

The CCCC-IP Annual: Top Intellectual Property Developments of 2012

A Publication of the Intellectual Property Caucus of the Conference on College Composition and Communication

March 2013

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Clancy Ratliff

Introduction to the 2012 *CCCC-IP Annual*

This is the eighth volume of the *CCCC Intellectual Property Annual*, my sixth as editor. I'm excited about this year's *Annual*: not only do the contributors offer their usual thoughtful analysis about developments in copyright law, such as Laurie Cubbison's article about content industries' use of bots to detect copyright infringement, Juliette Lapeyrouse-Cherry's insightful application of patent law in a case of "seed piracy" to our notions of authorship and collaboration, and Jeffrey Galin's article about the Georgia State University case's implications for fair use and online coursepacks, but they also help us as teachers. James Porter's article about MOOCs makes me proud to be the editor of an open-access publication and to help distribute this groundbreaking and timely work to a wide audience. Just read it.

The 2012 *Annual* also features two articles about plagiarism: I can easily imagine assigning Katie Kottemann's essay about plagiarism and the Romney campaign in a pedagogy seminar or even a first-year writing class. Steven Engel and Chris Gerben's analysis of the Harvard plagiarism scandal gives us a wonderfully clear explanation of the mixed messages students receive about authorship, collaboration, and plagiarism, which is helpful for any teacher as well.

The *Annual* ends with an essay by Cory Doctorow memorializing Aaron Swartz, a dynamic copyright activist who took his own life in early January of 2013. As you'll read, he was embroiled in legal battles resulting from his efforts to make information free to all. His loss has been felt all over the world, prompting articles about him in *Rolling Stone*, *Slate*, *Salon*, *The New Yorker*, *The Los Angeles Times*, and other periodicals. We are republishing Doctorow's post, which he originally wrote for Boing Boing and released into the public domain.

James E. Porter

MOOCs, “Courses,” and the Question of Faculty and Student Copyrights

MOOCs, or Massive Open Online Courses, are the new Next Big Thing in higher education technology development – and they appeared dramatically in 2012. The 2012 Horizon Report (Higher Education Edition) did not even mention MOOCs (New Media Horizon 2012). But a year later the 2013 Horizon Report identified MOOCs as one of the two most important emerging developments in educational technology, along with tablet computing (New Media Horizon 2013).

The MOOC acronym hit the popular press in 2012, but the concept emerged from several earlier projects that made instructional materials widely available online. In 2002 MIT launched its OpenCourseWare project, which provide online instructional materials for free under a Creative Commons open access license. Currently the program archives course materials for 2,150 courses (<http://ocw.mit.edu/about/>). In 2008 Andrew Ng, co-founder of Coursera along with Daphne Koller, started the Stanford Engineering Everywhere program, which offered online course materials for several Stanford engineering courses – again, under a Creative Commons open access license. In fall 2011 Ng’s online course on Applied Machine Learning at Stanford University enrolled over 100,000 students – and that course was probably the unofficial birth of the MOOC, the moment that first caught everybody’s attention.

This article explores the issue of faculty and student copyrights in MOOCs.¹ This issue should be of particular interest to composition faculty who develop online courses, whether MOOCs or OOCs (i.e., not “massive”).² The

¹ It is important to note precisely what this article does and does not address: (1) This article examines the issue of faculty copyrights, but not the issue of faculty patent rights – a related but distinct intellectual property question. In general, “universities have long claimed ownership of the patentable inventions of faculty members, but traditionally have not claimed their copyrightable works” (Lape 251). (2) This article deals only with US Copyright Law and its application to US universities, not with international copyright laws or agreements. Triggs does note, however, that in Canada there is an “academic exception” custom to work-for-hire comparable to US law. Kwall argues that the Berne Convention’s recognition of an author’s “moral rights” applies to the question of faculty copyrights, even in the United States, where the moral rights principle does not have as strong a standing as in other countries. (3) This article examines copyright issues pertaining only to college courses developed and taught by

² The MIT OpenCourseWare project archives course materials for 54 courses just on writing alone, including courses on technical communication, expository writing, the science essay, writing about race, and rhetoric. In Spring 2013 Coursera sponsored two MOOC composition courses: English Composition I, taught by Denise Comer of Duke

course materials developed for and within MOOCs – such as syllabuses, course policies, video lectures, assignment sheets, quizzes, class activities, PowerPoint slides, writing assignments, schedules, etc. – are certainly copyrighted. But who holds the copyright for those materials when they appear on a MOOC – and who “owns” the course overall? What are the intellectual property implications involved for faculty members who develop MOOCs? Are the copyright laws for MOOCs the same as for traditional face-to-face or online university classes (and what are those)? Further, what copyrights do students have for the original material they create and post to MOOCs?

I’m excited about MOOCs and see tremendous potential for them; I plan to develop and teach one myself. At the same time I am somewhat suspicious about the current development model for MOOCs: that is, many universities are outsourcing their MOOCs to third-party host/providers such as Coursera and Udacity. The MOOC host/provider contributes the technical delivery platform for the MOOC, the overall interface design, and the promotion and marketing for the MOOC – in exchange for which the host makes claims on the intellectual property of the MOOC. It is the nature of these IP claims – and the definition of “course” that underlies the IP licensing – that bears watching, because these claims can fundamentally change the ecology supporting the university’s relationship with its students.³

1. Who holds the copyrights for a college course?

To examine the copyright implications of MOOCs requires that we start with a more traditional intellectual property question: Do university faculty own the non-MOOC courses that they develop and teach, whether online or face-to-face courses? The answer to that question ranges from “No, of course not, because university courses are clearly works-for-hire under the 1976 US copyright statute, and the university as employer owns those” to “Yes, of course, there is a well-established ‘academic exception’ to the work-for-hire provision that says that faculty members own the intellectual property they create in works of research

University; and Writing II: Rhetorical Composing, taught by five writing faculty at Ohio State University – Susan Delagrang, Scott Lloyd DeWitt, Kay Halasek, Ben McCorkle, and Cynthia Selfe.

³ Because there is as yet no statutory or case law that explicitly addresses copyrights and MOOCs, we must necessarily speculate about how current copyright law and past cases will likely apply to MOOCs. However, there are numerous legal analyses addressing the issue of faculty copyright for online courses in general (Borow; Burk; Denicola; Klein; Kwall; Kranch; Laughlin; Masson; Peterson; Strauss; Triggs) – and at least one analysis that briefly considers the issue of faculty copyright for MOOCs (Butler). We can extrapolate from these discussions to speculatively address the question of MOOCs. And then we should revisit the issue in a few years to see what cases have arisen. I expect there will soon be numerous cases, as more and more universities offer MOOCs – and as the economic value of MOOCs increases.

and teaching.” It depends who you ask (or who you are reading), on how they interpret the law, and, perhaps most decisively, on the explicit employment policies of the particular university in question.

But let’s define our terms, starting with that most complex term “course.” A “course” is by no means a simple intellectual property unit because most college courses, with relatively few exceptions, are not entirely the original creations of the individual faculty member who develops them. Most courses are actually remixes, assemblages of various bits and pieces (“works”) whose copyright status is also quite various. And that is why university intellectual property policies are more likely to refer to “course materials” or “courseware” rather than to courses per se.

There might well be an act of creative originality in a particular course that a faculty member assembles: i.e., the assemblage itself (the selection and organization of the material) could be copyrightable. But even if that is the case, courses are also typically bundles of copyrighted materials assembled from various sources. A course might include materials like textbooks (copyrights held by publishers); PDF copies of print articles and chapters; links to online materials (YouTube videos, online articles, blog sites, whose copyright is held by individual authors, or who are perhaps licensed as open source materials); copyrighted images that the instructor displays in class (claiming educational Fair Use); handouts that the instructor has adapted, revised, remixed over years, based on borrowed scraps from others’ course materials. A course probably also includes the instructor’s own originally created notes, assignments descriptions, lectures, etc. It certainly includes public knowledge, factual information, and “common knowledge” that is not original (and so not copyrighted). It might include original work that is nonetheless in the public domain (e.g., US government documents, court cases, open source material). And it might include some copyrighted material, let’s be honest here, whose use contravenes copyright guidelines, or perhaps we should say, stretches the boundaries of educational Fair Use.

The entirety of copyright law is built on an innately ambiguous central concept: “the original work of authorship” (Madison 326). Postmodern theorists have made mincemeat of most of the terms in that phrase – “original,” “author,” and “work” (or text).⁴ We could do the same thing to the idea of “the original course.” Like “the work” in copyright law, “the course” functions as a necessary foundational concept, a core unit of academic work. It might function

⁴ According to Madison, it was the Copyright Act of 1909 that first established the term “work” as the collective noun that would stand for a wide variety of copyrightable materials. Before that copyright law tended to identify materials by distinct genre: books, maps, charts, musical compositions, engravings, and so on (334-335). One effect of this change was to shift the notion of copyright from a concrete notion more tightly connected to labor and material production to a more ethereal notion of copyright as an “intangible abstraction” (337). Madison goes on to point out that in US Copyright Law the meaning of the word “work” shifts inside the statute.

well as an academic organizing unit, delineating a boundary of knowledge and learning — but that does not mean that it functions effectively as an intellectual property unit.

A course that I teach is “mine” only in the loosest of senses: as teachers, we select and organize the instructional material; we originally create some of the instructional material (e.g., our lectures); a good chunk of the material we use in our classes is probably the intellectual property of other parties, borrowed under some implicit or explicit use agreement (e.g., textbook purchase, Fair Use exemption, open source license, adaptations, derivative works).

In what sense can I be said to “own” a course at all? Well, I bring my disciplinary expertise to the courses I teach and much of that expertise is knowledge I have learned from others in my field; some of it is my own knowledge that I have originally developed. As the course designer, I apply my disciplinary knowledge and my teaching expertise to select and arrange course readings; to design assignments; to scaffold course activities; to create class discussion prompts and writing assignments, etc. Certainly my individual comments on each student’s work are original. The “course” overall might well be “mine” in the sense that nobody else would collect and create the same content as I do — but much of what I or any teacher collects in their courses is the intellectual property of others. What is much safer and more precise to say is that I hold the copyrights for the original course materials that I have developed for my teaching.

But why doesn’t my university own the course materials as well as the course overall? The work-for-hire provision of US Copyright Law establishes as the default position that “the employer of the individual who creates the work is considered the author” (Burke 143). If I work for Proctor and Gamble and create a marketing report as part of my job, P&G own the copyrights for that marketing report. Though I may have been the writer of the report, under the work-for-hire provision of US Copyright Law, P&G, as my employer, is considered the author and the copyright holder of the work. This is very clearly laid out in the 1976 US Copyright Act, 17 USC §201(b): “In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright”). Some legal analysts see Section 201(b) as definitive: “The 1976 revisions to the Copyright Act and subsequent cases interpreting the Act suggest that faculty-created works fall within the purview of the work-for-hire doctrine” (Centivany 408).

Thus, it would seem that because I am employed by Miami University, Miami should, under the 201(b) work-for-hire provision, own the copyrights to whatever material I produce as part of my employment there — including textbooks, research articles, instructional materials, video lectures, handouts, and PowerPoint files. However, there is an exception — a long established “academic exception” or “faculty exception” — to the work-for-hire provision, a long-

standing custom (established through several older court opinions based on the 1909 Copyright Act – e.g., *Williams v. Weisser*; *Sherill v. Grieves* – see Herrington; Copyright Advisory Office) that instructors should be allowed to retain their copyrights to materials that they develop for purposes of research and instruction. The rationale for the “academic exception” are many and varied – academic freedom being one – but one critical answer is that university faculty are not “employees” in the conventional sense because they have a high degree of latitude in determining the content and scope of their research and teaching. Even if faculty are assigned to teach particular courses, they generally have a high degree of freedom in determining the content and design of those courses.⁵

The faculty or academic exception certainly stands as a well-accepted custom or policy, but its legal status is more murky (Strauss). Some argue that whatever might have been its legal status prior to 1976, the Copyright Act of 1976 represents the apparent “death” of the exception (Strauss 17). Others see Judge Posner’s opinion in *Hays v. Sony Corporation* as establishing some legal basis for the exception post-1976, even if not a strong or decisive basis (Kulkarni).⁶ And, importantly, “no court has ever explicitly rejected it” (Strauss 24).

However, there is also well-established exception to the faculty exception: In situations where a particular piece of faculty work, whether research or courseware, involves “significant university resources” (a common-if-ambiguous phrase) or is specifically commissioned or funded by a university, universities often claim all or some copyright privilege over that work. For instance, if a faculty member receives a summer grant to create an online course or a research grant to produce a book, the copyrights to the material developed might well be shared with the university.⁷

⁵ The American Association of University Professors (AAUP) has long been a strong advocate for the academic exception to work-for-hire (Ramsey and McCaughey; Smith; Springer).

⁶ In his opinion in *Hays v. Sony Corporation*, Judge Posner writes: “...virtually no one questioned that the academic author was entitled to copyright his writings. Although college and university teachers do academic writing as part of their employment responsibilities and use their employer's paper, copier, secretarial staff, and (often) computer facilities in that writing, the universal assumption and practice was that (in the absence of an explicit agreement as to who had the right to copyright) the right to copyright such writing belonged to the teacher rather than to the college or university.”

⁷ In a survey conducted in 2005, Loggie et al. gathered information from 42 Carnegie Doctoral Research-Extensive universities – 28 public universities and 14 private universities – to determine whether or not they assigned faculty the copyrights for the courseware they developed. Loggie et al. determined that “The majority of the universities (88%) designated in their policies that faculty owned courseware. However, 73% of the policies among this group of universities designated that the university owned the copyright when there is a previous agreement or the development of

The phrase “substantial use of university resources” (or “significant use”) is a common one in university copyright policies. Creating an online course might well involve “significant use of university resources” – particularly if (a) the faculty member has been specifically given extra support to develop the course (e.g., in the form of course release or grant), or if (b) development of the course has involved significant personnel time of instructional designers, videographers, or multimedia specialists.⁸

When universities like Harvard, Stanford, MIT, UC-Berkeley, and Michigan devote tens of thousands of dollars to developing MOOCs, or to releasing their faculty members to develop MOOCs, they are certainly going to expect remuneration in some form. At the same time they don’t want to depress faculty incentive to develop MOOCs – or lose their best faculty to universities with a more faculty-friendly copyright policy. The reason most commonly cited for the academic exception to the work-for-hire provision of copyright is academic freedom, but the more pragmatic reasons might well be (1) to promote and reward innovation and excellence, in research as well as teaching, and (2) to retain excellent faculty. One method traditionally used by universities to attract and keep the best faculty and to incentivize their innovation and excellence in teaching and in research, is to allow faculty to retain the copyrights for the works they produce.

Now when a university expends special resources to support faculty work, the situation might well be different. When I say “special resources” I am not talking about file cabinets, computers, paper, pens, printers, or offices, the normal and customary resources necessary for all instructors, but rather to a more extraordinary type of support – what is often identified as “significant use of university resources” – such as grants, course releases, summer monies, research leaves, and sabbaticals for which the faculty member is commissioned to work on a specifically identified project or projects for which multiple

courseware is included in the job description, or when additional compensation is provided in the form of additional release time or additional financial payment beyond salary. Further, 81% of the policies among this group of universities designated the university owned the copyright when there is substantial use of university resources or technological support” (230-231).

⁸ As Zhang and Carr-Chellman discuss, the question of the role of instructional designers in the development of online courses makes the intellectual property question “fuzzy.” To what extent should IT or ID personnel be considered co-creators of courses? Or to what extent does their involvement meant that course is co-owned by the university? According to Zhang and Carr-Chellman, the Association of American Universities (AAU) represents the institutional point of view, generally arguing that “courseware is a ‘collaborative collaboration,’” and that, therefore, it makes more sense for the university to hold the copyright (177-178). The American Association of University Professors (AAUP), on the other hand, is more an advocate of “faculty interests” (Zhang and Carr-Chellman 178).

university personnel are involved (e.g., a multimedia designer).⁹ In such cases, universities might well have justification for stronger copyright claims over works emanating from the project – but might be better advised to share copyrights with the faculty member. In short, the best approach overall might be for the parties involved to enter into a shared copyright agreement or license.

What an individual faculty member needs to do is understand the copyright policy in force at their university – a policy that is likely to be found in the faculty handbook or employment contract or in a collective bargaining agreement (if the faculty are unionized). The type of policy that most faculty are likely to find is one that (a) endorses the general principle that faculty own the research and scholarship they produce and the course materials they prepare for their teaching unless (b) the creation of such work involves “significant use of university resources” or the work was explicitly and directly commissioned by the university. Most MOOCs are likely to fall into this second category. The best advice I can offer to faculty regarding their intellectual property rights is this: Read in your employee handbook the section that details your university’s policies regarding the intellectual property rights of faculty, particularly in regards to online courses or instructional courseware. If you receive a research or instructional grant to develop online course materials or are specially commissioned to create an online course, make sure to understand the intellectual property provisions associated with that grant or assignment.¹⁰

Let’s be careful to maintain this distinction: “Courses” are not the same as “course materials.” I would argue that a faculty member who creates his or her own original course materials owns the copyright to those course materials, per the academic exception to copyright law – a principle that might or might not be supported by the law (that is the debatable point) but that is certainly well established in custom and recognized in most universities’ intellectual property policies. However, a course is a more complicated thing. A faculty member can certainly be said to “own” a course to the extent that he or she has created an original assemblage through a distinctive selection of readings and topics; through a distinctive arrangement; and through the development of original materials such as lectures, assignments, handouts, slides, and activities. At the

⁹ “AAUP policy holds that for faculty work to be work-for-hire, it requires use of extraordinary resources; use of traditional resources ‘such as office space, supplies, library facilities, ordinary access to computer and networks, and money,’ are not sufficient to make faculty work into work-for-hire” (Springer).

¹⁰ What are the continuing rights of faculty in courses that they have created? What happens to a given course when the faculty member leaves a university? Universities might operate under a policy that assigns copyright to the faculty member but that provides the university with a non-exclusive license to continue to use the faculty member’s materials, without permission, if the faculty member leaves the university or the course is taught by other instructors. There are several different ownership and licensing options that can obtain in any particular context (see Burk 147 for several scenarios).

same time, most faculty members also use in their courses material that is copyrighted by others or that is adapted from others' copyrighted work.

But what I have described so far is still not the entirety of a "course." Any college course obviously consists of a variety of course materials, but it also includes a delivery, a performance, an enactment, and, of course, interaction with students. Too many intellectual property discussions elide that distinction between "course" and "course materials." And too many discussions, particularly in the popular press, treat the "the course" as a commodity, an object, to be bought and sold — as if it were a textbook. But many courses, and perhaps most composition courses, function more like extemporaneous performances — and audience-participation performances at that. The course might have a script (a plan, a set of established materials), but the course itself unfolds in time as performance involving the instructor interacting with students and involving the creation of a fair amount of unplanned, unorchestrated material.

An online college course perhaps should be treated as resource or service, not as a commodity to be bought and sold as an object (Vaidhyanathan). In too many discussions the course is assumed to be no more than a kind of multimedia textbook of content — with the instructor as the perhaps expendable conveyor of that content. I have no doubt that some college courses run this way: that is, as the primarily one-way delivery of content from instructor and/or textbook to the student, conceived of as an empty vessel (or nearly so). In the MOOC world, this is called, pejoratively, an xMOOC. This is Freire's banking model of education, and it certainly exists, and it may even serve a useful purpose for some kinds of knowledge at some stages of student learning.

This view of the course obscures a vital point about the value of higher education. The value of many college courses is not simply "the content" per se. Rather, the real value added lies in the performance: the social exchange, the enactment, the interaction that happens between content, instructor, and students, and that results, ideally, in learning. The value added by the university is really the service, not the content — that is, the entire learning environment, that universities promote, of supporting faculty development and delivery of courses, whether those courses are face-to-face or online.

Let's remember that students are content creators, too. The assumption of the cMOOC — or "connectivist MOOC" — is that students themselves create knowledge and promote learning in their activities and interaction in a course. Many of those ad hoc, extemporaneous moments of course fall outside the purview of copyright (e.g., comments during a class discussion). But let's consider those responses and interactions that certainly do fall within the purview of copyright: the students' own writing, their written responses to class activities, their postings to online class discussions.

What copyright protections are in place for students? A cMOOC is designed so as to maximize student interaction, remixing, and social dialogue (see Siemens; Ravenscroft). The assumption of "connectivism" is that learning

happens not only in the one-way transfer of content from instructor to student/s, but most importantly in the networked, crowd-sourced collaborative interaction between participants and in participants' active contributions to and remixing of course content. Indeed there is an even stronger claim at play here (one not unlike the assumptions of Socratic dialectic): that the interaction between participants potentially creates new knowledge and course content. In this respect, students in a cMOOC could potentially be considered co-content creators — and ergo potential co-copyright holders — along with the instructor.

This is not a new or unfamiliar idea composition teachers, who are, I think, more comfortable and more attuned than most university faculty to the idea that students are co-contributors to course content.¹¹ We have been teaching cMOOCishly for a long time. (Back in the 1980s we referred to this as a social-constructivist approach to learning or knowledge development, or as epistemic rhetoric. Plato called it dialectic. Now it is known as connectivism. OK.) For most composition courses, let's remember, the primary course content is the students' own writing. Granted, the composition instructor develops or imports much course content in the form of the overall frame/plan for the course, readings, textbooks, the writing assignments, the rhetorical principles, the exercises and activities, the handouts and slides, etc. But the students themselves contribute a good amount of the content themselves — for example, when their own writing itself become the primary content for a class discussion about a certain rhetorical approach or technique.

So when we talk about who holds the copyrights for a college course, we should start with a fairly complex model for thinking about that — see Figure 1 for such a model. The model acknowledges that college courses are built on a particular kind of institutional ecology that promotes sharing and interchange in the interests of learning — and that places proprietorship over intellectual property in a subordinate (though not unimportant) position relative to learning.¹² This is also, unsurprisingly, a central assumption of the open access movement — that in order to achieve certain worthy social goals (like learning), it might be important to have a different kind of intellectual property principle at work, an open-access approach that promotes and encourages reuse, redistribution, adaptation, derivative works, etc.

¹¹ However, I do see this same assumption operating in other kinds of courses as well — for instance, in studio art or design courses in which the students' own work, along with instructor and peer review of that work, is also a significant part of course content.

¹² We could say that Congress partly, though inadequately, acknowledged this principle in establishing an exception for educational Fair Use (“nonprofit educational purposes”) in the 1976 US Copyright Act (17 USC §107).

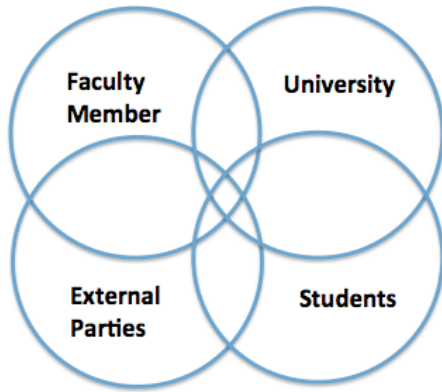


FIGURE 1. Copyright interests for typical college courses (online or face-to-face)

The “all-or-nothing approach” to determining the question of faculty ownership of courses – the course must be “owned” by the faculty member or by the university – is part of the problem because (1) a course is typically an assemblage of copyrighted (and uncopyrighted) materials from a variety of sources; (2) “the original work of authorship” in intellectual property law is itself a highly ambiguous foundational concept, particularly in the age of digital information and digital remix; and (3) for many types of courses (particularly, I would say, composition courses) we need to think about the students’ own contributions to course content and their own intellectual property rights.

Pragmatically it would be better to promote policies that recognize the copyright interests of multiple parties and to make use of licensing arrangements that recognize the complexity of copyright claims involved in any course.¹³ As Dan Burk points out, “ownership of copyright is divisible and sub-divisible in many different ways” (147); there are many different types of licenses that can be developed to delineate the university’s rights, the faculty member’s rights, the students’ rights. For instance, one such arrangement could assign the faculty member authorship rights to a course (and the overall right to maintain control of the course), but the university could retain a non-exclusive license “and the rights to continue using it when others are teaching it” (Burk 147; see also Kwall 20). This kind of balanced approach would be an endorsement of the faculty member’s right to control course materials they have originally created and to have control over the courses that represent a distinctive assemblage on their

¹³ Klein points out that such licensing agreements have become fairly common, particularly among universities leading in the development of online courses such as MIT, Texas, Stanford, and Harvard: MIT’s OpenCourseWare project rests on a licensing agreement “that allows MIT to distribute their course materials on the OpenCourseWare Web site, [while] the faculty member retains the copyright to the materials” (3).

part, but at the same time provide the university with continuing rights of access to and use of the course.¹⁴

2. Who holds the copyrights for a MOOC course?

For most conventional university courses, even online courses, the question of who holds the copyrights is quadripartite, as represented in Figure 1. For MOOCs, however, the relationship could well be quintipartite, if the MOOC involves a fifth agent – the MOOC host/provider – an entity likely making its own distinct copyright claims (see Figure 2). That is indeed the case with MOOC providers like edX, Udacity, and Coursera.

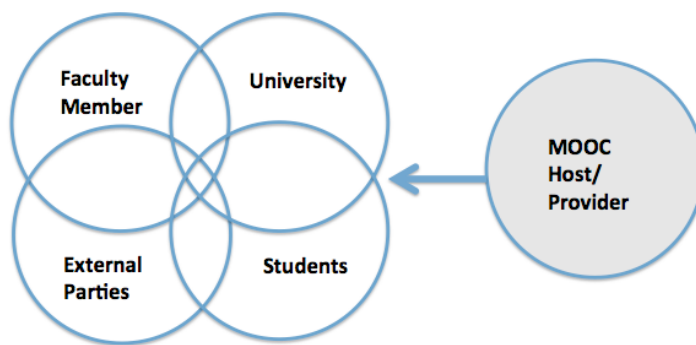


FIGURE 2. Copyright interests for MOOCs

Are MOOCs – Massive Open Online Courses – truly “open”? Well, that depends on whose MOOC. By definition they are “open” in the sense that the courses themselves are free (usually, so far) and open to all who can access them on the Internet. But not all MOOCs are “open” in the sense of “open source,” and certainly not in regards to their approach to intellectual property.

The early MOOCs (which were not called that) tend to operate under an open-access principle. MIT’s OpenCourseWare project licenses its available course materials under a Creative Commons open access license (Attribution-NonCommercial-ShareAlike 3.0 United States), which allows students to share, redistribute, and remix the course materials any way they like, as long as they credit the source and license the new materials they create with the same kind of license. The Open Yale Courses project, which began in 2007, currently offers 42 online courses using the same license.

What is interesting about these open-access courseware projects is that they offer “course materials” but often label the materials as “courses.” There is that troubling elision again. Does “the course” = “the materials for the course”?

¹⁴ Kim argues that it is only reasonable to suppose that universities have an “implied license” to continue to use courses developed by their own faculty. She proposes a revision to Section 101 that would make this implied license explicit in copyright law.

Not entirely, no, as we have seen from the previous discussion – what about the delivery, the performance, the students’ contributions? – but that confusion has significant consequences for teaching, for intellectual property, and for the future development of online higher education.

Other MOOC providers – the ones that are getting all the press, like edX, Udacity, and Coursera – are definitely not “open” in the sense of open access. Au contraire. In fact, they are establishing fairly restrictive copyright controls over the courses they offer and are striving to limit students’ uses of course material. For example, in its “Terms of Service,” Udacity establishes clear and strong proprietary claims about its online course material:

All content or other material available on the Class Sites or through the Online Courses, including but not limited to on-line lectures, speeches, video lessons, quizzes, presentation materials, homework assignments, programming assignments, programs, code, and other images, text, layouts, arrangements, displays, illustrations, documents, materials, audio and video clips, HTML and files (collectively, the “Content”), are the property of Udacity and/or its affiliates or licensors and are protected by copyright, patent and/or other proprietary intellectual property rights under United States and foreign law. (Udacity)

What copyrights do students possess for the materials in MOOC courses that they take? The answer is, Very limited rights. Students have rights of “access” and “use,” but not other rights of adaptation, reproduction, or redistribution. For example:

Coursera grants you a personal, non-exclusive, non-transferable license to access and use the Sites. You may download material from the Sites only for your own personal, non-commercial use. You may not otherwise copy, reproduce, retransmit, distribute, publish, commercially exploit or otherwise transfer any material, nor may you modify or create derivatives works of the material. (Coursera)

In regards to the students’ own work – the work that they originally produce and post to the MOOC course site – Udacity claims an exclusive license to “use, distribute, reproduce, modify,” etc., that intellectual property, including the right to use students’ material for commercial purposes or to sublicense these rights to other parties, a broad copyright claim that universities typically do not make on student work:

With respect to any User Content you submit to Udacity ... you hereby grant Udacity an irrevocable, worldwide, perpetual, royalty-free and non-exclusive license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such User Content on the Class Sites or in the Online Courses or otherwise exploit the User Content, with the right to sublicense such rights (to multiple tiers), for any purpose ... (Udacity)

Udacity’s copyright policies are fairly stringent in regards to protecting its own intellectual property – but fairly broad in regards to claiming rights to students’

intellectual property. This seems fairly typical for the major MOOC providers. Both edX and Coursera have substantially the same policies governing material posted for their online courses (edX; Coursera).¹⁵

It is important to note that these licenses do not refer to course registrants as “students,” but rather refer to “the User.” In fact most registrants for MOOCs are not, strictly speaking, college students; in respect to the MOOC provider they are just “people.” For the most part (with some exceptions), the registrants are not paying tuition and they are not earning real accredited college course credits. These offerings are not even technically “college courses” in the strict sense of the term; they are more like “learning tutorials” or “online interactive workshops.” What is odd about the arrangement, though, is that universities – and some fairly prestigious universities at that, normally paranoically obsessive about protecting their brand – are developing a close business relationship with these third-party providers. And they are actually embracing a vocabulary that blurs the institutional boundaries between the profit and the non-profit, between the corporate and the academic identities, between “course” and “course materials”; and between their “courses” and these online-training-modules-that-are-only-courses-in-the-informal-sense.

These restrictive copyright policies should be troubling to universities and to faculty who sponsor MOOCs on third-party hosts, as these copyright policies make claims on students’ copyrights that universities typically do not claim. Before investing in MOOCs, universities should think about their “institutional ecology” (Benkler 1272) – that is, the kind of institutional/organizational infrastructure they are building when they outsource their courses to a third-party host like Coursera or Udacity. What licensing arrangement are they establishing with those third parties – and how does that arrangement change, and possibly damage, the ecology of the university and the nature of its relationship with its students?

Should universities host their own MOOCs rather than outsource hosting? As we have seen with edX (the partnership between Harvard and MIT) many universities already possess considerable marketing power through their own branding, identity, and prestige. Why should the University of Michigan, for instance, offer their courses through Coursera? Why can’t students simply take the course directly from U-M – or from a Big Ten Consortium for MOOCs? Coursera’s answer to that question is that no university can match Coursera’s marketing and reach; no university can expect to attract “740,000 students” (Young). But what if some universities can? And what if, eventually, all universities will be able to do so?

In regards to MOOCs, the best approach for universities would be to develop a partnership model – or what Yochai Benkler calls “a cooperation-

¹⁵ Notice that these various Terms of Service do not refer to the troubling and ambiguous term (from a copyright standpoint) “course” per se, but rather refer to “Content” or “course material.” I worry that is because the licensing is assuming that “the course” = “the course materials.”

based system” (“The University” 59; see also Benkler “Intellectual Property”) – that provides broad, affordable access to students in exchange for modest compensation to faculty, to universities, and to hosts/providers who develop and deliver those courses. Because MOOCs are generally high-volume courses, they can take advantage of the long tail of digital economics – i.e., they can employ a micro-payment approach that charges each individual student a relatively small amount but that generates large revenues through the overall “massive” enrollment.

Under a Freedom of Information Act request, The Chronicle of Higher Education was able to secure a copy of the contract between Coursera and the University of Michigan to offer MOOCs (Young). Several important points clearly emerge from this 42-page contract:

1. MOOCs will not be “open” for long. Many, not all, will be developed as revenue-generating ventures (Kolowich).
2. If the Michigan-Coursera contract is any indication, the bulk of the revenue generated through a MOOC is likely to go to the host/provider. According to Young, “universities will get 6-15% of the revenue.”
3. The licensing arrangement governing copyrights for MOOCs – distinguishing the rights of the university, the faculty member, the students, and the host/provider – are likely to be complex and multi-faceted, but they are not likely to respect or even address the question of faculty or student copyrights.¹⁶

Conclusion

As is typical for educational technology development, the uses of the technology are running ahead of law and policy. This is not atypical at all; it cannot help but be the case. This is not a reason to be fearful or resistant to technology development – not at all! – but we do need to be cautious and aware of unintended and unwanted consequences. Faculty who develop MOOCs should

¹⁶ The Michigan-Coursera contract lists eight different “monetization strategies,” or business plans, for how a MOOC might generate revenue, how that revenue could be divided, and what copyrights accrue to which parties (Young). An important feature of the contract is the provision specifying that “all Intellectual Property Rights relating [to course content] will remain with the applicable Instructor and/or University” (8). That is, Coursera is not claiming to be the copyright holder for course content, though it is claiming broad licensing rights in regards to use of the material. In other words, the contract does not speculate about whether the Instructor or the University holds the copyrights on submitted course material – it is silent on the question of the academic exception. But the contract does include a separate “Instructor Release,” in which the instructor grants Coursera certain rights to store, host, reproduce, perform, etc., the submitted material.

be careful to understand the terms of the licensing agreement they are entering into. What understandings exist, either implicitly or in stated policy, at their home institutions in regards to ownership and control of intellectual property, both for traditional courses and for online courses? When faculty deliver courses via a third-party MOOC, what copyrights are they retaining for the original materials they have created? What rights are they losing or licensing, either to the university or the third-party host/provider? And what copyright protections are in place for students?

My overall advice for all faculty is this: Whenever you develop or offer an online course – and particularly a MOOC – be aware of the laws, policies, and contracts that establish your copyrights for that course and that delineate which copyrights you retain, which you don't, and which you share. You might well need to proactively negotiate to protect your copyrights – and your students' as well.

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Katie Kottemann

Mitt Romney, Friday Night Lights, and Politicizing Plagiarism

During the 2012 presidential election, Republican candidate Mitt Romney used the catchphrase “Clear Eyes. Full Hearts. Can’t Lose!” on his Facebook page and also in various campaign speeches, sometimes changing the line to “America Can’t Lose!” The problem is that the original line is a catchphrase from the television show *Friday Night Lights*, created by Peter Berg. In a letter addressed to Romney and obtained by the *Hollywood Reporter*, Berg writes: “I wasn’t thrilled when I saw that you plagiarized this expression to support your campaign. . . Your politics and campaign are clearly not aligned with the themes we portrayed in our series. . . Please come up with your own campaign slogan.” Berg’s anger about Romney’s plagiarism stems not just from the theft of the catchphrase but from the use of the line to support Romney’s right-wing platform.

Left-leaning publications pounced on this perceived indiscretion and weighed in on Romney’s ethical permissions to use the slogan. One *Slate* article asks, “Can you plagiarize a catchphrase?” and discusses the legal implications of altering and using the phrase: “Since ‘Clear eyes, full hearts, can’t lose’ is a minuscule portion of the entirety of the *Friday Night Lights* script, a judge or jury would probably not deem Romney’s use of the phrase a copyright violation” (Anderson). In *USA Today*, *Friday Night Lights* actress Connie Britton and executive producer Sarah Aubrey contribute their opinions about Romney’s plagiarism and relate Romney’s use of the phrase to his campaign platform, which, according to Britton and Aubrey, seeks to limit the rights of women: “In fact, it is President Obama who has shown his values to be more closely aligned with those represented by the phrase. . . So as women, let’s take ‘Clear Eyes, Full Hearts’ back and use it as it was always intended-- as a motivator for progress, power, and greatness.” In a *Jezebel* article titled, “Clear Eyes, Zero Class,” Erin Gloria Ryan discusses how, after Berg issued his letter, the Romney campaign began selling merchandise emblazoned with the *Friday Night Lights* catchphrase: “For only \$10, you, too, can express how inspired you are by wearing a slogan stolen from a show that has disavowed the guy who is now co-opting it like a snakey millionaire cartoon. Somewhere, a bald eagle is so moved that he’s crying a star-shaped tear.” These three distinct observations about Romney’s plagiarism-- legality, politicization, and commodification-- reveal some interesting and complex implications for the way plagiarism is taught in our composition classrooms.

Issues of plagiarism are frequently bound up with feelings of violation, both moral and ethical, and our conceptions of this violation affect the way we respond to and teach issues of plagiarism. When we catch a student plagiarizing,

we often wonder about that student's motivation and "academic honesty," and also about the appropriate punishment for the indiscretion. We often feel violated ourselves: "Does this student really think I'm this stupid?" "How could (s)he think I wouldn't notice this?" Frequently, we resort to a crime and punishment mentality-- a student who plagiarizes should be sought out, exposed, shamed, and forced to make penance. If not, then we are not doing our jobs as writing teachers. Luckily, plagiarism scholarship by Rebecca Moore Howard, Leslie Johnson-Farris, and Amy Robillard has revealed that plagiarism--whether whole text, patchwriting, or lack of attribution--is a "pedagogical opportunity, not a juridical problem" (Howard 788). In other words, seeking out plagiarists and punishing them for theft is not as effective as using that perceived indiscretion as an inroad to discuss the student's attempt to penetrate and absorb the language of the academy: "If a structure and policies do not exist within the college to address these issues, real change would have to start on the ground, in my classroom" (Johnson-Farris 314). Robillard reminds us that our subject positions as teachers affect the way we discuss issues of plagiarism in our classrooms: "We are the rhetors, our students the audience, and our conceptions of them both reflect and shape the ways we talk about plagiarism" (409).

So how do these issues of plagiarism in our classrooms relate to Romney's use of a TV show catchphrase during his campaign? Because of the politicization of Romney's offense, the "plagiarism as theft" metaphor abounds in left-leaning news media outlets. Romney is a thief who must be exposed and punished, not only by the media but also by the creators, producers, and actors of *Friday Night Lights*, the plagiarized text. Romney, by copying, politicizing, and monetizing a phrase that is not his own original creation, becomes a spectral figure who deserves to be shamed and punished for his crimes. But it is not only his theft but his politics and ethics that come to the forefront of criticism, mostly because he stole to promote a platform that is oppositional to the beliefs of the creators, actors, and viewers of *Friday Night Lights*. Only then does he become the real villain. So, it is a punishable offense if the person plagiarizes but even more so if he disagrees with the political stance of the violated. Would Berg, Britton, or Aubrey have complained if Barack Obama had used "Clear Eyes. Full Hearts. Can't Lose!"? Probably not. Instead, Obama's reference to the TV show would have been celebrated as a culturally aware allusion, something his constituents could relate to, celebrate, and screen print onto t-shirts. Is it only the political leanings of the offender that makes the crime so reprehensible and newsworthy?

If we replace the figure of Romney with that of a first-year writer and the news media with that of the first-year composition teacher, we may see a parallel between the act of politicization and the institutionalization of writing. Romney is guilty because he used the stolen phrase for political gain; our students are guilty because they use stolen words for academic gain. We are Peter Berg telling our students, "Nice try. But please come up with your own essay." We feel doubly violated by our students' indiscretions because they go against not our political leanings but our educational ones. We could also replace Obama

with ourselves-- teachers who borrow materials, lesson plans, and syllabi verbiage from each other without hesitation and, usually, without attribution. We don't condemn each other for these actions, but we do condemn our Romney-like students for similar actions. This hypocrisy reveals a certain mistrust: students are the opposition, and we judge and punish them accordingly. What we must strive to do, however, is not condemn our students the way the media and *Friday Night Lights'* cast and crew condemned Romney. Instead, we must alter the way we view plagiarism, and we should use our students' "academic dishonesty" as fodder for discussion about attribution, authorship, and production, not violation, punishment, and retribution. Then, as freshman composition teachers responsible for helping our students begin their journeys as part of an academic community, we can't lose.

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Jeffrey R. Galin

A Big Win for Georgia State for Online Reserves

The recent decision and order by Judge Evans in favor of Georgia State University is arguably the most significant fair use case to be settled since the 1976 Copyright law was enacted. Unlike the two often-cited cases that settled copyright law for coursepacks produced by for-profit copy centers (*Basic Books, Inc. v. Kinko's Graphics Corp.* and *Princeton University Press v. Michigan Document Services, Inc.*), *Cambridge UP v. Patton et al* directly addresses the substance of fair use for non-commercial purposes and provides university libraries and professors specific methods for determining fair use for copyrighted works in online reserves. Cambridge, Oxford, and Sage publishers sued Georgia State University representatives over faculty use of articles and chapters placed in the University online reserve and course management systems. The outcome of this case is not surprising to those of us who have been following it carefully since it was filed in April 2008. Judge Evans has provided a set of thoughtful and measured decisions that will likely hold up under appeal. While the case has binding authority only in the state of Georgia, it has set a powerful precedent that will likely stand for years to come. This short report introduces the fundamental questions raised by the case, offers a short review of important decisions that led to its findings, and ends noting several important additional outcomes from the penalty phase.

The fundamental question of this case is whether university faculty have the right to supplement their course reading list with online reserve articles and chapters without paying licensing fees for these materials. The ostensible answer is yes as long as the online reserve articles and chapters meet the fair use criteria within newly defined parameters as set forth in this case.

First and foremost, the judge states that all copyrighted excerpts were supplemental to the classes that used them. That is course syllabi reflect that students were required to purchase one or more books for their courses in addition to the online readings. While she does not directly state that faculty should not assign exclusively readings posted in online reserve or course management system, she implies that doing so could be problematic. Since the Georgia State case does not address this issue, there is no clear determination to follow; however, it makes good common sense to avoid assigning only readings from unpaid online copies. A good rule of thumb to avoid copyright violations is to assign primary texts and supplement them with additional online unpaid readings that all meet the four factor fair use test as set forth in the *1976 Copyright Act*, described below.

These fair use factors concern the Character of the work (non-commercial uses that transform original uses are most favored), Nature of the work (factual

is favored over creative), amount used from the work (typically a chapter or equivalent is favored), and the impact that unpaid use has on the potential market for the work (unavailable licenses for digital works are most favored). Details of fair use factors are provided in GSU's Copyright Website, a short, effective, and informative resource that also provides a Fair Use Checklist that faculty complete to make fair use decisions. This case resulted in several new qualifications in fair use case law, particularly for factors three and four. Factor three witnessed the most significant changes. Whereas past cases dealing with fair use and copyright typically avoided identifying fixed amounts that might be considered a kind of bright line rule for the amount one can take from a book, this court drew explicit lines that, while not absolutely binding, were used to determine overuse of works. Judge Evans held that: "Where a book is not divided into chapters or contains fewer than ten chapters, unpaid copying of no more than 10% of the pages in the book is permissible under factor three" (88). This rule effectively allows for "about one chapter or its equivalent" from a given source. Where a book contains ten or more chapters, the unpaid copying of up to but no more than one chapter (or its equivalent) will be permissible under fair use factor three." Furthermore, excerpts will be limited to "students who are enrolled in the course in question, and then only for the term of the course." Students also must be reminded that they may not share their copies with others (95). And the excerpts must serve a "legitimate purpose in the course" and must be "tailored to accomplish that purpose." These qualifications are the most explicit metrics ever to be articulated in case law concerning fair use, coming as close to "bright-line rules" as possible without contradicting the Supreme Court affirmation in *Campbell v Acuff-Rose Music*, 510 U.S. 569, 590 (1994) that each violation must be analyzed on a case-by-case basis.

The other substantial change that the Court introduced appears in factor four, impact on current and potential markets for the work. Typically, this factor will weigh against fair use when "harm is significant" (*Campbell v Acuff-Rose Music, Inc.* Yet, to "prevail on factor four, Defendants have the burden of proving that any harm from the infringing use is insubstantial." Despite this framework, Judge Evans found that the Plaintiffs also had obligations. Because the publishers claimed that "availability of licenses [ostensibly from the Copyright Clearance Center] shifts factor four fair use analysis in their favor, the judge reasoned that "it is appropriate for them to be called upon to show that CCC provided in 2009 reasonably efficient, reasonably priced, convenient access to the particular excerpts which are in question in this case" (83). This distinction became important in the case because only 13 excerpts of 46 from Oxford and Cambridge Presses were found to have licenses for digital distribution. This important point meant that 33 works were deemed to have met the burden of the fourth fair use factor because they were not able to "command permission fees" in 2009, and works were maintained in password protected systems and then removed from the systems after the term was over. Thus there was "little risk of widespread market substitution of the Defendants' copy for the Plaintiffs'

original" (79). This case makes clear that if licenses are readily available, then factor four weighs heavily in favor of copyright holders. If licenses are not readily available, then the last factor weighs in favor of the professors who would use the works (87).

Four additional contributions of this case may be found in Judge Evans' ruling for Declaratory relief: 1) that the "decidedly small excerpts" for factor three favor Defendants when the amount includes "the aggregate of all excerpts from a book" in a given term. In other words, faculty cannot offer one excerpt, take it down and offer another from the same sources if it amounts to more than the chapter equivalent; 2) These proceedings do not apply to "books intended solely for instruction of students" in a class, or textbooks. The judge implies that textbooks would be less likely candidates for a fair use defense. Similarly, creative works would likely fail a fair use test as well because of their higher level of protection in factor two. This means that works of fiction, poetry, drama, film, and other creative forms would be more protected and would likely require paid licenses for copies; 3) management of student access to these copyrighted materials must be strictly enforced as described in Factor four above; and 4) It may be possible to assign more than the typical chapter or 10% of a text for which there is not a digital license available. While there is technically no clear upper limit of the acceptable amount, Judge Evans states that an example of 18.5% that was found fair use in this case "likely is close to loss of fair use protection" (10). It is important to note that if the "heart of the book" has been excerpted, it could weigh against fair use, *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 565 (1985).

A few final thoughts on this case are worth mentioning. In her December 28, 2012 Order granting Defendants summary judgment on direct and vicarious copyright infringement, Judge Evans makes a definitive case against comparing online reserves with course packs from commercial copy shops, which proved decisive for the outcome of the case. I discuss this issue further in "Online Course Reserves on Trial." Furthermore, Plaintiffs in this case were rebuffed numerous times for demanding remedies well beyond what was warranted to maintain effective fair use practices. The court ruled in the May 11th, 2012 Judgment that while publishers have rights to publish entire edited collections, they may not claim greater protection for chapters that were originally written as separate works. She writes that the only incentive publishers have to control works in this way is "to choke out nonprofit educational use of the chapter as a fair use" (69).

Perhaps the most striking outcome of this case came in the final penalty phase. While the Plaintiffs prevailed in five cases of infringement, three from a single text, the Judge named the Defendants as the prevailing party and awarded them "reasonable attorney fees" of nearly \$4 million. The message from the four years of proceedings in this case is clear. Fair use holds up against direct and unrelenting challenges. It is unlikely that publishers will sue universities over fair use practices again any time soon. Universities and faculty must take care to

manage their course materials responsibly and diligently, and the publishing industry for academic works must take note that academic uses of certain kinds of works will continue to be upheld. If the decision is not overturned, it has provided clear guidelines for online reserves and management of copyrighted works in course management software like blackboard.

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Laurie Cubbison

False Positives Reveal Problems with Copyright Enforcement Software

The major media conglomerates have been actively enforcing their copyright protection on the Internet through the use of algorithmic software bots. These software programs trawl the Internet, specifically major sites such as Google, YouTube, Facebook and others, for text, video and music files that contain intellectual property. During 2012, several incidents revealed that the copyright bots were returning results full of false positives. The particulars of these incidents made it clear that not only could the software bots not identify fair use of intellectual property, but also could not identify contractually authorized use of intellectual property. In this essay I will discuss some well-known incidents from 2012 and what they reveal about use of intellectual property on the Internet.

In August 2012, NASA distributed public domain footage of its Mars landing on its own YouTube channel, only to have a takedown notice appear on the footage that read that the "video contains content from Scripps Local News, who has blocked it on copyright grounds," according to Adam Estes. In September, Doug Gross of CNN reported that the streaming video of the Hugo Awards was blacked out by a software bot that identified clips of Neil Gaiman's winning episode for BBC's *Doctor Who* as copyright infringement. The third high-profile incident took place a few days later when YouTube's automated copyright software removed Michelle Obama's Democratic Convention speech almost immediately after transmission. By December, Torrentfreak.com was reporting that Google was publishing the DMCA takedown requests, only to reveal that the software bots were returning hits on legal files on such sites as Amazon, iTunes, Facebook, and others, including the companies' own official websites.

These false positives reveal issues with regard to the use of these automated copyright filters that previous discussions of fair use with regard to copyright infringement do not. It becomes clear that the software is not sensitive enough to cope with the legal arrangements that exist that allow electronic files to be used legitimately, particularly when content produced by one entity is used by another.

The clues to the problems with the software appear in the takedown notices that were posted in place of the NASA and Michelle Obama videos. Note that the NASA video was declared to have content from Scripps Local News, but the video was produced by NASA and as a government document is already in the public domain. How was it that a media conglomerate claimed it as intellectual property? I suggest that the claims resulted when the NASA video was picked up by news stations across the nation, that when the video was

incorporated for the first time by a media company into its own newscast, for the purposes of the software filters, it became content associated with that company. When we get to the video of Michelle Obama, we learn that multiple companies claimed content associated with the speech, as reported on Slate.com:

This video contains content from WMG [Warner Music Group], SME [Sony Music Entertainment], Associated Press (AP), UMG [Universal Music Group], Dow-Jones, New York Times Digital, The Harry Fox Agency, Inc. (HFA) [which collects and distributes license fees on behalf of the music industry], Warner Chappell, UMPG Publishing and EMI Music Publishing, one or more of whom have blocked it in your country on copyright grounds. Sorry about that.

At the convention the song "Signed, Sealed, Delivered" by Stevie Wonder was used to introduce her, which explains the presence of the music publishers in the list. The three news organizations on the list -- Associated Press, Dow Jones, and New York Times Digital -- account for the rest. So why did the YouTube filters block the first lady's speech? I would argue that the music filters picked up the song, and the video filters picked up the video of the speech as the news outlets began to publish it on their own channels.

The Hugo Awards incident occurred as the award show was being streamed live, according to Gross. In this case, three separate entities were responsible for the loss of the transmission: WorldCon, the science fiction convention presenting the show; Ustream, the hosting service streaming the show; and Vobile, the company providing the copyright enforcement software. Gross reported that the "Hugo Awards had permission to air the clips but apparently had not notified Ustream." Brad Hunstable, head of Ustream, admitted that Ustream's process for performing such notifications wasn't easy to use, while Adam Estes reported that Vobile's CEO claimed that the service is only able to identify content, unable to shut down the transmission itself.

Are these incidents a case of misprogrammed software, or do they reflect another issue? It could be that in arranging rights to use copyrighted material in the live events of the Democratic National Convention and the Hugo Awards ceremony, the organizers neglected to confirm the digital rights to the material. If the rights were confirmed, then the question would become whether the software can recognize digital rights for content that is embedded within other content. When a copyright owner contracts to use copyrighted content owned by someone else, the software needs to be programmed to recognize that use.

The Mars landing incident points to a different issue. It seems to require the producers of public domain videos to nonetheless identify themselves as the creators via the software filters before the media companies can claim them inadvertently through re-transmission. It seems that a public domain code would need to be inserted into the uploaded video file that an algorithm could then recognize as not being the intellectual property of companies that might choose to rebroadcast it.

Given the growth of projects and assignments that involve multi-modal composition, especially using video, instructors and students who use video and music from the Internet or who share their work online need to be aware of how copyright enforcement algorithms work and the kinds of mistakes they make. Instructors who plan to incorporate videos into their lessons may walk into class expecting a particular video to be available, only to find it missing. Incorporating information about the Digital Millennium Copyright Act and digital copyright enforcement into lesson plans would be a good idea, even when the material may be used legitimately. While students may freely use public domain materials in their own compositions, those new compositions may trigger mistaken takedown notices, as the NASA video or the convention speech have done. Instructors can prepare students for the eventuality of such notices and how to respond to them.

As these examples demonstrate, the mistakes made by these digital copyright enforcers go beyond taking down fair uses of copyrighted material to taking down contractually authorized material. When these mistakes are made, rather than acquiescing to their judgments, creators and users need to challenge those decisions through the avenues provided by the major websites.

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Steven Engel and Chris Gerben

The Harvard Cheating Scandal: The Language of Plagiarism and Collaboration in the Age of the Social Internet

The 2012 Harvard cheating scandal is as much about the perception of, and reaction to, plagiarism and collaboration as it is about the actions of the students enrolled in the Harvard undergraduate class in question, Introduction to Congress. Aside from the obvious spotlight on student discipline at one of the country's most esteemed institutions, this case highlights the intersecting tensions of plagiarism, collaboration, academic honesty, academic climate, pedagogy, technology, and reputation. While much of the press about the case seeks to assign blame to the professor, the students, the climate, or the Internet, this incident is better suited to act as a sounding board for our evolving conversations about textual ownership and creation in the 21st century.

On August 30, 2012, *The Harvard Crimson*, the college's student newspaper, reported that the school's disciplinary board was investigating over 100 students for "inappropriately collaborating on answers" and plagiarizing their classmates' responses on a take-home final exam (Robbins). The Dean of Undergraduate Education, Jay M. Harris, noted that the case was "unprecedented in its scope and magnitude" (Pérez-Peña and Bidgood). All of the nearly 125 students accused of cheating were enrolled in Assistant Professor Matthew B. Platt's Government 1310: Introduction to Congress, which culminated in a take-home final exam. During the grading of these exams, the course's teaching fellows and the professor noticed similarities in 13 of the exams (Cook and Robbins). Professor Platt brought these exams to the Administrative Board, who investigated all of the exams. By the end of the summer, the Board found nearly half of the 125 exams "showed signs of collaboration," (Pérez-Peña and Bidgood) and possible plagiarism.

During a resulting, and lengthy, review process, nearly 70 students were asked to temporarily withdraw from the College, while another 30 were put on probation (Ferreol and Lucky). By winter term 2013, faculty were required to explain their collaboration policies in their syllabi as a result of the case (Conway).

The case was not without its controversy, of course. Students claimed that the teaching fellows encouraged collaboration leading up to the exam (Ferreol and Lucky). Alumni and former deans publicly criticized the investigation and drawn-out review process (Auritt and Lucky). And even after the review was completed, there still remains a possibility of lawsuits against the college (Ferreol and Lucky).

The Exam

The exam consisted of several short-answer questions, an essay question, and a bonus question. The instructions given with the exam indicated that it was “completely open book, open note, open internet, etc.” The exam also noted that “in all other regards, this should fall under similar guidelines that apply to in-class exams. More specifically, students may not discuss the exam with others—this includes resident tutors, writing centers, etc.” Later analysis of the exam language noted the seeming contradictions between an “open internet” being permissible, while discussing the exams with others was not, especially since several enrolled students claimed that teaching fellows had helped them prepare for the exam as part of sanctioned review sessions. These subtle moments of language use are part of the issue surrounding this case; more apparent, however, are moments where students appear to have lifted verbatim language from others.

Plagiarism

The Harvard cheating scandal was discovered like many cases of plagiarism are: a teacher noting unexpected similarities between student texts. In this case, Professor Platt discovered several essay responses that shared the phrase “Freddie Mac’s stealth lobbying campaign.” Other essays referred to an “obscure” historical moment, the Cannon Revolt of 1910. In addition, at least two of the students placed an unnecessary space between the comma and the numeral 5 in the number 22,500. (Cook and Robbins). However, this case is more than just an example of textual similarities and how the attention paid to the textual components obscure the complexity of plagiarism.

The Council of Writing Program Administrators defines plagiarism as “when a writer deliberately uses someone else’s language, ideas, or other original (not common-knowledge) material without acknowledging its source.” By drawing focus to plagiarism as a literacy act and not just a textual artifact, this definition highlights that plagiarism is a multifaceted literacy practice that is situated in particular historical, social, and cultural contexts (Howard; Howard and Robillard). Instructors must, as Kathryn Valentine writes, take into account the “participants’ values, attitudes, and feelings as well as their social relationship to each other and to the institutions in which they work” (89-90).

The reporting on this incident tends to conflate a number of practices under the large umbrella of *plagiarism*. For example, it appears that some students used the phrase “Freddie Mac’s stealth lobbying campaign” without properly acknowledging its source, thinking that this phrase was common-knowledge. (A Google search for that phrase results in over one million hits.) Some students might have deliberately copied this from another student in order

to avoid doing the work themselves. Still others might have picked up the phrase during a conversation with their fellow classmates. All of these students would be guilty of the blanket term “plagiarism” though their literacy practice took different shapes. This is especially salient as Harvard’s official statements on the case often use the words plagiarism and collaboration to describe similar actions.

Collaboration

Defining collaboration is arguably at the center of understanding and discussing the incident. Harvard, itself, uses the phrase “inappropriate collaboration” in several statements and publications to describe related acts that seemingly fall short of the label of plagiarism (or cheating), but appear firmly in a grey zone between unsanctioned and sanctioned group work outside of class. Likewise, students of the class in question were forbidden from discussing the take-home exam with others in the class, or with tutors at the Harvard Writing Center. Since conversation is an assumed activity at the heart of most definitions of collaboration (e.g. Bruffee; Ede and Lunsford), group work – including study groups with course tutors in attendance – would be considered a possible form of “inappropriate collaboration” in this case.

According to the *Harvard Guide to Using Sources*, published as an online resource by the Harvard College Writing Program, the onus of determining whether group or tutoring work is collaborative or not (or appropriate or not) rests with the student. It states, “In some courses you will be allowed or encouraged to form study groups, to work together in class generating ideas, or to collaborate on your thinking in other ways. Even in those cases, it’s imperative that you understand whether all of your writing must be done independently, or whether group authorship is permitted. Most often, even in courses that allow some collaborative discussion, the writing or calculations that you do must be your own.”

One of the questions remaining as the dust settles in this incident is where collaboration was placed on the process and product continuum. The language of the exam makes clear that students are not permitted to “discuss the exam with others,” which foregrounds the *process* of collaboration. Perhaps ironically, such direction fails to overtly forbid the joint construction of texts (i.e. writing and not just discussing, also a staple of established definitions of collaboration) that are the result/product of online interactions facilitated by social websites (e.g. wikis and social networks.) In these latter cases, collaboration is inherent to the *product(s)* itself, but could be understood as not actively supporting discussion with others. Leaving such interpretation of “appropriateness” to students who foster evolving views of the separation of in-class and online environments may have opened the door to differing perspectives in this case.

Technology

That some of the most popular websites today fall under the ever-widening designation of “social media” suggests the close relationship of co-construction of knowledge valued in collaboration and the ability to quickly share information on the Internet; it would be impossible to determine where one ends and the other begins. Sites like Wikipedia, Facebook, and Twitter only “work” when users can read, write, and share (or, copy) others’ texts on the interactive platforms. This fact is the main fodder for arguments in support of Harvard students’ potentially inadvertent collaborating under the exam direction of utilizing an “open internet.” One such argument appears in online magazine *Slate*. Referring to the exam language, author Farhad Manjoo comments, “the test allowed students to consult the Web, a medium that is built on teamwork. If students looked up stuff on Wikipedia or Quora, they would have been effectively discussing the exam with others. And yet online collaboration would have been kosher under the test’s rules, even though you’d be labeled a cheater if you posed the same question to your friend Laura rather than Quora. That distinction makes no sense.”

While critics of both the exam writer and students alike condemn any overt copying and misrepresentation of material, voices on both sides acknowledge the shifting context of learning in a digital age. Hobbs Professor of Cognition and Education at the Harvard Graduate School of Education, Howard Gardner, acknowledges that students’ “easy access to information, if not knowledge, coupled with the simplicity of ‘cutting’ and ‘pasting’ makes it very easy to plagiarize,” adding that the case at Harvard presented a “perfect storm” for plagiarism accusations primarily because of the ease with which student test-takers could exchange and (re)present knowledge by way of the Internet. Gardner, like others, points to the possible code switching that adolescent students now face as they use personal computers for both social and scholarly pursuits. In an age when every new keystroke implies a future reciprocation from someone else, the blurry lines between plagiarism and collaboration are being redrawn in programming code.

Teaching

The coverage of the Harvard cheating scandal often highlighted the role of the instructor, usually with a critical eye. For instance, in a letter republished in *The Harvard Crimson*, Harvard alumnus Thomas G. Stemberg wrote, “We had a professor who, like many the Faculty of Arts and Sciences assigns to teach undergraduates, was clearly not qualified to do so.” Alex Halperin of *Salon* magazine reported that the course had a reputation as a “gut course” and that the professor announced he didn’t care if students came to lecture. NYU professor Jonathan Zimmerman took a more sympathetic stance and pointed out that in colleges, “teaching is mostly unrewarded, which is the biggest scandal of

all. Across every kind of school...professors who give more time to research tend to make higher salaries; meanwhile, the ones who devote themselves more to teaching tend to earn less." An undercurrent of many of these reports is the surprise (and, in some cases, delight) of seeing a failed moment in teaching at one of the world's most esteemed centers of higher learning.

Less pronounced was the attention given to the role of the teaching fellows. Mary Carmichael of *The Boston Globe* reported that it was a teaching fellow who initially noted the similarities in students' answers. An anonymous student's email is quoted in Salon as saying, "I can personally attest that my TF [teaching fellow] collaborated on every single exam with me. [The TF] pointed me in the right direction, gave me some answers, gave me some insights, and some quotes to use." (as cited in Halperin). This in-between role of the teaching fellow – as gatekeeper and as coach – highlights the wide spectrum of ways that students and teacher interact, and perhaps (inappropriately) collaborate.

And so the specter of plagiarism, the promise of collaboration, and the disruption of technology visibly merge into 21st century classrooms. While it is easy to identify pedagogical missteps in hindsight (unclear instructions, mixed messages about collaboration, for instance), the future task for compositionists is to try to construct a space where critical conversations about plagiarism and collaboration can take place.

Implications

Undoubtedly this 2012 incident at Harvard provides more questions than answers about the future of the language of plagiarism and/or collaboration in the age of social media. Perhaps, then, it shouldn't be seen as ironic that one of the most thorough sources of information about the case can be found on the Wikipedia page dedicated to the "2012 Harvard Cheating Scandal." On this page – which can be edited by anyone, and accessed on any increasingly mobile device – readers can quickly become editors, and vice versa, again blurring the lines between what it means to consume and construct knowledge on the Internet.

Higher education institutions are close behind, quickly trying to map these lines as a way to avoid the next scandal. For example, in the shadow of this incident, Yale College Dean Mary Miller dissuaded faculty at that university from assigning take-home exams in fall 2012 (Menton). Additionally, at the beginning of classes in winter 2013 at Harvard, Dean of Undergraduate Education Jay M. Harris apparently reminded faculty in an official statement that all instructors should review and include a statement on collaboration policies for all of their syllabi (Conway). In these two reactions we see a major focus on teaching as a way to preempt potential issues exacerbated by technology.

This focus on teaching is echoed in a staff editorial published by *The Harvard Crimson* following announcement of the punishments in February 2013. The staff bemoans the length of the investigation (approximately ten months)

while stating, "this scandal...highlights the necessity of good teaching, of clear policy, and of fair process." Though the case involved months of inquiry, reevaluating teaching methods, and parsing of processes related to plagiarism and collaboration through the use of the Internet, one simple factor unites the entire episode: every stage of this saga involved the carefully nuanced use of language and writing. Whether seen as a case study of logistical (or legal) writing by the teaching staff, or social writing by the students, the 2012 Harvard cheating scandal points to the ever-increasing need for writing and teaching professionals to think carefully about how they communicate their expectations to others. As this case clearly demonstrates, even if students take their instructors' wording literally, that may be only the beginning of evolving conversations about writing in the 21st century.

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Bowman v. Monsanto and the Rhetoric of Piracy in the GE Seed Debate

On February 20, 2013, the Supreme Court heard the first oral arguments in the case of *Bowman v. Monsanto*, a dispute between Vernon Bowman, a 75-year-old farmer from Indiana, and the multinational agricultural biotechnology firm Monsanto. At issue in the case is whether the patent on Monsanto's genetically engineered Roundup Ready soybean extends to second-generation seeds. The court's decision is expected by June, and will have far-reaching consequences for the biotechnology industry, among other industries involving self-replicating technologies and patents on organisms (Sherman). In this report, I situate the case of *Bowman v. Monsanto* in the context of the wider public discourse surrounding patented, genetically engineered (GE) seed. After a brief introduction to the case, I examine the complex rhetoric of piracy in the GE seed debate, and suggest applications of rhetoric and composition studies scholarship that can inform this discussion.

Like many farmers, Vernon Bowman planted two crops of soybeans each year. For his first crop, he purchased Monsanto's patented, genetically engineered Roundup Ready seed, and in keeping with the license he did not save any of the patented seed for replanting when he harvested. Second crops are typically less successful, so in 1999 Bowman decided to save money by purchasing commodity seeds from a nearby grain elevator, some of which were Monsanto's Roundup Ready variety. He planted the seeds in violation of the license, which allows harvested seed to be sold to a grain elevator, but not replanted. When he harvested the second crop, he saved seeds for the next year's second planting. For eight years, Bowman continued to save seed from his second planting for the next year's late season crop, purchasing additional commodity seed as needed (*Monsanto Co. v. Bowman*).

In 2007, Monsanto sued Bowman, accusing him of patent infringement, or "seed piracy." In September 2009, the US District Court for the Southern District of Indiana decided in favor of Monsanto, and directed Bowman to pay the company \$84,456. Bowman appealed the decision, but in September 2011 the Federal Circuit Court of Appeals also ruled in favor of Monsanto (*Monsanto Co. v. Bowman*). Bowman appealed again, and in February 2013 the case reached the Supreme Court. None of the justices appeared to support Bowman's position after the first day of arguments (Sherman); however, a Monsanto victory is not guaranteed, as the Supreme Court "has generally been taking a narrower view of patent rights than the appellate court" (Pollack).

Bowman's case is not unique. Monsanto has filed over 140 similar lawsuits that have involved more than 400 individual farmers, and has thus far

been awarded \$23.67 million. According to Monsanto, these “seed piracy” lawsuits are meant to “discourage using technology to gain an unfair advantage” and ensure that the company is able to continue funding research and development for new technologies (“Pilot Grove Co-op”). Scientists employed by biotechnology firms and non-profit groups like the Bill and Melinda Gates Foundation, bolstered by the backing of government agencies like the USDA, claim that biotechnology is necessary to feed the world. From the perspective of GE supporters, farmers who infringe on patents should be considered seed pirates. As demonstrated in the case of *Bowman v. Monsanto*, corporate patent holders are eager to enforce strict licensing agreements on their GE seed. Anti-genetic engineering activists like Vandana Shiva perceive the activities of scientists and biotechnology firms involved in bioprospecting, genetic engineering, and seed patenting as exploitative, and label such activities “biopiracy” (Shiva 49). The arguments against GE seed are typically environmental or ethical, and they often stem from calls to protect farmers’ rights. Environmental issues associated with GE technology include the migration of genes caused by cross-pollination and dependence on petrochemical-based fertilizers and pesticides (Hettinger 300–302). According to Shiva, Monsanto’s GE herbicide resistant seeds “destroy diversity and food crops in the Third World and generate artificial demand for unnecessary varieties” (80).

Implications for Rhetoric and Composition

These conflicting appeals to piracy are rooted in differing understandings of the pirate figure. Monsanto’s use of the term “seed piracy” is tied to an eighteenth-century conception of piracy rooted in the same Romantic notion of authorship that enables the patenting of GE seeds as original creations. The corporate author, Monsanto, seeks to protect its creations from the pirates who aim to share knowledge freely. Bowman is, in this sense, a pirate. On the other hand, accusations of “biopiracy” align with contemporary understandings of authorship that account for collaborative modes of creation, approaches forwarded by scholars including Lisa Ede, Andrea Lunsford, and Susan West. Given the rootedness of the concept of piracy in intellectual property to the Romantic conception of authorship, moves to rethink authorship also entail a rethinking of the accompanying definition of piracy.

Collaborative and feminist approaches to creative production reinforce a culture of open exchange among networked peers. If extended to farming, these approaches suggest that the seed selecting, sharing, and saving practices of an agricultural community constitutes a form of intergenerational collaborative, and often gendered feminine, creative production. Thus, if selected seeds are the creative legacy of generations of collaborators, then the use of existing seed in the development of patented, genetically engineered varieties is an act of simultaneous appropriation and enclosure.

The shared ownership claims of the seed saving community are prior to those of corporate entities, which Ede and Lunsford note have taken on the role of the originary eighteenth-century author (359). However, the modern industrial approach to farming does not recognize selecting and saving seed as collaborative production, so seeds are understood as authorless raw material. By preventing seed saving, Monsanto has effectively transformed peer-networked farmers into dependent consumers. Corporations like Monsanto have “assum[ed] the mantle of the author” as originary genius and used it to “lead the way in a kind of gold rush attempt to extend copyright in all directions” (Ede and Lunsford 359).

In the eighteenth century, book pirates sought to share knowledge and resist enclosure through intellectual property protections, while publishers used the figure of the author encourage enclosure through expanding intellectual property claims. Contemporary collaborative and feminist models of creative production resist the enclosure of the commons as they acknowledge that creative production involves “drawing on an intellectual commons to produce something ‘new’” (Lunsford and West). If authorship is thus redefined using models collaborative and feminist production, it seems the author and the pirate may have exchanged roles. By extending and applying collaborative and feminist theories of authorship, rhetoric and composition studies can offer insight into the complex rhetoric of piracy surrounding GE seed, a debate that underpins the case of *Bowman v. Monsanto*.

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Cory Doctorow

RIP, Aaron Swartz

My friend Aaron Swartz committed suicide yesterday, Jan 11. He was 26. I got woken up with the news about an hour ago. I'm still digesting it -- I suspect I'll be digesting it for a long time -- but I thought it was important to put something public up so that we could talk about it. Aaron was a public guy.

I met Aaron when he was 14 or 15. He was working on XML stuff (he co-wrote the RSS specification when he was 14) and came to San Francisco often, and would stay with Lisa Rein, a friend of mine who was also an XML person and who took care of him and assured his parents he had adult supervision. In so many ways, he was an adult, even then, with a kind of intense, fast intellect that really made me feel like he was part and parcel of the Internet society, like he belonged in the place where your thoughts are what matter, and not who you are or how old you are.

But he was also unmistakably a kid then, too. He would only eat white food. We'd go to a Chinese restaurant and he'd order steamed rice. I suggested that he might be a supertaster and told him how to check it out, and he did, and decided that he was. We had a good talk about the stomach problems he faced and about how he would need to be careful because supertasters have a tendency to avoid "bitter" vegetables and end up deficient in fibre and vitamins. He immediately researched the hell out of the subject, figured out a strategy for eating better, and sorted it. The next time I saw him (in Chicago, where he lived - he took the El a long way from the suburbs to sit down and chat with me about distributed hash caching), he had a whole program in place.

I introduced him to Larry Lessig, and he was active in the original Creative Commons technical team, and became very involved in technology-freedom issues. Aaron had powerful, deeply felt ideals, but he was also always an impressionable young man, someone who often found himself moved by new passions. He always seemed somehow in search of mentors, and none of those mentors ever seemed to match the impossible standards he held them (and himself) to.

This was cause for real pain and distress for Aaron, and it was the root of his really unfortunate pattern of making high-profile, public denunciations of his friends and mentors. And it's a testament to Aaron's intellect, heart, and friendship that he was always forgiven for this. Many of us "grown ups" in Aaron's life have, over the years, sat down to talk about this, and about our protective feelings for him, and to check in with one another and make sure that no one was too stung by Aaron's disappointment in us. I think we all knew that, whatever the disappointment that Aaron expressed about us, it also reflected a disappointment in himself and the world.

Aaron accomplished some incredible things in his life. He was one of the early builders of Reddit (someone always turns up to point out that he was technically not a co-founder, but he was close enough as makes no damn), got bought by Wired/Conde Nast, engineered his own dismissal and got cashed out, and then became a full-time, uncompromising, reckless and delightful shit-disturber.

The post-Reddit era in Aaron's life was really his coming of age. His stunts were breathtaking. At one point, he singlehandedly liberated 20 percent of US law. PACER, the system that gives Americans access to their own (public domain) case-law, charged a fee for each such access. After activists built RECAP (which allowed its users to put any caselaw they paid for into a free/public repository), Aaron spent a small fortune fetching a titanic amount of data and putting it into the public domain. The feds hated this. They smeared him, the FBI investigated him, and for a while, it looked like he'd be on the pointy end of some bad legal stuff, but he escaped it all, and emerged triumphant.

He also founded a group called DemandProgress, which used his technological savvy, money and passion to leverage victories in huge public policy fights. DemandProgress's work was one of the decisive factors in last year's victory over SOPA/PIPA, and that was only the start of his ambition.

I wrote to Aaron for help with *Homeland*, the sequel to *Little Brother*, to get his ideas on a next-generation electioneering tool that could be used by committed, passionate candidates who didn't want to end up beholden to monied interests and power-brokers. Here's what he wrote back:

First he decides to take over the whole California Senate, so he can do things at scale. He finds a friend in each Senate district to run and plugs them into a web app he's made for managing their campaigns. It has a database of all the local reporters, so there's lots of local coverage for each of their campaign announcements.

Then it's just a vote-finding machine. First it goes through your contacts list (via Facebook, twitter, IM, email, etc.) and lets you go down the list and try to recruit everyone to be a supporter. Every supporter is then asked to do the same thing with their contacts list. Once it's done people you know, it has you go after local activists who are likely to be supportive. Once all those people are recruited, it does donors (grabbing the local campaign donor records). And then it moves on to voters and people you could register to vote. All the while, it's doing massive A/B testing to optimize talking points for all these things. So as more calls are made and more supporters are recruited, it just keeps getting better and better at figuring out what will persuade people to volunteer. Plus the whole thing is built into a larger game/karma/points thing that makes it utterly addictive, with you always trying to stay one step ahead of your friends.

Meanwhile GIS software that knows where every voter is is calculating the optimal places to hold events around the district. The press database is blasting them out -- and the press is coming, because they're actually fun. Instead of sober speeches about random words, they're much more like standup or *The Daily Show* - full of great, witty soundbites that work perfectly in an evening newscast or a newspaper story. And because they're so entertaining and always a little different, they bring quite a following; they become events. And a big part of all of them getting the people there to pull out their smartphones and actually do some recruiting in the app, getting more people hooked on the game.

He doesn't talk like a politician -- he knows you're sick of politicians spouting lies and politicians complaining about politicians spouting lies and the whole damn thing. He admits up front you don't trust a word he says -- and you shouldn't! But here's the difference: he's not in the pocket of the big corporations. And you know how you can tell? Because each week he brings out a new whistleblower to tell a story about how a big corporation has mistreated its workers or the environment or its customers -- just the kind of thing the current corruption in Sacramento is trying to cover up and that only he is going to fix.

(Obviously shades of Sinclair here...)

also you have to read <http://books.theinfo.org/go/B005HE8ED4>

For his TV ads, his volunteer base all take a stab at making an ad for him and the program automatically A/B tests them by asking people in the district to review a new TV show. The ads are then inserted into the commercial breaks and at the end of the show, when you ask the user how they liked it, you also sneak in some political questions. Web ads are tested by getting people to click on ads for a free personality test and then giving them a personality test with your political ad along the side and asking them some political questions. (Ever see ads for a free personality test? That's what they really are. Everybody turns out to have the personality of a sparkle fish, which is nice and pleasant except when it meets someone it doesn't like, ...) Since it's random, whichever group scores closest to you on the political questions must be most affected by the ad. Then they're bought at what research shows to be the optimal time before the election, with careful selection of television show to maximize the appropriate voter demographics based on Nielsen data.

anyway, i could go on, but i should actually take a break and do some of this... hope you're well

This was so perfect that I basically ran it verbatim in the book. Aaron had an unbeatable combination of political insight, technical skill, and intelligence about people and issues. I think he could have revolutionized American (and worldwide) politics. His legacy may still yet do so.

Somewhere in there, Aaron's recklessness put him right in harm's way. Aaron snuck into MIT and planted a laptop in a utility closet, used it to download a lot of journal articles (many in the public domain), and then snuck in and retrieved it. This sort of thing is pretty par for the course around MIT, and though Aaron wasn't an MIT student, he was a fixture in the Cambridge hacker scene, and associated with Harvard, and generally part of that gang, and Aaron hadn't done anything with the articles (yet), so it seemed likely that it would just fizzle out.

Instead, they threw the book at him. Even though MIT and JSTOR (the journal publisher) backed down, the prosecution kept on. I heard lots of theories: the feds who'd tried unsuccessfully to nail him for the PACER/RECAP stunt had a serious hate-on for him; the feds were chasing down all the Cambridge hackers who had any connection to Bradley Manning in the hopes of turning one of them, and other, less credible theories. A couple of lawyers close to the case told me that they thought Aaron would go to jail.

This morning, a lot of people are speculating that Aaron killed himself because he was worried about doing time. That might be so. Imprisonment is one of my most visceral terrors, and it's at least credible that fear of losing his liberty, of being subjected to violence (and perhaps sexual violence) in prison, was what drove Aaron to take this step.

But Aaron was also a person who'd had problems with depression for many years. He'd written about the subject publicly, and talked about it with his friends.

I don't know if it's productive to speculate about that, but here's a thing that I do wonder about this morning, and that I hope you'll think about, too. I don't know for sure whether Aaron understood that any of us, any of his friends, would have taken a call from him at any hour of the day or night. I don't know if he understood that wherever he was, there were people who cared about him, who admired him, who would get on a plane or a bus or on a video-call and talk to him.

Because whatever problems Aaron was facing, killing himself didn't solve them. Whatever problems Aaron was facing, they will go unsolved forever. If he was lonely, he will never again be embraced by his friends. If he was despairing of the fight, he will never again rally his comrades with brilliant strategies and leadership. If he was sorrowing, he will never again be lifted from it.

Depression strikes so many of us. I've struggled with it, been so low I couldn't see the sky, and found my way back again, though I never thought I would. Talking to people, doing Cognitive Behavioral Therapy, seeking out a counsellor or a Samaritan -- all of these have a chance of bringing you back from

those depths. Where there's life, there's hope. Living people can change things, dead people cannot.

I'm so sorry for Aaron, and sorry about Aaron. My sincere condolences to his parents, whom I never met, but who loved their brilliant, magnificently weird son and made sure he always had chaperonage when he went abroad on his adventures. My condolences to his friends, especially Quinn and Lisa, and the ones I know and the ones I don't, and to his comrades at DemandProgress. To the world: we have all lost someone today who had more work to do, and who made the world a better place when he did it.

Goodbye, Aaron.

Contributors

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