exploration of military psychiatry via soldiers' diaries, letters, medical charts and patient interviews. Despite the fact that he attributed the source and made it clear in his prologue that the quotes were from Shephard's work, charges of plagiarism and unethical behavior abounded. Last year, Raymond McDaniel's poetry collection *Saltwater Empire* received criticism for using (without permission) narratives of Hurricane Katrina survivors excerpted from interviews conducted by Abe Louise Young for the organization *Alive in Truth: The New Orleans Disaster Oral History & Memory Project* and published on their website. In both cases, the poets claimed to be writing in the genre of found poetry.

According to Poets.org, found poetry involves using existing text in poetic form. Found poems can include text from practically any source: graffiti, road signs, speeches, letters, novels, and even Facebook status messages. Found poetry purists do not add their own words but will drop pieces of the original text to create new meaning. For many poets, found poetry creates new relationships of language and sound and serves as inspiration or as a writing exercise. Most found poems are not published because magazines, journals and publishing companies are concerned with intellectual property and copyright issues. In line with copyright law and fair use guidelines, you can create new works from existing works without written permission from the copyright holder as long as the source is credited. Citation is thus the legal responsibility, but what about the ethical one?

Raymond McDaniel's book, *Saltwater Empire*, includes a series of six poems entitled "Convention Centers of the New World" composed of narrative excerpts from Antoinette, Rachid L., Carol Y, Joyce W, Deborah J., and Tami J. Though McDaniel thanks *Alive in Truth* he does not provide the names of the New Orleanians whose stories he uses or mention Young who conducted the interviews nor did he request permission as he "assumed the records were public, that *they existed to be public*". McDaniel cites the *Alive in Truth* website's home page, "Please explore our new digital archive of the new digital archive of oral histories. We encourage you to read, reflect, and respond to these stories" (n.p.). He ignores the copyright information at the bottom of each page that states, "All interviews, archival material, and photos are protected by copyright and require written permission from *Alive in Truth* for excerpts or reproduction in any form."

The mission of *Alive in Truth*, according to their website, is to "document individual lives, to restore community bonds and to uphold the voices, culture, rights and history of New Orleanians" (n.p.). In an essay for the Poetry Foundation on the fifth anniversary of Hurricane Katrina, Young explains how McDaniel's text actively works against that mission. "I believe these people have a right to their narratives. In order to publish them, I believe that the speakers must be consulted and that they must be given the opportunity to sign off on copyright forms. By neglecting to inquire, much less make certain that his plans were acceptable to the narrators, McDaniel reenacted a familiar racist pattern, and a blind spot in American poetry publishing was revealed," she writes (n.p.). Young goes on to discuss the importance of poetry of witness and the feeling, particularly after a traumatic event, that poetry can respond, can "do something" but cautions "poetry of witness requires ethical rigor, careful editing, and ongoing stewardship of the personal stories of living people because it's quite easy to "do something" destructive, too" (n.p.). She explains that Alive in Truth made a commitment to those who shared their stories of survival, a commitment that the stories would not be used for commercial gain, that a free archive of their narratives would be available, that permission to use their story could only be given by the participants. It is clear that McDaniel's use of these stories circumvented Young's commitment.

Both Ben Shephard and Abe Louise Young, who conducted and compiled the original research used in the found poems, openly expressed their outrage over the appropriation of text. In the *Sunday Times*, Shephard explained that his anger derived from concern that out of context (which he feels his book provides), the quotations from soldiers and their families are exploitative and amount to nothing more than a "collage of horror and pathos" (n.p.). Neither McDaniel nor Motion use any original work from the researchers themselves, rather they use the source material Shephard and Young compiled, though Motion does alter some of the language in the quotes, changing "kids" to "children," for example. Extolling the tradition of borrowing and rearranging texts, Andrew Motion cites Shakespeare's reworking of Sir Thomas North's *Life of Mark Antony* for his play *Antony and Cleopatra* as well as Ruth Padel's book based on her grandfather, Charles Darwin's, letters. I can think of a dozen other examples where storylines, plot and even characters are remixed into other stories. What is interesting in these two cases is neither the charge of plagiarism nor the matter of attribution but rather the issues of appropriation and exploitation. Ultimately the question remains: who has a right to tell whose story?

There is risk of exploiting the voices of survivors of war and disaster when compiling oral histories, and certainly in including such narratives in found poetry. Shephard and Young stress the importance of context in their work, contexts which can become stripped when the words of others are remixed into the form of found poetry. Young urges us as teachers, writers, poets, historians and storytellers to have a public conversation about the ethics of using others' stories for our own agendas and purposes.

In conjunction with the American University's Center for Social Media and its Washington College of Law, the Harriet Monroe Poetry Institute recently created the "Code of Best Practices in Fair Use for Poetry." The eighteen page guide, available as a free download from the Institute's website and from the website of the Center for Social Media, is intended to illustrate and guide those in and outside of the poetry community to the "reasonable and appropriate" ways to use copyrighted materials. The guide explains that it is appropriate to request permission as a courtesy even if the use of materials could be made without it. Because interpretations of fair use vary from community to community and "creative needs differ with the field, with technology and over time" the code of best practices attempts to guide its readers through a set of "common practices" where fair use applies. The second principle mentioned in the code covers "new works 'remixed' from other material: allusion, pastiche, centos, erasure, use of "found" material and poetry-generating software" (10). The description of this principle explains that sources for poetic remix come in various and often unconventional forms and that technology extends "the range of techniques by which language from a range of sources may be reprocessed as new creative work" (10). The code is explicit that the "mere exploitation of existing copyrighted material, including uses that are solely "decorative" or "entertaining," should be avoided" and that attribution should be provided unless it is "truly impractical or artistically inappropriate to do so" (10).

Because the cases presented here are ethical and not legal cases, we are left to ponder whether Andrew Motion or Raymond McDaniel's use of appropriated text falls under *The Code of Best Practices* guidelines. It seems clear that Motion's attribution helps build a case toward fair use while McDaniel's lack of attribution and permission do not. Both cases, however, call our own understanding of the ethics of appropriation into question and reveal just how easy and exploitative it can be to speak for others even while using their own words.

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Jeffrey R. Galin

Online Course Reserves on Trial: What to Expect From the Georgia State Case

In 2008 Cambridge University Press, Oxford University Press, and Sage Publications, Inc. sued Georgia State University (including the university President, Provost, Associate Provost for technology, Library Dean, and the Georgia State Board of Regents) over the distribution of their works in two online delivery systems as part of the library online reserves and university courseware. The plaintiffs claim that Georgia State University has engaged in "systematic, widespread, and unauthorized copying and distribution of a vast amount of copyrighted works" (*Cambridge UP v. Patton et al.* 2). The Defendants respond that the electronic distribution of copyrighted materials is protected by fair use because the materials are being used for the purposes of teaching, scholarship, research, or non-profit educational purposes as allowed by 17 U.S.C. § 107. University libraries and technology management administrators are watching this case closely because its outcome could determine the fate of online reserve systems and courseware management across the country.

After two years in the courts, Judge Orinda Evans recently narrowed the scope of litigation by ruling on cross motions for summary judgment. The ruling has been slightly modified to correct a mistake made by the plaintiffs, but it favors Georgia State. A short analysis of the Judge's rulings below provides an explanation of the impact this case is already having in its preliminary stages. As I discuss Judge Evans rulings on direct, vicarious, and contributory infringements, I suggest their positive implications for universities across the country. Kevin Smith writes in a blog post: "Going forward with Georgia State lawsuit" that "even though the Judge clearly expects to go to trial, there is a lot in her ruling to give hope and comfort to the academic community" ("Going Forward"). After explaining the rulings, I turn to his reasons for making this claim: 1) reassurance that a ruling is more likely to favor fair use, which would prevent a dramatic limiting of course materials available to students; 2) relief that the Judge has substantially narrowed the scope of case as it moves toward trial; and 3) appreciation of Georgia State's revised copyright policy from which other universities can learn to modify their own policies. I conclude generalizing how the existing rulings may affect decisions by the publishing industry to file future litigation concerning online reserves.

Sovereign Immunity

As Smith notes, most parties who move for summary judgment do so to win the case outright on the basis of motions and evidence submitted without the need

for a trial. While neither side prevailed at this early stage, Georgia State was granted summary judgment on two of the three motions, direct infringement and vicarious infringement and significantly narrowed the scope of contributory liability. The Judge ruled that, as representatives of Georgia State working in their official capacity, the Plaintiffs cannot be sued in federal court for "retrospective or compensatory relief." See Summit Med. Assocs., P.C. v. Pryor, 180 F. 3d 1326, 1336-37 (11th Cir. 1999) . A special exception to sovereign immunity, *Ex parte Young* 209 U.S. 123 (1908) does allow plaintiffs to seek "prospective equitable relief to end *continuous* violations of federal law," or injunctive and declaratory relief of "continuous and ongoing" copyright violations. This immunity and its exception mean that Plaintiffs may not sue for money but only to stop continuous and ongoing infringing activities.

These complex legal details are important for several reasons: 1) representatives of other state universities would also qualify for sovereign immunity, which would also bar plaintiffs from seeking compensatory damages for copyright violations. 2) Private institutions, however, would not be protected by these exceptions because the "continuous and ongoing" qualification is a specific requirement of *Ex parte Young*, which is invoked only when sovereign immunity applies. 3) Because *Ex parte Young* allows declaratory and injunctive relief only of "continuous and ongoing" violations, Judge Evans ruled that Georgia State's revised copyright policy, implemented during the course of the trial, bars plaintiffs from using evidence from before the new policy was implemented. They may only present violations that have continued since the implementation of the new policy. 4) Without the incentive of substantial compensatory damages, future lawsuits are much less likely if clear guidelines emerge from this case that other institutions can follow. 5) And, finally, Judge Evans' ruling on the cross motions for summary judgment deals with substantive practical concerns that may portend a trial along similar lines. If this case is not settled out of court, it is likely to provide bright line guidelines for online reserves and management of copyrighted works in course management software like blackboard.

Dismissal of Direct and Vicarious Infringement

It is important to note at the outset that, of the three legal theories that the plaintiffs pursued in their complaint, only the indirect theory of liability, contributory infringement, remains available for trial or settlement. Judge Evans dismissed direct and vicarious infringement outright, granting defendants summary judgment on these two motions. Because, she rules, the Georgia State representatives did not themselves copy and distribute the materials nor did they make "fair use determinations as to individual works" (16), no direct infringement can be found concerning the named defendants.

Mary Minow explains in her blog that the question of who actually infringed may be the deciding factor of the case. The publishers suggest that it was the "librarians and professors who scanned, copied, displayed, and

distributed the Plaintiff's copyrighted works 'on a widespread and continuing basis'" ("Who infringed"). She offers further that the professors and librarians only make one copy and place it on a server. Even the court recognized that the defendant's theory points to students copying and downloading these works for use. If "students making a single copy of a brief work for educational purposes is a fair use," Minow writes, "then there is no direct infringement [sic] and there can therefore be no indirect contributory infringement." I doubt that the findings will be so straight forward in a trial ruling. If even one document does not meet the four-part fair use test, then infringement will be found.

On the other hand, based on the Judge's rulings in the summary judgment phase of the case, it appears that rulings on each work will generally favor fair use. The purpose and character of use will likely weigh in favor of non-profit educational uses in all cases. Except for a few creative works and consumable workbooks (if there are any) the nature of most works will be factual (non-fiction) and weigh in favor of fair use. The amount that is used will likely be the most important factor, particularly if there is more than a chapter or two from a single work. It is worth noting, however, that there is no fixed amount that is deemed unallowable. The rule of thumb is "no more than is necessary for his or her intended use" Kelly v. Arriba Soft Corporation 280 F.3d 934 (CA9 2002) withdrawn, re-filed at 336 F.3d 811(CA9 2003) as long as the "heart" of the work is not taken, Harper & Row, Publishers, Inc. v. Nation Enters 471 U.S. 539 (1985). It is worth noting, however, that the fair use statute explicitly allows multiple copies of for classroom use. Finally, Judge Evans has already noted that no market harm appears to have been caused because of the ways that faculty and students make decisions about which texts they will use and/or purchase, as I explain below. Since no single factor can tip the scales by itself, it is possible that fair use will be found in most if not all cases, but not likely, as Mary Minow suggests, because of who is doing the copying. We will only know once all works are evaluated and defended, one at a time.

The Judge also ruled that vicarious infringement cannot be used in trial as a theory for culpability. This indirect form of liability for copyright infringement requires that "Defendants 'profit[ed] directly from the infringement and [had] a right and ability to supervise the direct infringer." Grokster, 545 U.S. at 931 n.9; S. Bell Tel. & Tel. Co. v. Associated Tel. Directory Publisher, 756 F.2d 801, 811 (11th Cir. 1985). The publishers tried to claim that a statement about the use of technology to attract students was sufficient to demonstrate direct profit for the university. They also tried to argue that the use of ERes and uLearn, online reserves and course management software respectively, draw students to the school and thus lead to profits. Judge Evans noted that, while these systems may be attractive to students, no inference of direct profit may be made. Students don't come to Georgia State University to use ERes and uLearn.

She goes on to dismiss yet another claim made by the publishers that online reserves are now replacing course packs. Quoting several faculty and librarians, she notes that faculty are unlikely to ask students to purchase articles or partial books that would be placed in an online reserve system because they

already require students to purchase books that are use in their entirety in class. Besides, notes one professor, students just won't buy a book if only two chapters will be used from it (22). Nor are faculty at Georgia State including readings in electronic reserves if licensing fees are necessary. She concludes this section noting that coursepack licensing fees make the use of course packs "too expensive for students," a shift to online reserves is part of a larger university trend away from paper to digital, online reserve systems are also "capable of substantial non-infringing uses" (23), there is no evidence that online reserves have replaced "requiring students to buy textbooks" (24), and while moving away from coursepacks had to do in part "with ·cost cutting" for students, no financial benefit accrues to the University. For all of these reasons, it is "unreasonable to conclude" that there is a correlation between a decreased use of coursepacks and an increased use of the two online delivery systems.

Each one of the arguments dismissed above has important implications for universities. Her dismissal of the claim that online reserves replace course packets at Georgia State is extremely important. *Basic Books. v. Kinko's* and Princeton *University Press v. Michigan* now ensure that any coursepacks produced by for-profit business must obtain permissions for all works included. Many faculty, including myself, have simply stopped using such coursepacks. The fact that there is a decline in their use does not mean that online reserves are simply replacing them. Like the faculty in *Cambridge v. Patton et al*, I typically use course reserves only to supplement the primary texts of my classes. This point can't be overstated for university libraries. Course reserve policies should ensure that students are still purchasing (or continuing use from previous terms) other books or textbooks and that online reserves are supplemental. Faculty need only to sign a statement to this effect when they submit their materials for online reserve to help ensure compliance.

Smith's Three Points

Kevin Smith notes "this testimony seems to confirm the fear that a ruling against fair use would dramatically limit the course materials available to students" because faculty would include many fewer articles and chapters in their courses if permissions had to be paid for all works. In fact, the coursepack rulings have already reduced the number of course readings that are typically used in classes. If the current case reduces the scope of fair use, these materials will be reduced substantially more. Such a ruling would have negative social consequence with minimal benefit for the publishers. The current ruling seems to favor fair use, but that could change in a trial setting.

Smith notes that a second important implication of this ruling is the "narrow window for proving infringement" ("Going forward). Since direct and vicarious infringement are off the table, only the indirect contributory infringement is left. Furthermore, it will not be enough to show that courseware and electronic reserves are capable of infringing activity. The publishers will have to show that university representatives knowingly induced, caused, or

materially contributed to the infringing conduct of their students (Cable/Home Commc'n Corp. v. Network Prods., Inc., 902 F. 2d 829, 845 (11th Cir. 1990). If it is found that these technologies were provided in order to promote copyright infringement (think Grokster and Napster) and demonstrate "affirmative steps taken to foster infringement," then the group of Georgia State defendants are likely to be found guilty under a provision called respondeat superior, which can hold employers responsible for employees who copied the files. In fact, the Judge found no indication in the record of such affirmative steps. Rather, she ruled: "Here, there is no evidence that Defendants 'induced, caused, or materially contributed' to the unlawful distribution of copyrighted works" by promoting the use of ERes and uLearn (27).

Most important of all, the court found that the 2009 Copyright Policy does not encourage copyright infringement on its face. On the contrary, it "appears to be a positive step to stop copyright infringement." Smith makes his third point quoting this statement from the ruling's closing pages to suggest that Georgia State's policy looks like many other policies across the country, which bodes well for the future of online reserves and courseware. In the longest footnote of the ruling, Judge Evans actually demonstrates that the 2009 Copyright Policy appears to be "far more comprehensive than, [sic] the copyright policies instituted by other colleges and universities" (29). Her clear praise of the policy makes it a standard to which administrators who revise their own university policies should aspire.

Barring a settlement, Judge Evans found only one issue on which the case may turn at trial. She notes that the university is responsible for overseeing the implementation of the Current Policy and that the current motions for summary judgment do not answer the question "whether in practice the Current Policy is encouraging improper application of the fair use defense" (30). The publishers will have to show that there are sufficient ongoing and continuous misuses of the copyright fair use defense resulting from the 2009 Copyright Policy. Georgia State representatives will have to demonstrate that each case of identified infringement meets fair use standards.

Conclusions

It is clear at least that this judge is not trying to skirt the complex issues and implications raised by this case. The attention to detail and clearing of ground in the preliminary phases have proven highly instructive for university administrators and faculty. Publishers cannot seek compensatory damages from state institutions, although individual faculty may be held personally liable (see footnote 7). Publishers cannot make blanket claims that online reserves replace course packets. Nor can they claim that encouragement to use course reserves or a lack of budget for securing permissions can be construed as "clear expression or other affirmative steps taken to foster infringement" *Grokster*, 245 U.S. at 935. They cannot assert that universities profit from use of copyrighted materials simply because students choose to attend their schools and use their

electronic resources. Nor can publishers assert that all copyrighted works must be processed through the Copyright Clearance Center and corresponding fees be paid. Georgia State's Copyright policy makes it clear that there are at least three categories of works that should not go through such processes: 1) works that faculty deem to be fair use based on their formal review using the Georgia State fair use test; 2) works in the public domain, including government documents; and 3) works licensed to the university through online services. If this case is not settled, Judge Evans' ruling for summary judgment on behalf of the Defendants is not overturned, and other universities adopt similar Copyright Policies, it is likely that public colleges and universities may only be held liable for copyright violations in online reserves and courseware if there is proof of continuous and ongoing distribution of works in sufficient numbers that do not meet fair use standards. Thus, the most important outcome so far of this case is that Georgia State's Copyright Policy should be emulated by the rest of us. In fact, universities should not wait for a verdict in this case to reconsider their copyright policies. Now is the time to begin. Visit "Policy on the Use of Copyrighted Works Education and Research" at http://www.usg.edu/copyright/.

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Traci A. Zimmerman

Directions on the Road to Copyright Reform? An Overview of The Copyright Principles Project Report

The Copyright Principles Project (CPP) was formed in 2007 and is made up of 20 members who share the belief that while copyright law works "reasonably well" in some areas, it can and should be improved in light of the "dramatic technological advances" over the last 40 years. These advances – including the rise of user generated content, the increase of peer-to-peer file sharing technologies, and the transformation of how we access information via the Internet and World Wide Web – have posed significant questions that Congress "did not and could not have anticipated in the mid-1970s when the last copyright effort reached fruition" (Samuelson et al. 1). As a result, current copyright law is a law of "shreds and patches": a web of amendments that tend to obfuscate rather than clarify the "normative principles that ought to illuminate how [the law] should be applied in particular instances" (Samuelson et al. 3). In a world where copyright issues affect both amateur and professional alike, and where copyright rules implicate (and, at times, unduly criminalize) the activities of ordinary people, it is more important than ever to clarify the scope, purpose, and application of copyright law in the digital age. To this end, the CPP members, led by Berkeley Law Distinguished Professor Pamela Samuelson, released "The Copyright Principles Project: Directions for Reform" on September 28, 2010 that explores the possibilities for meaningful reforms to the U.S. copyright system. The project is the result of three years of work and certainly looks the part: it is thorough (approximately 70 pages long) and thoughtfully rendered. Marybeth Peters, the outgoing head of the U.S. copyright office and informal contributor to the project, said that "the report intelligently informs the copyright debate, and the identification and discussion of issues is well-done and important….[the] entire project significantly reinvigorates efforts to bring copyright law up-to-date, either incrementally or as a major revision" (qtd in Gluss 1).The project's members would agree with Peters' assessment, noting that "some changes recommended in this Report can only be brought about by legislative action, while others can be accomplished through common law evolution" (Samuelson et al. 4). Regardless of how these changes are addressed, one thing is clear: change is going to take time.

Even the CPP members are hesitant about claiming how much change they can really agree upon. The members are a rich mix of academics, practicing lawyers, and industry representatives and have an equally rich mix of expertise and experience with copyright law and policy. They can agree in principle that copyright law is important for education, culture, and democracy and that there needs to be balance between the interests of copyright owners and the public to

"enable the formation of well-functioning markets…that yield benefits for all stakeholders" (Samuelson et al. 1). What they cannot agree upon is exactly how to get there, on the "directions for reform" around which the entire report is centered. "Disagreements," they write, "tend to arise over how to implement these goals in statutory language and actual practice….We are not…in a position to offer a comprehensive and detailed set of reform proposals" (1, 3). Approximately one half of the preamble to the CPP report is spent delineating the limits of its findings (e.g. they met only 9 times in three years) and carefully articulating a disclaimer for how to interpret these findings:

> The views expressed in this Report are, however, those of the individuals involved; they should not be ascribed to the members' institutions, organizations, clients, or employers. Individual participation in this project should, moreover, not be interpreted as an endorsement of each and every proposal discussed in this document. In fact, various members of the group maintain reservations and even objections to some proposals described as recommendations in this Report….we do not intend affirmative statements or the use of phrases such as 'we recommend' or 'we believe,' to suggest that the group as a whole was uniformly in support of each view stated. (Samuelson et al. 4)

Regardless of these disagreements and disclaimers, what is made abundantly clear in the CPP report is that all of its members "came away with believing that a better copyright law is possible" (4). Considering the diverse makeup of the CPP (distinguished academics from Berkeley and Michigan Law as well as corporate attorneys from Walt Disney Co., Microsoft, and Warner Bros. Entertainment), it is truly a tribute to the members involved that there was enough agreement to set forth recommendations at all.

Report Overview

The 70 page CPP report is broken into five main sections: The Preamble (pp. 1-5); Part I: Guiding Principles (pp. 6-7); Part II: How Consistent With Good Copyright Principles is U.S. Copyright Law Today? (pp. 8-21); Part III: Copyright Reform Proposals (pp. 22- 68); and Part IV: Conclusion (68). The bulk of the report is dedicated to articulating 25 Copyright Reform Proposals (Part III) and this overview will highlight a few of the more important recommendations as touches our work as teachers and scholars.

Recommendation #1: Copyright law should encourage copyright owners to register their works so that better information will be available as to who claims copyright ownership in which works.

This recommendation implicitly addresses the problem of instant, "one-size-fits-all" copyright protection as well as the attendant problem of "the overlong duration of copyright" which hampers creativity in both the short-and long-

term: once a work is fixed in a tangible medium it is automatically copyrighted (so very few copyright holders register their works at all), and those who want to license an older work often cannot locate the copyright owner (contributing to the growing "orphan works" problem). While there was no consensus about shortening the current term of copyright, there was consensus on "duration related issues" (Samuelson et al. 10). The members supported a more transparent and organized method of registering copyrighted works so that "members of the public can have better information about the works currently protected by copyright and about those works' respective owners" (Samuelson et al. 24). The U.S. Copyright office would not be solely responsible for all of the registration responsibilities; instead, "industry participants could compete for business from copyright owners" as in the current domain-name system, and existing groups like Creative Commons could become such a registry. By revising and streamlining the registration system, the members envision a clearer way to "tailor" copyright by distinguishing "those rights holders who place significant value on their works and who wish to obtain the widest range of protections" from those who create "for fun" kinds of works that are not of commercial value (Samuelson et al. 26, 37).

Of course, the idealism of this recommendation meets a harsh reality in Recommendation #2, as the Copyright Office is designated as the one to "set standards for acceptable private registries – i.e. both technical standards and also specifications determining what kinds of copyright information a compliant registry *must* and *may* ask for from users and place into its database" (Samuelson et al. 28). Once these standards are established, the Copyright Office would "accept applications from firms seeking to operate as private registries and would certify that private registries (of many different types) meet and continue to adhere to the registry standards" (28). Ultimately, the goal in these recommendations is to provide a kind of "search once, search everywhere" system – the kind of system we have become used to in conducting online Web searches, but we've miles of bureaucracy to go before we sleep.

Recommendation #3: The Copyright Office should develop additional policy expertise and research capability, particularly in the areas of economics and technology.

If the work of the CCCC-IP Caucus and Committee shows us anything, it is that issues of copyright need to be explored through the original spirit of copyright (as an act to "promote learning") and not just through the letter of the law. What is exciting about this recommendation is that the CPP members understand copyright to be just such a "sensitive balance" between "public and private interests" (Samuelson et al. 30). "Copyright policy," they assert, "cannot and should not be made based solely on the interactions of lawyers, legislators, and interested parties" (30). To that end, they recommend that two new positions be created in the Copyright Office: Chief Economist, and Chief Technologist (30). These positions would not be permanent ones; in fact, they

would be filled by a new person every 2-3 years "to ensure a regular infusion of fresh thinking" (30). These individuals will be recruited from academia, other government agencies (such as the FTC or FCC) and the private sector. In addition, the report goes on to recommend that the Copyright Office "consult with experts in other fields related to the production of copyrighted works, such as individuals with experience in media studies and other disciplines related to the creation and dissemination of culture" (30). This recommendation reinforces the notion that copyright needs to be re-visioned as something new (not just as a rearranging of the old) and that this vision has to be informed by the public.

Recommendation #4: The Copyright Office should give serious consideration to developing some mechanism(s) through which users could receive guidance on "fair use."

One of the more troubling trends of U.S. copyright law is how the focus is often on enforcement rather than on engagement; that is, articulating what you can't use, rather than on what you can. This recommendation focuses on "reconciling copyright law with the First Amendment" by "ensuring that copyright's exclusive rights do not impose significant restrictions on expression" and by "freeing up a range of uses that do not threaten rights holders' ability to obtain an adequate return from their works" (Samuelson et al. 30). This can be accomplished by "providing the public with more guidance about what constitutes 'fair use' and what does not" (Samuelson et al. 31). In the March 24, 2010 Letter from CCCC to the US Copyright Enforcement Coordinator, we expressed a similar desire:

> We ask that, as you consider others' comments regarding "public education and awareness programs for consumers," you not exclusively focus on anti infringement. We urge you also to provide educational materials that inform users what rights they have under fair use, through licensing and shareable materials such as those provided through creative commons, and through legal protections and rights afforded by using materials in the public domain (2).

Later, in Recommendation #17 ("Copyright law should recognize that there are more fair use purposes than is recognized in the current statute"), the CPP members recommend that the current fair use provision be revised to "more accurately reflect the range of social policy purposes for which fair use is often used in practice" (Samuelson et al. 52).

Recommendation #14: Once information resources become part of copyright's public domain, they must remain in the public domain.

While "public domain resources are generally available for free by all" contract law "can sometimes be used to control access and use of these resources, subject to copyright law's preemption doctrine" (Samuelson et al. 51). Ultimately, this recommendation makes clear that there needs to be more access and less retroactive control in this area.

Recommendation #15: Copyright law should make it easy for copyright owners to dedicate their work to the public domain.

The current Copyright Act does not provide for Public Domain Dedication; unlike Creative Commons, which provides for such a designation as a way to provide alternatives to the "all rights reserved paradigm of traditional copyright." This recommendation recommends that there be a provision making it easy for copyright owners to dedicate their work to the public domain.

Recommendation #19: Copyright exceptions for libraries, archives, and museums should be updated to better enable preservation and other legitimate uses in light of ongoing technological change.

As cultural institutions preserving the cultural record, libraries, archives, and museums should be helped (not hindered) by copyright law to perform these critical functions. If this recommendation were implemented, these institutions could legally convert such things as old films and documentaries to digital format, and not be subject to the "Orphan Works" problem (where the original copyright holder is unknown or, if known, long since gone).

Conclusion

The CPP report admits that the last few decades have brought "dramatic changes in the copyright landscape" (Samuelson et al. 68). "Copyright law touches us all on a daily basis" says Pamela Samuelson, "and now millions of people who create user-generated content have become copyright stakeholders" (qtd in Gluss, 2). As such, "copyright law needs to be simpler, understandable, and more flexible to change with the times" (qtd in Gluss, 2). The CPP report addresses this problem directly, making it clear that current copyright law no longer "serves well the interests of those it affects" (Samuelson et al. 68).

The goal of reform is a much needed one, but one that is not going to come easily or quickly. "Too much discourse about copyright law…has been burdened by rhetorical excesses and an unwillingness to engage in rational discourse with those having differing perspectives" (Samuelson et al. 68). What the members of the CPP have shown us, however, is that "it is possible for persons of good will with diverse viewpoints and economic interests to engage in thoughtful civil discourse on even the toughest and most controversial copyright issues" and emerge from it believing that a better copyright law is

possible (Samuelson et al. 4).

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Clancy Ratliff

Free and Open Textbooks in Rhetoric and Writing Studies

The issue of access is one of the main reasons our field has held a prolonged interest in copyright and intellectual property matters. We want everyone to have access to education, art, science, and culture. We want open-access publishing in general, for our scholarship and for teaching resources. But we especially empathize with college students and their diverse financial situations; many are, as we all know, accruing student loan debt, juggling class schedules and work schedules, and, in some cases, supporting their families. Admittedly, many others are racking up high bar tabs, paying high membership dues to fraternities or sororities, and buying expensive clothes, but we maintain concern for the students who are struggling to pay their bills and whose financial future is especially uncertain. Such concern means that we -- especially those of us who, like me, are Writing Program Administrators -- often agonize about our responsibility to select textbooks that are both affordable and pedagogically sound and appropriate for our students.

In this paper, I will describe two developments from the year 2010 that pertain to intellectual property and our field. One is the publication of a report titled *A Cover-to-Cover Solution: How Open Textbooks are the Path to Textbook Affordability* by a student activist group. The other is the publication of volume I of *Writing Spaces: Readings on Writing*, an open textbook for undergraduate writing courses.

Research and Recommendations on Open Textbooks

Active since 1973 (or earlier), PIRGS have organized campaigns on a variety of issues including student loan debt, the environment, and, since 2005, affordable textbooks. Since 2005, Student PIRGs (Public Interest Research Group) has had a "Make Textbooks Affordable" campaign to raise awareness about the "tipping point expense" of textbooks in higher education -- a cost that can potentially mean the difference between getting an education and not getting one. In 2010, they released a report titled, "A Cover-to-Cover Solution: How Open Textbooks are the Path to Textbook Affordability," which was based on survey research of over 1000 students on ten campuses.

The researchers review some of the problems with the current textbook market, problems that we, as writing teachers, already know about: frequent new editions of books, and shrink-wrap packaging of proprietary software with books (requiring students to buy new books in order to get the CD or access code for the software). Also reviewed are some of the cost-saving strategies currently in place: textbook rental, resale, and e-books. Student PIRGs calls these measures "a good start," but they argue that open textbooks are a more

sustainable strategy for keeping textbooks affordable in the long term.

The Student PIRGs research found that open textbooks that give students the option to buy a print copy or download a free online version, like the Flat World Knowledge publishing model, will best solve the economic problem of textbook cost. The research found that 75% of students preferred to have print textbooks, so online-only book options are not ideal. Book rental is not generally an attractive solution either, as the Student PIRGs research found that most students want to buy some books but rent others.

The research group then calculated the savings each current option (renting, e-textbooks, and e-books for e-readers such as the Nook or Kindle) offers. They found that book rental saves students about 33%, reducing their book expense to $602 per year, on average. E-books and e-reader books fared worse, offering savings of 8% and 1% respectively. In a dramatic contrast, open textbooks can cut students' book expenses by 80% while still providing students with choices to accommodate their preferences: "Print copies come in black and white and color, softcover and hardcover, and students can self-print part or all of the text. Digital copies are typically free, and can be accessed online or offline from a variety of devices including e-readers, laptops and smart phones" (12). One of the most interesting findings of the study is that 76% of students would pay a small fee to go toward compensating authors of free and open textbooks (13).

Extending the Student PIRGs Research

I notice three points that are not made in the Student PIRGs report, two minor and one major. First the minor points: the report criticized textbook publishers' practice of coming out with frequent new editions without substantive changes -- and I agree with this criticism -- and they conclude, for a variety of reasons, that using open textbooks is the best solution to the problem of book costs. It should be noted that with open textbooks, the new editions issue is no longer a problem. The textbook author or publisher can make improvements and updates to the book as needed, even if it's more frequently than every two or three years, and the cost of a new edition for the student is negligible; even if he or she already bought a print copy of a previous edition, the student can view online or self-print only the material in the newer edition.

The second minor point I noticed wasn't made is that book rental and buying used would also be options for print copies of open textbooks, likely saving print-preference students even more money. I don't know who sets the costs of book rental, but in order to create a more attractive option for students (and thus make money), the cost-setter would have to price the rentals lower than the cost of buying the books outright. The same goes for buying used: barring special circumstances, like autographed or rare editions, used copies are always going to be less expensive than new copies. Students who prefer print copies can buy them simply in order to satisfy their preference, then decide later if they want to own the books permanently or not. If they choose, they can re-

sell the book and get some of their money back, offsetting both their net cost and the cost to the next student who uses the book. Because open textbooks are not published for profit, there would be no serious attempts to undermine the sale of used books, and the used print open textbooks market could flourish.

The major point not addressed in the Student PIRGs report is university bookstore markup, which is typically 30% of a book's retail cost. This percentage may go into a university's operating budget, as it does at the University of Louisiana at Lafayette, where I teach, making the overall textbook-cost issue less simple than it appears, especially with deep budget cuts for higher education. Certainly if university bookstores order print copies of open textbooks to stock for students to buy, the university bookstores will still apply the markup, and the operating budgets will get that money. However, the fewer dollars a book costs, the fewer dollars 30% of that amount will be. I don't mean to suggest that there's actually an incentive to select more expensive textbooks, but bookstore markup is an factor that enters into my own thinking about the economics of course textbooks.

On a related note, the Student PIRGs report alludes to the 2010 provisions of the Higher Education Opportunity Act regarding making textbook costs public. Universities that receive federal aid are supposed to publicize the costs of their classes' textbooks. My understanding of the law -- what I've done for our First-Year Writing Program site -- is that universities must disclose what their university bookstores charge for each book as well as the ISBN of each book for purposes of comparison shopping. While I agree that sharing this information benefits students and had already planned to post this information prior to hearing about the law, I have to wonder how much our university, so underfunded already, stands to lose from reduced bookstore revenue.

Open Textbook Options for Rhetoric and Writing Studies

The field of Rhetoric and Writing Studies currently has six options for open textbooks. The first, the *Rhetoric and Composition WikiBook*, was published in 2005 and written by Matt Barton and students at St. Cloud State University. It is not only open-access and freely available to print (permission granted under its Attribution/ShareAlike terms); it is also an ongoing project that students in writing classes can contribute to themselves.

The second open textbook option for writing teachers is Steven Krause's book titled *The Process of Research Writing*, which he published in 2007 under an Attribution/Noncommercial/ShareAlike Creative Commons license. Both this book and the *WikiBook* can be viewed in HTML format and as PDFs for no cost and self-printed by students. Students may, depending on their universities' policies, be able to use university printers and supplies for this purpose.

It's the third option, I believe, that is the most in alignment with the Student PIRGs' recommendations for open textbook publication because students can buy a print version of the book. The first volume of *Writing Spaces: Readings on Writing* was published in 2010, the second volume close behind in

January 2011. I am on the editorial board of this book series. Under the licensing terms, Attribution/Noncommercial/No Derivative Works, students may download a PDF of the books free of charge and self-print the whole book or selected chapters, but unlike the other two, *Writing Spaces* is available for purchase as a bound volume from Parlor Press. Through Parlor Press's web site, students can buy volume 1 for $23.00 (price is the same on Amazon), and volume 2 for $25.00. The Student PIRGs report mentions the importance of accommodating students' diverse preferences (especially the majority's preference for print), and it points out that Flat World Knowledge is a company that follows this model of selling print copies but offering free downloads.

Or at least it appears to follow this model. The fourth, fifth, and sixth options for Rhetoric and Writing Studies are *Writing for Success* by Scott McLean, *The Flat World Knowledge Handbook for Writers* by Miles McCrimmon, and *Exploring Perspectives: A Concise Guide to Analysis* by Randall Fallows. The first two of these are licensed under a Creative Commons Attribution-Noncommercial Use-Share Alike license. The third is also under a Creative Commons license, but it will be available online later this month, so I cannot view the title page to see the specific kind of license. Flat World Knowledge claims to offer students the opportunity to read the book online for free, buy an electronic version for the Kindle or Nook, or buy a print copy. The "read online for free" option, however, is not as open as one might assume. On the sites for these books, I see no link to a downloadable PDF of the book. I can only read the book in HTML format or as an embedded PDF in a PDF viewer. At the bottom of the screen is a button with "Print this chapter: $2.49."

Now, under the terms of the Creative Commons license, I could buy a copy of the book (or have a desk copy sent to me), scan the whole book or selected chapters into PDF, upload the documents to my course site, and make them available for students -- so that they can view them without an internet connection or print them at only the price of paper and toner. But Flat World Knowledge makes this option quite difficult. The most truly open and sustainable textbook models are the first three options: The *Rhetoric and Composition Wikibook*, *The Process of Research Writing*, and *Writing Spaces*.

Concluding Thoughts

I am impressed with Student PIRGs' dedication to lowering the cost of higher education, and I'm happy to see the 2010 HEOA provisions about textbook costs. Because students are a captive market and cannot choose their own textbooks, I like that they are becoming more aware of options within their current constraints. Intellectual property is an economic issue, of course; publishers buy a textbook author's copyright and make copies, and students buy the copies at a high price -- on average, each student spends $900.00 a year on them, according to the Government Accountability Office (qtd. in Student PIRGs 1).

I would like to conclude with some thoughts on our (professors' and Writing Program Administrators') options and constraints. The genres of writing

textbooks are, as most of us know, readers, rhetorics, and handbooks. We have six options for open textbooks, three of which are rhetorics, two of which are handbooks, and one of which combines the qualities of a rhetoric and a reader. We don't yet have cohesive open textbooks that fall into the genre of reader (for classes that don't take a Writing About Writing approach), but as far as books about academic writing and the writing and research processes are concerned, we have a few open textbook alternatives, and we should explore these. I recommend class-testing one or more of these books -- a teacher in my writing program class-tested a few chapters in *Writing Spaces* with positive results -- and doing local studies to discover campus-specific implementation issues.

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Aaron Barlow

The 'Fair Use' Challenge

This could be the year that the 'fair use' doctrine finally loses its potency as a protector of academic activity, especially online. Righthaven LLC may be forcing the courts to establish rigid, individualizable guidelines for what has been a poorly defined (though significant) part of American copyright protections and rights. 'Fair use' "allows anyone to copy, quote, and publish parts of a copyrighted work for purposes of commentary, criticism, news reports, scholarship, [or] caricature"(Heins). According to the U.S. Copyright Act (§ 107): In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include --

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for value of the copyrighted work. (Copyright Law)

Defining in detail just how much of something can be used -- and in what specific circumstances -- will cast a pall over attempts at incorporating parts of extant works into new ones. Until this changes, the lack of definition in the law provides important protection for the artist, the scholar, and the student.

Founded by people associated with Stephens Media, a holding company controlling the *Las Vegas Review-Journal*, and with MediaNews Group, Inc., the owner of *The Denver Post*, Righthaven has initiated some 200 lawsuits against bloggers and others over the past year or so. Most of the suits, so far, are being settled out of court, but at a cost that will make bloggers, writers, students and scholars think twice about pushing the currently amorphous limits of 'fair use' as they use material they find on the Internet. Given the risk-averse nature of most schools and colleges, this may lead to even greater attempts to contain student (and faculty) activity on the Web, placing it behind increasingly strong barriers. Protective and proprietary software systems such as Blackboard may end up limiting, even more than they do today, student ability to interact directly with the Internet—an important part of their learning. In addition, faculty may find themselves reluctant to 'network' publicly as freely as they might from fear of punitive results, their role as public intellectuals further curtailed.

Making matters potentially worse, in November of 2010, *The Denver Post* published a "Notice to Readers About Denver Post Copyright Protections" that reads, in part, "fair use of our content restricts those who want to reference it to

reproduce no more than a headline and up to a couple of paragraphs or a summary of the story" (Terms of Use). The Notice continues with a 'request' that a link to the *Post*'s website be included.

What's most interesting about this Notice—and most disturbing—is the way it assumes that 'fair use' can be defined by a particular entity for its products. The use of 'our content' makes it clear that the *Post* is not speaking for other organizations but is defining what it finds acceptable as 'fair use.' The move from a generalized legal concept to one that can be crafted by an individual organization would mean that users would have to check in each individual instance for what the particular media outlet defines as 'fair use.' If a Notice such as the one *The Denver Post* published could not be found, bloggers, scholars, and others quoting from an article would have to assume the most narrow interpretation of 'fair use' possible.

The *Post* includes a threat with its Notice: "we will use all legal remedies available to address… infringements." The company is not kidding: Righthaven was created to do just this.

The Righthaven model, according to the Electronic Frontier Foundation, is fairly simple: "They find cases by (a) scouring the Internet for parts of newspaper stories posted online by individuals, nonprofits, and others, (b) buying the copyright to that particular newspaper story, and then (c) proceeding to sue the poster for copyright infringement. Like the RIAA and USCG before them, Righthaven is relying on the fact that their victims may face huge legal bills through crippling statutory damanges and the prospect of paying Righthaven's legal fees if they lose the case. Consequently, many victims will settle with Righthaven for a few thousand dollars regardless of their innocence, their right to fair use, or other potential legal defenses" (Esguerra). Because of its cozy relations with Stephens Media and MediaNews Group, many of the copyrights purchased have come from newspapers owned by those companies. The results of Righthaven action have included suits against a man in Las Vegas for quoting a story about his own activities (Righthaven v Anthony Curtis) and another against an autistic youth in North Carolina for posting a picture without permission (Roberts).

Though the Electronic Frontier Foundation has taken on Righthaven, backing the defense of the blog Democratic Underground (Electronic Frontier Foundation), the cost of fighting Righthaven proves prohibitive to most, so they often settle, for a still-stiff penalty. Bloggers and others not yet targeted but wanting to use material Righthaven might gain copyright to will find that they must either abide by Righthaven's own narrow interpretation of 'fair use' or avoid the material altogether, finding other sources.

In October of 2010, Righthaven lost a round in court over its claim of an overstepping of 'fair use' rights (Green, Oct. 20) in one of the lawsuits it has brought. In February, Righthaven appealed (Green, Feb. 15). Though this legal story has achieved some notice on the blogs and in newspapers, it has yet to find real attention in the academic community. It should.

As academics, we have a duty to argue for the broadest possible

interpretation of 'fair use,' for the concept was established, in part, to further our activities as teachers and as scholars. This is an area where our public intervention can prove significant and appropriate.

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Jerry Lee

The "Art" of Summary: a Lesson Learned from Jason Huff's *AutoSummarize*

In the ubiquitous Hacker's *Rules for Writers*, plagiarism is defined as "(1) failing to cite quotations and borrowed ideas, (2) failing to enclose borrowed language in quotation marks, and (3) failing to put summaries and paraphrases in your own words" (415). According to this excellent and comprehensive definition, plagiarism in essence involves the theft of another's intellectual property: the idea itself, the articulation of the idea, or the summarization of the idea. But the unstated assumption is that the "intellectual property" is that of another human. What will become of our traditional notions of plagiarism when we involve the "intellectual property" of computer software?

Several months ago, I learned of Jason Huff's *AutoSummarize* project through a blog post by Madeleine Schwartz on the website of *The New Yorker*. The project (available in .pdf at http://www.jason-huff.com/files/autosummarize-jhuff2010.pdf) features "[t]he top 100 most downloaded copyright-free books summarized using Microsoft Word 2008's AutoSummarize 10-sentence function and organized alphabetically" (Huff). Among my favorites are Mary Shelley's *Frankenstein*:

> Everyone loved Elizabeth. "Dear, dear Elizabeth!" Excellent friend! "Dear mountains! Dear William! "'Excellent man! Clerval! Beloved friend! Man! "My dear Friend,

Keats's *Poems Published in 1820*, which results in a postmodern Romantic transcendence of the written word, poetry at its finest:

> PAGE 2. PAGE 3. PAGE 4. PAGE 5. PAGE 6. PAGE 7. PAGE 8. PAGE 9. PAGE 10. PAGE 11.

And, of course, Joyce's *Ulysses*, the 650-page tome (the Gabler edition) I struggled through in a semester-long graduate seminar had been neatly condensed for me as such:

> Bloom.
> Bloom. Bloom.
> Bloom. Bloom. Bloom.
> Bloom. BLOOM:
> Bloom? BLOOM

It was at least able to identify the main character as Leopold Bloom, a fact not revealed until the fourth chapter.

According to Microsoft's online resources for educators, the AutoSummary Tools "can highlight and assemble key points of a document." Microsoft further claims that a student can use the feature to "create an automatic summary of a number of long science articles or to quickly create an

abstract for a finished history report. The student runs AutoSummarize and then edits the summary" ("AutoSummarize"). The feature, failing to deliver on its promise, was subsequently removed for Microsoft Office Word 2010 (Microsoft, "Changes").

I had recently read Mark Bauerlein's *The Dumbest Generation* and started to worry a bit. Bauerlein argues that all Americans under 30 (myself included) collectively hate to read anything worthwhile--"the new bibliophobes" he calls us. The full extent of his pessimism becomes most apparent, I think, in his discussion of *Harry Potter*. His essential claim is that children read the book simply because they fear the consequences of not having read it. "Not to know the characters and actions is to fall out of your classmates' conversation" (44), writes Bauerlein. While it it's a bit of a paradox to say that people read it only because everyone else reads it (like Yogi Berra who said that nobody ever goes to Yankee Stadium because it's too crowded), Bauerlein leaves one to infer that there would be no imperative to read *Harry Potter* save the risk of pop-cultural illiteracy and social alienation.

Bauerlein laments, "If only we could spread that enthusiasm to other books" (44). Allan Bloom in *The Closing of the American Mind* similarly argues that students could get more from books other than *The Catcher in the Rye*, books written by "better writers" (63). Gerald Graff, on the other hand, arguing in opposition to the camp of traditionalists who purportedly venerate the classics for having some inherent value that non-canonical writings cannot offer, claims any text can be a worthwhile object of study: "it is no just the object of study but *the kind of question being asked about it*" (99, emphasis in original).

Aside from the debate on the value and legitimacy of the literary canon, the prevalence of resources like Spark Notes and Cliff's Notes may nonetheless confirm Bauerlein's thesis, although we cannot in good faith prove causality. But there is at least one artifact that instantiates the fears of Bauerlein: a series of graphic novel adaptations of the work of canonical writers such as Wilde, Poe and Twain, called the *Graphic Classics*, marketed as "Books you'll <u>want</u> to read," which is an allusion perhaps to Twain's reference to a classic as "something that everybody wants to have read and nobody wants to read." Volume 8 features several short stories by Twain, including "The Celebrated Jumping Frog of Calaveras County." This story, like the others, is "summarized" using lots of images, and minimal dialogue and narration. It is entertaining to be sure, but by abbreviating the story, it precludes any potential to understand Twain's story on a deeper level. Understanding the story as a parable of recurring tensions between the American East and West is made possible through Twain's subtle and at times overt characterizations, which don't always translate to the graphic novel version. The point, again, is that summary is no easy task.

I began to consider, if our students hated reading as much as Bauerlein claimed they did, they'd likely utilize every resource possible to avoid it. I noticed that one of the texts featured in Huff's project is a work that is commonly assigned in First-Year Composition: Jonathan Swift's "A Modest Proposal." It was summarized using the 10-sentence option as such:

> There only remain an hundred and twenty thousand children of poor parents annually born. I have no children, by which I can propose to get a single penny; the youngest being nine years old, and my wife past child-bearing.

In addition to the 10-sentence option that Huff used, there are other ways to use the AutoSummarize function. One can choose to summarize a document into 20 sentences, 100 words or less [sic], 500 words or less [sic], or one may produce a summary that is 10% or 25% of the original.

I tried other options of the AutoSummarize function on Swift's essay. I hypothesized that there would be no way a student could pass as having read Swift's essay in its entirety (in a class discussion, in a quiz, in a paper, etc.) by only reading the AutoSummarized version. Fortunately, the Microsoft product did not work as well as advertised, even for a shorter text. I just had to confirm.

But the point is not to discuss the effectiveness of Microsoft's product. Nor is the point to remind everyone how much our students hate reading. The point is to argue that Huff's *AutoSummarize* project reminds us that effective summaries cannot be produced through mechanical (literally) and unengaged reading. Edgar Allan Poe argued that when a "skillful literary artist" composes, "[i]n the whole composition there should be no word written, or which the tendency, direct or indirect, is not to the one pre-established design" (647). Admittedly, Poe was referring to the art of composing a short story, but the point is to punctuate the fact that asking a student to take a well-written and well-edited text and to summarize it should require a substantial amount of effort. Therefore, if we want to encourage active reading among our students, and if we want to hold students accountable for something we've assigned them, we might consider asking them to submit a written summary a bit more often. They'll be challenged to read the work carefully, and to synthesize what they've read in a cohesive and coherent manner. And dare I say they'll be asked to *analyze* the text too, for judiciously and selectively determining which key points to emphasize is a challenging endeavor in and of itself.

Microsoft can do a lot for us: it can help us to spell (sometimes), and it can help us with grammar (sometimes). But I'm not convinced yet that it can help us to summarize a text. Not quite yet, anyway. When technology improves, and I don't doubt that it will, we might be poised to reconsider what constitutes plagiarism. In other words, notions of plagiarism currently assume a theft of the work of a sentient being. For example, if a student uses SpellCheck to fix "neccessary" into "necessary," we don't expect documentation because we're generally concerned with larger issues (e.g., the theft of ideas or eloquent passages), and, well, there's no way for us to know if the student knew how to spell the word or not in the first place,. But we might make a case that the knowledge of the proper spelling of a word constitutes intellectual property as well, in this case, the intellectual property of Microsoft Office, maybe.

I don't think that a radical reconceptualization of what constitutes plagiarism is in order today, or anytime soon. But I think it's at least something worth thinking about, at least in passing. For now, however, I can emphasize the

other point I've been trying to make, which is that the challenges of elegantly summarizing complex ideas in a text must be better left to the skillful and thoughtfully engaged reader. I believe that with our help our students can refine the hitherto neglected art of summary.

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Stephanie Vie

The 300-Year Anniversary of the Statute of Anne

April 10, 2010 was the 300th anniversary of the Statute of Anne, the first copyright act and in many ways the basis for our current understandings of copyright law today. Looking back at the Statute of Anne is an interesting means of framing a history that helps us better conceptualize some aspects of copyright protection in the United States three hundred years later.

The Statute of Anne: A History

Now considered to be the origins of global copyright law, the Statute of Anne is the first legal enactment that expressly focused on copyright and authors' rights. Enacted on April 10, 1709 in what was then the Kingdom of Great Britain—today the United Kingdom—the statute was named for Queen Anne, who reigned from 1665 to 1714. Prior to the statute, authors had no rights to their own written works and generally would sell their works to a publisher, thus ending any further claim to their own materials.

The full title of the statute, "An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned," (Tallmo) is particularly intriguing: an act *for the encouragement of learning*. The original intent of the statute was to place greater rights in the hands of authors, allowing them to receive portions of fines levied to copyright infringers (part of the fine went to the authors and part went to the Queen). Lee Marshall points out in *Bootlegging: Romanticism and Copyright in the Music Industry* that, despite the language of the statute, encouragement of learning was actually secondary to protection of authors' rights, which he believes was the primary goal of the Statute of Anne; however, he does note that, regardless of intent, the statute created what we today know as the public domain, "a cultural resource that was owned and could be freely used by all—that was not only significant in promoting learning but also promoted the idea that a nation's cultural heritage belonged to the people" (11). Thus, while the stated and intended goals of the Statute of Anne might have been at odds, the resultant creation of the public domain may have been the most likely means of encouraging learning through the dissemination of materials available to all for free use after the copyright period had expired. The creation of the public domain is one of the largest legacies of the statute for us today.

However, Peter Jaszi further argues that the Statute in fact did not protect authors' rights but instead assisted the publishers from the threat of "down-market competition" that had emerged from the introduction of the printing press; as he notes, booksellers co-opted the idea of authorship and authors'

rights "to create a stable legal foundation for a market in texts as commodities" (32). The idea of focusing on publishers' rights sometimes at the expense of authors' is intriguing to consider today in light of movements like the Creative Commons, a group that has suggested that the affordances of online composing —remixing and re-envisioning copyrighted works—is hindered by the reality of copyright laws. Thus we come full circle to the original stated concept behind the Statute of Anne, the encouragement of learning, and see how an organization like Creative Commons is necessary to help make that goal possible, given that, as CC states, "the idea of universal access to research, education, and culture is made possible by the Internet, but our legal and social systems don't always allow that idea to be realized" ("About Creative Commons").

Beyond the implications of the original stated intent and the actual intent of the Statute of Anne, another aspect that is intriguing to consider three hundred years later is the longevity of copyright protection; the differences between copyright protection in 1709 and today are impressive. The original length of copyright according to the statute was fourteen years, renewable for another fourteen years if the author was still alive at the end of the first term. Only twenty-eight years of copyright protection in total, then, was available to an author. This relatively brief period is amazing to consider given the length of copyright today in the United States. After copyright term refinement in 1976 (the Copyright Act of 1976) and extension 1998 (the Copyright Term Extension Act of 1998, also known as the Sonny Bono Copyright Term Extension Act), the length of copyright protection for authors in the United States was potentially extended (depending on the original creation date, publication status, and authorship status) to seventy years after the death of the author. A helpful chart detailing the current status of copyright terms is available from Peter Hirtle via Cornell University's Copyright Information Center (see Works Cited). Along with these extensions, authors' rights have in many ways become far more stringent than those originally set forth in the Statute of Anne; today, organizations like the Creative Commons believe that the "all rights reserved" approach places too much control in the author's hands, leaving little recourse for innovative work using copyrighted materials without the author's express permission. Instead, a "some rights reserved" approach could allow authors to retain some rights and control but allow others the ability to remix and recreate without having to go through traditional copyright clearance channels ("About Creative Commons").

The Statute of Anne: Looking Ahead

As we look back at the origins of copyright law by examining the impact and reach of the Statute of Anne, it is important to note that copyright is in a state of continual adaptation—to new technologies, new ideas, and new understandings of authorship and infringement. Yet at the same time, we can clearly see ways that the original statute continues to influence the ways copyright laws are

structured in the United States today. While none of us will be around in three hundred years to see what further changes take place, I imagine that the influence of the Statute of Anne will still be felt in some manner even then.

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Laurie Cubbison

"A Tale of Two Tarts" and a Case of Copyright Infringement

The Internet has a murky reputation with regard to copyright law as a place where "information wants to be free" and where copyright infringement is pervasive. It is also a place, however, where contributors are constantly writing and self-publishing with an awareness that exposure is often the only compensation they receive for their work. The conflict between food blogger Monica Gaudio and *Cooks Source* editor Judith Griggs presents a case study for examining the misunderstandings about the copyright status of Internet documents as well as the outrage felt by Internet authors when their material is used without permission.

On November 3, 2010, Gaudio posted to her LiveJournal (a blogging site with social networking components) that she had learned that an article of hers "A tale of two tarts", posted to the site godecookery.com in 2005, had been published without her knowledge by a small New England magazine named *Cooks Source*. The article described the origin of the apple pie in relation to two recipes from 14th and 16th century sources. When Gaudio emailed the magazine to ask how her article had been published in the magazine without her permission, the editor Judith Griggs replied to ask what she wanted. Gaudio replied that she wanted "an apology on Facebook, a printed apology in the magazine, and $130 donation (which turns out to be about $0.10 per word of the original article) to be given to the Columbia School of Journalism" (n.p.). The email response from Griggs, as posted by Gaudio to her LiveJournal, revealed a poor understanding of intellectual property law and copyright infringement:

> "But honestly Monica, the web is considered 'public domain' and you should be happy we just didn't 'lift' your whole article and put someone else's name on it! It happens a lot, clearly more than you are aware of, especially on college campuses, and the workplace. If you took offence and are unhappy, I am sorry, but you as a professional should know that the article we used written by you was in very bad need of editing, and is much better now than was originally. Now it will work well for your portfolio. For that reason, I have a bit of a difficult time with your requests for monetary gain, albeit for such a fine (and very wealthy!) institution. We put some time into rewrites, you should compensate me! I never charge young writers for advice or rewriting poorly written pieces, and have many who write for me… ALWAYS for free!" (qtd. in Gaudio, n.p.)

The editing in question referred to cleaning up the 14th and 16th century English used in the article., which indicates a misunderstanding of the article's purpose, but more egregious is Griggs's misunderstanding of public domain. As noted by copyright attorney Margaret Esquenet, when interviewed about this conflict on

National Public Radio's *All Things Considered*, public domain has a limited legal definition with limits based on the age of the text: "'Anything written in the last 10, 15, 20 years, virtually impossible to be in the public domain" (Block, n.p.).

The other interesting aspect of this conflict has to do with the resulting reaction. Gaudio's initial post received 920 comments, and news of the conflict spread, most notably through the Twitter feeds of author Neil Gaiman and actor Wil Wheaton, whereon it was picked up by a number of Internet news sites and spread to national and then international news publications. Eventually, through the efforts of amateur online investigators, it became apparent that *Cooks Source* had republished, without permission, articles from such sources as NPR and Food Network (Block). Eventually however, the Internet response turned into a mob uproar, with *Cooks Source*'s Facebook account hacked, and the magazine forced out of business (Greenlee).

The two most significant implications of this incident involve not only the continuing widespread misunderstanding of public domain and the copyright status of material published online, but also that bloggers and other online writers and publishers must maintain the awareness that their own intellectual property is vulnerable. In fact, I would argue that the outrage that erupted online was due to the perception of their own vulnerability on the part of Internet writers and publishers. In the past, online intellectual property issues have focused on the use of corporately owned texts by online writers and publishers such as fan fiction and mash-up creators, but the *Cooks Source* incident indicates an awareness on the part of niche writers and publishers that their own intellectual property rights are at stake as well.

The incident has pedagogical implications as well. As Griggs unfortunately points out in the email excerpted above, appropriating text from the Internet and putting someone else's name on it is only too common among college students. Thus, introducing this incident as a case study can not only open up discussion of public domain and the copyright status of online materials, but it can also foster discussion of the unseen victims of plagiarism: the writers whose work has been taken. Gaudio's sense of violation is echoed in the uproar that followed. Students often perceive plagiarism as a victimless crime, and it may be eye-opening for them to witness the outrage expressed not only by the writer whose work was used without her permission but also the outrage expressed by others on her behalf.

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Kim D. Gainer

DMCA Developments Relevant to Educators

Educators concerned with the impact of the Digital Millennium Copyright Act of 1998 (DMCA) upon their profession and their students may want to take note both of a report on the unintended effects of the act and of a recent change in the application of the law intended to address one of those unintentional results.

In 2010, the Electronic Frontier Foundation continued its practice of publishing periodic surveys of the effects of the DMCA under the series title "Unintended Consequences." The first report was issued after the legislation had been in effect for five years, and last year saw the fourth report, marking twelve years during which "anti-circumvention provisions of the DMCA have been invoked not against pirates, but against consumers, scientists, and legitimate competitors" (Electronic Freedom Foundation n.p.). The DMCA is far reaching, prohibiting both acts that circumvent technology intended to prevent copying as well as the distribution of tools that would enable such circumvention to take place; and the Foundation report documents numerous instances in which the law has been used in ways that arguably go beyond enabling copyright holders protect their intellectual property from illegitimate uses. The DMCA has the potential to criminalize fair use, to block free discussion, and to hamper legitimate research.

Instances in which the DMCA was invoked in an attempt to stifle discussion included a threat by Apple against a site where hobbyists were discussing how iPods might be made to utilize nonproprietary software. Similarly, Texas Instruments threatened a blogger who reported on ways to install nonproprietary software on one of the company's calculators. The company also threatened bloggers who commented on the original post. Among other examples: SunnComm threatened to invoke the DMCA when a researcher publicized a hole in copy protection software; Blackboard succeeded in stopping a conference presentation on security weaknesses in its software; and a researcher delayed revealing information about a flaw in Digital Rights Management (DRM) software on Sony-BMB compact discs that would compromise the security of users' computers because of the possibility that he would face sanctions under the DMCA.

In the latter example, not only was the researcher reluctant to publish his findings, but he has also been discouraged from continuing his research on computer security systems. The Electronic Freedom Foundation documented other instances in which researchers and journalists have refrained from entering into discussions or pursuing certain lines of inquiry because they feared the invocation of the DMCA. A member of a team that had been testing the efficacy of security 'watermarks' no longer works in that area as a direct result

of a DMCA challenge. A researcher into site-blocking software has been reluctant to proceed in his investigations because he has been unable to obtain assurances that his work would be considered compliant with the act. In two separate instances, a programmer and an expert in computer security each declined to publicize security flaws that they uncovered in the course of their research; and two other experts, including a professor of digital forensics, removed information from their websites because of DMCA-related concerns.

The above examples—and the many others documented in the Foundation's survey—illustrate the chilling effects that the DMCA can have upon research and free expression. When individuals and organizations are reluctant to enter into discussions or engage in research for fear that they may be on the receiving end of DMCA-based threats, then prior restraint has virtually been resurrected for the digital age.

On a positive note, however, the Electronic Frontier Foundation did report several cases in which individuals and organizations familiar with their rights and supported by the appropriate organizations were able to push back against threats. SunnComm backed down in the face of negative coverage and a public backlash, and another company that issued DMCA-based threats, Hewlett-Packard, likewise backed down in the face of unfavorable publicity. Apple also withdrew its threat to take action under the DMCA when it was itself sued by the wiki site that hosted the discussion about installing nonproprietary software on iPods. Similarly, researchers blocked by an industry consortium from delivering papers at a conference were able to publish their findings after filing a lawsuit. The bloggers threatened by Texas Instruments reposted their content after the Electronic Frontier Foundation contacted the company to support their right to free expression. These favorable outcomes suggest the importance to educators of being aware of their rights and the rights of their students, as well as the importance of learning about the existence of organizations that will support them in the exercise of those rights, either directly or by providing vital information. The Electronic Frontier Foundation is one such organization; another is the Chilling Effects Clearinghouse, whose website not only provides information on the DMCA but also includes a searchable database of DMCA-related takedown notices submitted by recipients. Yet a third is the Fair Use Project sponsored by The Center for Internet and Society at the Stanford Law School.

In addition to taking heart at the existence of organizations that provide information and support on DMCA-related issues, educators can take some encouragement from a ruling that acknowledges "that it is sometimes necessary to circumvent access controls on DVDs in order to make [certain] kinds of fair uses of short portions of motion pictures" (Billington n.p.). In July of 2006, James H. Billington, the Librarian of Congress, announced an exemption to the DMCA that allows certain users to 'rip' DVDs for transformative purposes. Specifically, "college and university professors and [...] college and university film and media studies students" are permitted to circumvent copy protection software "in order to accomplish the incorporation of short portions of motion pictures into new

works for the purposes of criticism or comment." This exemption is based on the judgment of Marybeth Peters, Register of Copyrights, that

> [...] the record does demonstrate [...] that college and university educators, college and university film and media studies students, documentary filmmakers, and creators of noncommercial videos frequently make and use short film clips from motion pictures to engage in criticism or commentary about those motion pictures, and that in many cases it is necessary to be able to make and incorporate high-quality film clips in order effectively to engage in such criticism or commentary.
>
> (Peters 43827)

Previously, only college or university film or media studies professors were allowed to circumvent copy protection. Students were excluded entirely from the exemption, as were all instructors not teaching in the two specified areas. However, these words from the Federal Register suggest only that the door has been cracked open, not flung wide. The National Telecommunications and Information Administration (NTIA), weighing in on the proposed guidelines, advised Peters that the evidence did not warrant an extension of the exemption to elementary and secondary school teachers and students and recommended that, among students on the college and university level, only those taking film and media studies courses be covered by the new guidelines (Peters 43828). The Register of Copyrights concurred with this opinion, stating that

> Proponents for educators failed to demonstrate that high-quality resolution film clips are necessary for K-12 teachers and students, or for college and university students other than film and media studies students.[...O]ther means, such as the use of screen capture software, exist that permit the making of lower-quality film clips without circumventing access controls[....]
>
> (Peters 43828)

On the other hand, the phrasing of the exemption omits two key phrase present in a previous exemption announced in 2006, when the Librarian of Congress specified that copy-protection could be circumvented only in the case of "works included in the educational library of a college or university's film or media studies department" and that the resulting compilations were only for use "in the classroom" (Peters 43827). In the Library of Congress Rulemaking Hearing, Martine Courant Rife, English educator and lawyer, had asked the Register of Copyrights to recognize that a 'classroom' may not always be something that exists within the space of four walls. Classes are being taught online and through course management systems, and students may be uploading their work rather than presenting it in a physical space. She argued that as a result "to limit the exemption to face-to-face is to [...] disenfranchise students and teachers working in on-line spaces [...]" (Rife 185).

Dr. Rife additionally testified that limiting the exemptions to the holdings in a college library would also disenfranchise some students and educators because of the vast disparity in resources between educational institutions. She

compared two institutions with which she is familiar: Lansing Community College and Michigan State University, the latter with a much larger library than the former (Rife 186).

> It is perhaps as a result of such testimony that in this latest exemption the Librarian of Congress omitted the phrase "in the classroom" and replaced "works included in the educational library of a college or university's film or media studies department" with this new language: "Motion pictures on DVDs that are lawfully made and acquired" (Billington n.d.).

In sum, the restrictions on the 'ripping' of copy-protected media for reasons of fair-use have been relaxed in several ways. On the college and university level, all instructors are free to circumvent copy-protection for educational purposes. Some college and university students are now likewise eligible to circumvent those protections. Students and instructors may utilize all works lawfully obtained, even if not owned by their educational institution; and, implicitly, the resulting transformative works may be shared beyond the physical classroom in online settings. It is to be hoped that the progress represented by these new guidelines will be built upon in 2012, when a new round of hearings will be held that will result in the publication of another set of exemptions in 2013.

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Laurie Cubbison is Director of Writing at Radford University in Radford, Virginia, having received her doctorate in rhetoric/composition from Purdue University. Her research interests focus on the use of the Internet by non-professional writers, with particular attention to fan writers and fan communities centered on television series, comics, novels and films.

Devon Fitzgerald teaches first year composition, business and professional writing and interdisciplinary culture courses at Millikin University. Her research and teaching interests are diverse, typically focusing on narrative, culture and identity whether she explores American folklore and urban legends, *Frankenstein* and science fiction texts, or digital and social media. She writes creative non-fiction, blogs regularly and designs websites. Her latest project explores the ways in which our digital lives become a kind of archive and the practices, nostalgic impulses and impact on memory and narrative that such practices encourage. Devon collects robot kitsch, *Frankenstein* paraphernalia and vintage film posters. She is almost always behind a computer screen.

Kim D. Gainer is professor of English at Radford University in Radford, Virginia. Professor Gainer became interested in the subject of intellectual property when she began writing fan fiction inspired by the stories of J.R.R. Tolkien and became aware of the fair-use issues related to that hobby. She has served as co-chair and chair of the CCCC Intellectual Property Caucus and has contributed to both the Intellectual Property Annual and the Intellectual Property Reports published in the NCTE Inbox.

Jeffrey R. Galin received his degree in Critical and Cultural Studies, specializing in rhetoric and composition, at the University of Pittsburgh and has taught writing and the teaching of writing at California State University, San Bernardino and Florida Atlantic University since 1996. He is founder and director of FAU's University Center for Excellence in Writing and Writing Across the Curriculum program. He has co-edited *The Dialogic Classroom: Teachers Integrating Computer Technology, Pedagogy, and Research* and *Teaching/Writing in the Late Age of Print*. He has published articles in *College Composition and Communication*, *Computers and Composition*, and

Kairos, including "Shifting Boundaries of Intellectual Property: Authors and Publishers Negotiating the WWW," "Heterotopic Spaces Online: A New Paradigm for Academic Scholarship and Publication," and "Bosch v Ball-Kell Faculty May Have Lost Control Over Their Teaching Materials." He has also published chapters on issues of copyright and fair use in several edited book collections. His current research projects include sustainability of WAC programs, a book-length project on intellectual property in higher education, and a Writing Across the Curriculum handbook.

Jerry W. Lee is a PhD student in the Rhetoric, Composition and the Teaching of English (RCTE) program and teaches in the Writing Program at the University of Arizona in Tucson. He is currently teaching Business Writing, which involves a client-consultant service learning project. His research interests include world English literacies, the rhetorics of memory and historiography, and nationalist discourse. He is currently working on a project that examines the politics of globalization and English language policy in Korea. Committed to programs and organizations that facilitate access to higher education, Jerry has worked with the Jackie Robinson Foundation in Los Angeles and is currently a mentor for the Arizona Assurance Scholars program.

Clancy Ratliff is Assistant Professor and Director of First-Year Writing at the University of Louisiana at Lafayette. She has recently published essays in *Women's Studies Quarterly*; *Composition, Copyright, and Intellectual Property Law* (SUNY Press); and *The Scholar & Feminist Online*. She received the 2006 Hugh Burns Best Dissertation Award from Computers and Composition for her dissertation, *"Where Are the Women?" Rhetoric and Gender in Weblog Discourse*. She teaches first-year writing courses and graduate-level courses in composition theory.

Stephanie Vie is assistant professor of composition and rhetoric at Fort Lewis College in Durango, Colorado, where she teaches in the Writing Program; she is also the incoming director of FLC's Writing Center. She completed her doctorate in Rhetoric, Composition, and the Teaching of English at the University of Arizona in Tucson. Her current research centers on how social networks can be used in the composition classroom to teach technological literacy. Her work has appeared in *Computers and Composition*, *Kairos*, and *e-Learning*.

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