

PREFACE

MARTINE COURANT RIFE, SHAUN SLATTERY,
AND DÀNIELLE NICOLE DeVOSS

You have been invited to participate on a college-wide committee to examine work-for-hire policies at your institution. During your first meeting, a committee member boldly claims that all work faculty and students create during their tenure at the institution should rightly be the property of the institution—especially considering the economic hardship and budget cuts facing most institutions of higher education. What is your response to this claim?

An undergraduate student has accepted work doing freelance web authoring and design. She comes to you to ask what materials produced in a freelance capacity can be included in her professional portfolio. As both professor and professional mentor to this student, how might you advise her?

You serve on an advisory committee for your college's library. A library representative and faculty member co-present their proposal to adopt a college-wide media use policy. The policy includes requirements such as “faculty can use 30 seconds of a 5-minute song” in their teaching, or “faculty can post 10 minutes of a 90-minute film on the college's streaming server” for class use. How might you advise in this situation?

While working with a departmental curriculum committee, a committee member claims that there is no need to revise a writing course to include copyright and fair use because “there's not enough time to teach that, too.” What might your response be?

Intellectual property, more and more, rubs up against the work we do in our classrooms, libraries, and offices and in our curricula, teaching, and policies. When we craft teaching materials that include visuals, audio, and video, we implicate ourselves in intellectual property issues. When we ask students to craft multimodal compositions, we implicate them in intellectual property issues. What intellectual property issues are involved depend on each composition, audience, context, purpose, and use. Intellectual property is an inherently rhetorical set of laws and practices, worthy of our attention as researchers, teachers, colleagues, and members of our institutional communities.

Appropriately, more and more rhetoric and composition studies scholars have entered into the conversation about intellectual property issues, especially as these issues orbit around digital writing practices and new media texts. However, very, very few of us are lawyers; few of us have had formal training in U.S. law. The purpose of this edited collection is to gather together stories, theories, and research that can further inform the ways in which we situate and address intellectual property issues in our writing classrooms. We focus in this introduction on the motivations for this collection and the intellectual backdrop for the work presented here, we include an overview of the collection's contents, and, in the appendix to this introduction, we provide a brief discussion of the foundational laws and legal precedents that frame our work.

WHY NOW?

We want to call attention to one tiny moment, one that might seem mundane but is incredibly important in terms of understanding our current cultural and political time and what changes we may foresee to intellectual property in the United States. That moment is this: One of the last acts President George W. Bush took as he planned to vacate the presidency in fall of 2008 was to create a cabinet-level position of intellectual property enforcement coordinator, or “copyright czar,” as the position came to be referred to in the press. The position was created by the Prioritizing Resources and Organization for Intellectual Property Act of 2008, designed to coordinate the anti-piracy and intellectual property protection work of agencies including (but not limited to) the Department of Justice and the Patent and Trademark Office. Not only did this Act provide for the appointment of a copyright czar, but it also created a requirement that the czar chair an “interagency intellectual property enforcement advisory committee” and that this committee develop an administrative strategy to increase “enforcement against intellectual property infringement.”

In April 2, 2009, a consortium—including the American Library Association, EDUCAUSE, the Internet Archive, Wikimedia Foundation, and others—delivered a letter to President Obama, encouraging him to break from the direction being pursued by the copyright czar. This consortium asked the president instead to “create offices devoted to promoting innovation and free expression” (American Association of Law Libraries, et al., 2009). The letter raised concern about Obama’s potential candidates for copyright czar, noting that in the past almost all had close ties with or served as representatives for copyright industries. The letter warned, “we ask you to consider that individuals who support overly broad IP protection might favor established distribution models at the expense of technological innovators, creative artists, writers, musicians, filmmakers, and an increasingly participatory public.” Potential implications noted by the consortium ranged from constraints to technology innovation to barriers being established to citizen use of cultural heritage materials. The key argument made in the letter is that although the government has established and adopted a range of copyright protection positions and acts, the government has not balanced such action by establishing any positions, acts, or offices devoted to encouraging technology innovation and intellectual property distribution.

In an April 20, 2009 response letter, a group representing copyright protection argued against the creation of a false dichotomy between control and innovation and noted that “intellectual property drives innovation and creativity” (Copyright Alliance, 2009). In a smart move—given the current economy in the U.S. and in the world—the authors called attention to the employment of some 38 million U.S. workers in the creative industries.

On September 25, 2009, President Obama appointed Victoria A. Espinel as the first U.S. Intellectual Property Enforcement Coordinator. Prior to the appointment, Vice President Joe Biden, a staunch intellectual property protectionist, promised industry groups—including the Motion Picture Association of America—that they’d be pleased by Obama’s pick.

On February 23, 2010, the *Federal Register* published a notice authored by Espinel. The notice invited public input and participation in the larger process described in the document:

The Federal Government is currently undertaking a landmark effort to develop an intellectual property enforcement strategy building on the immense knowledge and expertise of the agencies charged with enforcing intellectual property rights. By committing to common goals, the Government

will more effectively and efficiently combat intellectual property infringement. (Espinel, 2010)

Public comments were specifically requested to document the “costs to the U.S. economy resulting from intellectual property violations, and the threats to public health and safety created by infringement” and to provide “detailed recommendations ... for improving the Government’s intellectual property enforcement efforts.” The *Federal Register* notice further outlined twenty areas where additional public comments were sought, including, for example:

Describe existing technology that could or should be used by the U.S. Government or a particular agency or department to more easily identify infringing goods or other products ... Suggest how state and local law enforcement authorities could more effectively assist in intellectual property enforcement efforts, including whether coordination could be improved, if necessary, and whether they should be vested with additional authority to more actively participate in prosecutions involving intellectual property enforcement ... Describe the adequacy and effectiveness of the reporting by the various agencies responsible for enforcing intellectual property infringements, such as the reporting of investigations, seizures of infringing goods or products, prosecutions, the results of prosecutions, including whether any further voluntary reporting of activities should be made, in keeping with other federal law ... Suggest specific methods to limit or prevent use of the Internet to sell and/or otherwise distribute or disseminate infringing products (physical goods or digital content) ... Provide information on the various types of entities that are involved, directly or indirectly, in the distribution or dissemination of infringing products and a brief description of their various roles and responsibilities ... Discuss the effectiveness of recent efforts by educational institutions to reduce or eliminate illegal downloading over their networks. (Espinel, 2010)

The call clearly focuses on documenting intellectual property violations and suggesting enforcement strategies; increased governmental oversight and enforcement of intellectual property thus continues to move forward.

In response to the call for comments on the joint strategic plan, the Conference on College Composition and Communication—with support from the

National Council of Teachers of English (NCTE), and with the endorsements of over 80 academics across the U.S. as well as organizational support from the Association of Teachers of Technical Writing and the Writing in Digital Environments Research Center—submitted a letter to the copyright czar reflecting the concerns of writing teachers in preserving fair use in teaching and learning (Conference on College Composition and Communication, 2010). Over 1,600 comments were received by Intellectual Property Enforcement Coordinator Espinel, and the 2010 Joint Strategic Plan on Intellectual Property Enforcement was issued in June 2010. Writing teachers have started to mobilize in their efforts to be heard regarding the continued development of copyright law and policy. The contributors to this collection drive that point further home as they detail the concerns and strategies that we face in our day-to-day responsibilities as teachers and researchers of writing.

We think that this particular cultural, historical, and technological moment offers us the opportunity to make unique contributions to educating students, teachers, and others about the rights they currently have and about the issues they will face due to what clearly appears to be a government-backed “enforcement” mode in the area of intellectual property protection. If we want to be part of the conversations that craft fair work-for-hire policies at our institutions, and position ourselves as experts to teach copyright and fair use to writing students and to raise the legal issues professional writers will face in their work lives, now is the time to act. As a small move toward this, we offer a collection of writing that we hope will be just the beginning of the additional larger conversations we need to have about copyright and writing in the digital age.

COPYWRITE SCHOLARSHIP: 1994 TO PRESENT

This collection builds on a body of scholarship over a decade old. We summarize this foundation of pioneering scholarship to contextualize and scaffold the contributions in this collection. Of particular interest here are those questions that endure—that remain points of contention from our field’s earliest examinations of the intersection of composition and copyright—and those issues that arise anew. One of the most compelling emergent issues is the changing nature of composition through the proliferation of digital content production technologies and the development of a popular culture of media participation.

In 1994, Andrea Lunsford and Lisa Ede began publishing on their explorations of collaborative authorship and the teaching of writing, laying the groundwork for further copyright discussions in the context of teaching writing. It’s also been a decade since Tharon Howard (1996) originally published

“Who ‘Owns’ Electronic Texts?,” urging the field to attend to copyright and fair use issues as they intersect with technical communication. The conversation was continued in the 1997 special intellectual property issue of *Kairos*, in which TyAnna Herrington explained the fair use doctrine and its importance to the teaching of writing in online environments. In her article, Herrington argued that, contrary to popular belief, copyright laws do apply to digital communication, the public does have fair use rights, and fair use is necessary to protect freedom of speech. In an interview included in the same issue of *Kairos*, Johndan Johnson-Eilola (1997) characterized intellectual property as a social and economic construct existing to maximize profits for capitalists. Johnson-Eilola was asked during the interview where fair use should begin on the web, because everything is “published.” The question was as interesting to the field in 1997 as it is still, and yet the question remains without a clear answer, even from legal scholars.

Interest and inquiry within composition studies on fair use, copyright, and their relevance to the teaching of writing was further expanded in a special issue of *Computers and Composition* (1998) edited by Laura Gurak and Johnson-Eilola. In this issue, Herrington, Henrietta Nickels Shirk and Howard Taylor Smith, John Logie, and Janice Walker discussed positions on copyright, fair use, and implications for the teaching of writing. Herrington connected free speech to fair use; Shirk and Howard discussed the implications of the Conference on Fair Use (CONFU) guidelines on writing pedagogy; Logie reminded us of intellectual property law’s history and connections to developing technologies, calling for teaching copyright issues; and Walker argued that, because the Internet changes what writing teachers do in the classroom, we should develop theories that show differences and similarities between plagiarism and copyright.

It was in these earlier years that Jim Porter (1997) addressed the need for developing an ethical stance toward Web writing. He argued that if the law is unethical to follow, we can break it. Several years later, Logie (2005) addressed Porter’s argument, stating that if we are going to engage in civil disobedience, it needs to be organized and public so our behaviors aren’t mistaken for ignorance—or, even worse, seen as active theft.

More recent scholarship has emphasized the need to teach writers basic copyright law and fair use (DeVoss & Porter, 2006; DeVoss & Webb, 2008; Dush, 2009; Herrington, 2003; Howard, 1996; Juliet, 2004; Logie, 2005, 2006b; Reyman, 2006, 2010; Rife, 2006, 2007, 2010; Rife & Hart-Davidson, 2006; Waller, 2006a, 2006b). Because most research and writing is done on computers and in networked environments, reliance on the fair use doctrine has become crucial for the educational community. We live in a cut-and-paste

world where remix is commonplace (Grabill & Hicks, 2005; Lessig, 2004, 2008; Ridolfo & DeVoss, 2009; Westbrook, 2006); however, it is unknown how (or if) composition teachers are teaching copyright. Thus far, only one collection in our field focuses on copyright law and its pedagogical implications—Steve Westbrook’s (2009) excellent *Composition & Copyright: Perspectives on Teaching, Text-making, and Fair Use*.

Recent media coverage of peer-to-peer (P2P) file sharing cases—coupled with lawsuits against hundreds of schools, individuals (including students), and peer-to-peer software distributors—has understandably kindled disciplinary interest. In the context of P2P file sharing and teaching, writing pedagogy pieces have appeared by Porter and Martine Courant Rife (2005), Dànielle Nicole DeVoss and Porter (2006), and Rife (2006). Following Porter and Rife’s short position paper on the U.S. Supreme Court’s decision that Grokster was secondarily liable for the copyright-infringing behaviors of users of its software, the Caucus on Intellectual Property and Composition/Communication Studies (CCCC-IP) began a yearly publication, “Top IP Events,” published on the NCTE Web site. In 2009, the CCCC-IP also began publishing a monthly report on the NCTE Web site and an announcement in the NCTE email list. In 2010, the Top Intellectual Property Developments annual, currently coordinated by Clancy Ratliff, one of the contributors here, contained the largest number of contributions (nine) in the 5 years since its inception.

In *Controlling Voices: Intellectual Property, Humanistic Studies, and the Internet* (2001), Herrington examined how intellectual property law impacts educators, including those in rhetoric and technical communication. Two years later, she produced *A Legal Primer for the Digital Age* (2003), a short textbook covering a wide range of laws relevant in the everyday practice of technical communicators. The text contains a section on intellectual property issues, where Herrington noted that copyright law is applied in conjunction with other laws and discussed basic work-for-hire issues.

Lunsford (1999) and Sarah Robbins (2003) combined feminist rhetorical theory with discussions of intellectual property. Lunsford’s concern was with corporate authorship. Robbins argued that, as we try to understand intellectual property, we should look at cases and issues of authorship involving women’s ways of making knowledge, particularly via collaboration.

Logie (2005) provided a broad overview of copyright laws (including a bit of history), and argued for the importance of teaching copyright in technical communication. In a short position paper a year later, Logie (2006b) argued that copyright instruction should have a central place in the writing classroom. He included a 1790s view of copyright in the U.S., explicitly arguing for the “importance of scholarly access” (p. 1). Copyright law was originally invented

to assist learning, he noted, “and we, as educators, have failed in our obligation to embed this simple fact in the public’s consciousness” (p. 1). To address this problem, Logie urged us to include a focus on copyright within our pedagogy.

Steve Westbrook (2006) made an important move by connecting visual rhetoric and copyright in a very pragmatic context—a student’s multimedia piece, which was unable to be published because the requisite permissions were denied by the copyright holder. Pointing to the missing student piece in his article, Westbrook wrote that copyright affects composition teachers and students “on the level of daily practice” and threatens to silence both teachers and students. The author suggested using Lessig’s Creative Commons licensing as an immediate practical solution to the copyright problem. Westbrook’s 2009 collection includes a chapter where he continues this discussion, pushing further at issues of visual rhetoric and copyright in the context of writing pedagogy.

Jessica Reyman (2006) championed teacher awareness and activism, noting that the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 was developed to update copyright law to accommodate the uses of copyrighted materials in distance-education environments. And, yet, pursuant to her analysis of the TEACH Act and its implications for teaching writing, the act fails to offer the same protections for online teaching as it offers in face-to-face environments. Reyman argued that the TEACH Act provides an opportunity for faculty and their institutions to become more involved in the conversations about copyright and to influence law and policies. In Reyman’s (2010) recent book, she discusses the narratives and metaphors within the intellectual property debate in a rhetorical context.

This rich base of existing work in the field is the conversation we enter with this collection. Our collection is timely because we have some evidence from the legal and media literacy fields that teachers tend to misunderstand copyright and fair use and pass that misunderstanding on to their students (Hobbs, Jaszi, & Aufderheide, 2007). In September 2007, the Center for Social Media at the School of Communication at American University released a report stating that the key goals of teaching media literacy are “compromised by unnecessary copyright restrictions and lack of understanding about copyright law” (Hobbs, Jaszi, & Aufderheide, p. 1). In another study, Marjorie Heins and Tricia Beckles (2005) found that artists and scholars have only a vague sense of what fair use means, and this uncertain knowledge circumscribes composing practices. An additional study, “The Digital Learning Challenge,” reported that undue fear about copyright infringement liability has constricted exchanges of valuable information across social network spaces (Fisher & McGeeveran, 2006). William Fisher and William McGeeveran found that because of digital rights management (DRM) technologies, the only way certain media can be accessed

even for purely educational uses is for teachers and individuals to knowingly violate copyright law by circumventing anti-access measures.

This collection, more generally, also emerges from recent pedagogy-focused scholarship that argues that, because of the changed nature of writing in digital environments, teachers need to recalculate what they teach. On a broad level, the argument in favor of teaching intellectual property derives from the growing body of scholarship on informational literacy, multiliteracies, and digital literacies (American Library Association, 2004; New London Group, 1996; Sorapure, Inglesby, & Yatchisin, 1998). The teaching of digital literacies imbricates the teaching of copyright because it relates to how one might legally use others' materials, and vice versa (see also Digital Rhetoric Collective, 2006; Grabill & Hicks, 2005; Henning, 2003; Selber, 2004; WIDE Research Center Collective, 2005).

COPY(WRITE): PREFACE AND PREVIEW

Copy(write) includes a range of voices and perspectives on copyright, fair use, and related topics such as originality, authorship, cultural participation, and institutional authority and power. We include several chapters by “copy-write” pioneers—composition and rhetoric scholars among the first to bring discussion of copyright to our scholarship, many of whom are revisiting the conversations they helped start—as well as the voices of new scholars and students, whose experience with and reflection on copyright issues are now shaping our scholarly conversations. *Copy(write)* includes a mix of traditional scholarship, original research, and personal reflection to engage the copyright issues we experience as university workers and participants in contemporary digital culture. The book is divided into three topic areas: Part I focuses on the law and legal landscape; Part II focuses on the tools and resources available to researchers and teachers; and Part III focuses on pedagogical practices and approaches for addressing intellectual property in the writing classroom. Each part concludes with a response by a notable scholar who helps highlight connections among the chapters and identifies enduring questions and future directions for scholarship and action.

Part I: The Law, the Landscape

In Part I: The Law, the Landscape, contributing authors explore the laws and institutional structures and policies that make up the scene of our copyright practices. We begin Part I with Jeffrey Galin's “The Fair Use Battle for

Scholarly Works,” in which he revisits and extends the discussion of academics’ rights and responsibilities in using scholarly work which he, along with several other scholars, began a decade ago. Galin examines the key issues and emergent transformations that educators face with respect to copyright practices and fair use advocacy. He also offers advice for how we as academics can reassert our fair use rights.

Through an engaging combination of scholarly discussion and personal reflection, Russel Wiebe examines the nature of plagiarism and cheating by complicating the concepts of authorship and originality in “Plagiarism and Promiscuity, Authors and Plagiarisms.” His discussion resonates with our field’s struggles with plagiarism and the origin of ideas. Alternately entertaining taxonomies of plagiarism and the impossibility of “some single, stable author,” Wiebe advises teachers to engage students in conversations about intertextuality and plagiarism rather than acting as police.

In “Authoring Academic Agency: Charting the Tensions between Work-for-hire University Copyright Policies,” Timothy Amidon explores the ambiguities and tensions that exist between university IP policies, Title 17 of U.S. Code, and various kinds of academic authorship. Amidon first describes his struggle in his institution as he tried to license his Master’s thesis under a Creative Commons License and then discusses “work-for-hire” as defined by U.S. Code before providing an insightful analysis of the IP policies of 14 universities. He concludes with suggesting actions for academic authors to strengthen our ownership of the works we create.

A different kind of copyright policy is studied in Barclay Barrios’ “Soul Remedy: Turnitin and the Visual Design of End User License Agreements.” EULAs, as they are commonly known, are legal contracts that specify the rights and responsibilities of a company offering a service or software and its end users. In this chapter, Barrios analyzes the wording and design of these contracts and of the plagiarism-detection service Turnitin in particular, and discusses their implications for instructors and students. As opposed to the unreflective clicking of “I Agree” that we and students may engage in, Barrios suggests using EULAs as a teachable moment, and as documents that can be put to use to discover and question how these agreements position the user’s work.

Bob Whipple contributes a reflection on collecting digital images as an important part of the construction of self. In “Images, the Commonplace Book, and Digital Self-Fashioning,” Whipple compares image downloading and posting to the keeping of “commonplace books”—collections of texts and clippings used by men and women from the late medieval and renaissance periods through the mid-19th century. Often overlooked as frivolous, these catchall

spaces, Whipple argues, are important for the development of our ideas and ourselves.

Composition and IP scholarship pioneer Tharon Howard revisits ideas first raised in his 1996 work, “Who Owns Electronic Texts?” In “Intellectual Properties in Multimodal, 21st-Century Composition Classrooms,” Howard examines the origins of copyright law to challenge the commonly held view that authors have a “natural right” to their work that supersedes all other potential claims on how the public may rightfully use the work. Ultimately, he sees copyrights not as “rights” but instead as privileges granted by the State to balance the needs of society with the needs of the individual. Howard argues that today’s students need a robust understanding of copyright laws in order to negotiate the complexities of digital authorship and IP laws and policies. To model this understanding, Howard poses five copyright conundrums from his teaching and professional experience and provides a lucid discussion of the legalities and rights at work in each.

In “Is Digital the New Digital?: Pedagogical Frames of Reference and Their Implications in Theory and Practice”, Rob Dornsife explores the challenges of moving between analog and digital forms of media. He reflects on the incompatibility of their rules and aesthetics and, therefore, the problems of writing assignments that fail to acknowledge these differences. Through a fascinating discussion of recording and production technologies, Dornsife arrives at the problems with the concepts of “the copy” and “the original” in the digital world, and, thus, problems with copyrights and notions of plagiarism based solely on these concepts. To address analog bias, he proposes an ethic of “digital stewardship” and “artistic license.”

We conclude Part I with a response by John Logie, author of the influential *Peers, Pirates, and Persuasion* (2006a) as well as numerous articles and chapters on copyright issues in the writing classroom.

Part II: The Tools

Part II: The Tools explores copyright and fair use in practice, through scenes of use and through techniques and tools for responding productively in moments when copyright is implicated. The authors provide stories, struggles, and solutions for the challenges of navigating authorial decision-making. Steve Westbrook begins Part II with a reflection on the nature of our field’s conversation about fair use. “What We Talk About When We Talk About Fair Use: Conversations on Writing Pedagogy, New Media, and Copyright Law” is an examination of our scholarship, textbooks, and pedagogy. In addition to advocating that we teach students the four factors for determining fair use, West-

brook uses the case of *Online Policy Group v. Diebold, Inc.* (2004) to model the kind of rich, complex analysis of the fair use of digital material that we might engage in with our students.

To further complicate print-based notions of authorship and originality, E. Ashley Hall, Kathie Gossett, and Elizabeth Vincelette analyze YouTube's interface and examine parody videos posted there to explore practices of sampling, remixing, and appropriation in the composing process. "Parody, Penalty, and Pedagogy" reveals the complicated motives and composing decisions made in this important form of expression and cultural participation. They suggest strategies for helping students to thoughtfully and legally engage in digital discourse.

In "Copyrights and Copywrongs: Intellectual Property in the Classroom Revisited," copywrite pioneer Janice Walker returns to some of the questions she first raised in 1998. In light of the recent proliferation of digital production technologies and the increase in online teaching and digital pedagogy, Walker finds the majority of the textbooks and style guides of our field unhelpful for students and teachers in their treatment of copyright, often ignoring multimodal compositions or the use of copyrighted work in the classroom. In examining the use of IP in classrooms, she discusses the law, policies, practice, and responsibilities of various players in our educational systems. Walker's discussion of the evolution of her own IP pedagogy offers numerous examples of what we can do as teachers to inform, challenge, and empower students in relation to their own work. She closes with guidance for what we can do for our students, our peers, and ourselves to productively engage these complex issues.

Jim Ridolfo and Martine Rife untangle the Gordian knot of free speech, privacy, orphan works, *in loco parentis*, publicity/contractual rights, and fair use issues raised in the case of a student whose picture was taken at a protest but remixed and reused by her university for promotional materials. "Rhetorical Velocity and Copyright: A Case Study on the Strategies of Rhetorical Delivery" explores the copyright implications and unanticipated possibilities of rhetorical delivery in the mix-mash-merge age of digital rhetoric. Through a cogent analysis of the legalities of the use of Maggie Ryan's image, Ridolfo and Rife tease out the rights of and implications for the student and the actions of the university. Maggie's case is a rich source for discussion of ethical, cultural, and other issues in copyright, intellectual property, and rhetoric, and the authors include generative questions for use in the classroom.

TyAnna Herrington expands our discussion of fair use to include free speech in "Following the Framers: Choosing Pedagogy to Further Fair Use and

Free Speech.” In this chapter, Herrington broadens her original work on fair use and free speech, drawing upon the spirit of the law drafted by the original framers of the U.S. Constitution to present a moving argument for the necessity of access to information and protected fair use for enacting free speech. Herrington argues that educators must choose pedagogies that support free speech and fair use to prepare students to participate in the democratic process as digital citizens.

We conclude Part II with a response by Jim Porter of Miami University, whose early work on networked spaces and ethical issues is considered landmark in the field (Porter, 1998) and whose recent work has addressed issues of digital delivery and research practices and copyright implications in digital spaces (McKee & Porter, 2008, 2009).

Part III: The Pedagogy

In Part III: The Pedagogy, contributing authors share their responses to the challenges of teaching students about copyright and fair use in the digital age.

In “Toward a Pedagogy of Fair Use for Multimedia Composition” Renee Hobbs and Katie Donnelly review the ongoing dialogue about fair use within the media literacy community, which has worked to reduce copyright confusion among educators through the development of the Code of Best Practices in Fair Use for Media Literacy Education. Hobbs and Donnelly discuss the fair use implications of two practices that specifically concern student multimedia composition: using copyrighted materials in creative work and sharing that work with authentic audiences as part of the teaching and learning process. Their chapter provides clear suggestions for negotiating classroom and student use of IP from a wide range of media.

To learn how teachers and students from introductory writing courses understand IP issues, Nicole Nguyen—an undergraduate student when she conducted her study and now a law student at DePaul University—conducted surveys and interviews. “Intellectual Property Teaching Practices in Introductory Writing Courses” presents Nguyen’s findings, illustrating the shared concern among students for IP issues both in and out of the classroom and their sometimes limited exposure to and understanding of IP issues. Nguyen’s study helps us see, in part through her inclusion of student participants’ voices, the importance of instilling “a spirit of curiosity, awareness, and ethics” to prepare students for authorial decisions in the classroom, in their workplaces, and as participants in digital culture.

In “Moving Beyond Plagiarized/Not Plagiarized in a Point, Click, and Copy World,” Leslie Johnson-Farris documents her “journey from ordinary,

average community college composition instructor to intellectual property rights pedagogical philosopher.” Her journey involves the realization that typical writing assignments automatically implicate copyright issues—issues some of us have not attended to as much as we might. Johnson-Farris turns to the institutional policies at her college and discusses how her understanding of these policies evolved in the context of her classroom teaching experiences. She outlines tensions present in the very infrastructure of community college teaching and the increasing need to produce students sophisticated about copyright and plagiarism issues in a digital world.

In “*Couture et Écriture: What the Fashion Industry Can Teach the World of Writing*,” Brian Ballentine discusses the “piracy paradox” within the fashion industry. Ballentine describes this paradox as founded on the idea that “profits and productivity are greater due to an absence of copyright protection for fashion designs.” In this chapter, he discusses an attempt at addressing this paradox through a now-defunct bill, the Design Piracy Prohibition Act, and issues around the piracy paradox are layered into Ballentine’s experience teaching a writing course in which the students were all fashion industry majors.

In “The Role of Authorship in the Practice and Teaching of Technical Communication,” Jessica Reyman discusses issues of authorship and attribution for working technical communicators. She offers specific suggestions for the teaching of technical writing, as we support students in making the transition from the educational setting to the workplace in the context of copyright, authorship, and ownership issues.

Rebecca Moore Howard, a key scholar in issues of plagiarism, intellectual property, and authorship in our field, provides a response to the Part III chapters. We are delighted to include an afterword by Clancy Ratliff, editor of the CCC-IP Annual: Top Intellectual Property Developments.

Our initial goal in crafting this collection was to situate the need to identify and describe pedagogical strategies for addressing intellectual property in the teaching of writing. The authors in this collection offer theories, research, approaches, cautionary tales, and local and contextual successes that can further inform the ways in which we situate and address intellectual property issues in our writing classrooms. Because the law is a living entity, laws will of course evolve, as will digital tools, technologies, and networks. We hope that readers find in this collection both established landmark cases *and* current and predicted changes to our technologies, our laws, and our teaching. We hope readers will find relevance, resonance, and broad strategies that transcend specific cases and that are nimble enough for application at our wide range of institutional and disciplinary homes, and in the diversity of spaces in which we teach, research, serve, participate, and live.

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APPENDIX: EXPLANATIONS OF LEGAL CONCEPTS RELATING TO COPYRIGHT

In the educational setting, in some ways the risks are great for inaccurate intellectual property knowledge, but in other ways the risks are low. The risks are great because the average cost of defending a copyright infringement lawsuit is just under one million dollars, but the risks are low in the academy because—until very recently—educators weren't often being sued (Fisher & McGeeveran, 2006); this, however, may be changing (Rife, 2008). The complex writing lives of students are not completely encompassed in the space of our classrooms. Yet, the teaching of copyright issues in the writing classroom may be the only formal instruction many students ever receive. This knowledge will have to carry them forward in their jobs and future careers.

Four main areas of copyright law often arise in the teaching of writing: 1) the basic protections of copyright law; 2) exceptions to that protection as provided in the fair use statute; 3) the work-for-hire provisions within Title 17; and 4) authorized or licensed use (use with permission). We summarize these concepts here to help those unfamiliar with copyright law understand the legally based arguments of the chapters included in this collection.

The Basic Protections of Copyright Law

U.S. copyright law, enacted through Congress' constitutionally granted power under Article 1, Section 8 of the U.S. Constitution, is applicable to the teaching of composition because this law provides automatic protection to any work fixed and original at the moment of its fixation. For example, any original text, visual, sound, etc., published to the Web (or elsewhere) is copyright protected. Because of copyright law's broad application, virtually all digital publishing—whether or not it incorporates another's text, visuals, sounds, or movie clips—will invoke copyright law. Protected works include notes, webpages, software, computer code, emails, reports, patterns, tutorials, instructions, manuals, visuals, video, audio, and all other "fixed" media. Under current law, a copyright holder has the exclusive right to copy, distribute, perform/display, and create derivative works.

The Fair Use Statute

The fair use doctrine, as codified in Section 107 of the U.S. Copyright Act, provides relief from copyright holder monopoly. This doctrine provides an exception to the copyright holder's exclusive rights and is heavily relied upon

in educational environments as students and teachers complete remixes, perform critical analysis, generate research, and compose mash-ups for purposes of teaching and learning (DeVoss & Porter, 2006; Grabill & Hicks, 2005; Lessig, 2004; Westbrook, 2006). Fair use is, essentially, unauthorized use—use that does not require authorization (in the form of permissions or licensing).

Section 107, Title 17 defines fair use as “reproduction in copies ... or by any other means” for uses including “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.” The four factors that courts use to make legal determinations regarding infringement are listed in the statute, and function as a legal heuristic guiding not only judges, but also attorneys, users, authors, and others who attempt to make and justify everyday composing decisions. The four factors ask that one consider:

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

Although not often acknowledged, reliance on fair use is even alive and well in the business sector. For those of us teaching technical and professional writing, or for those of us using a service-learning component in our curriculum, fair use has continued utility outside the educational institution.

Further, everyday activities on the Internet rely on fair use. Search engines send out “spiders” that crawl the Web, copying increasingly vast amounts of data then stored in the search engines’ databases (Band, 2005). This copying is completed without direct permission of Web site owners. Jonathan Band notes that “the billions of dollars of market capital represented by the search engine companies are based primarily on the fair use doctrine” (Band, p.5). Another example of for-profit reliance on fair use is the invention and sales of software that records screens or captures images on the web or from software applications (for instance, TechSmith Camtasia, a screen-casting tool, or Adobe Photoshop, image-editing software). If such uses were not deemed potentially fair, this software could be outlawed due, in part, to charges similar to those raised in cases against peer-to-peer software—its potential to “induce” users to infringe.

Work-for-hire Provisions

Just like copyright protections and fair use exceptions try to control or organize how texts can be appropriated and circulated, the work-for-hire provisions of Title 17 provide a default author in employer–employee contexts. Under copyright law, the default in employer–employee situations is that an employee’s creations made within the scope of employment are technically “authored” by the employer, who thus owns all copyrights:

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. (Title 17, 201 (b): Works Made for Hire)

Many of us have become familiar with work-for-hire through our attempts to change default policies at our institutions so that policies better preserve faculty and/or student authorship in individual creations. Some institutions for example, allow faculty to retain ownership over their teaching materials and/or books and other materials they produce while employees—employees who, most often, rely on the institution’s library databases, network connections, computers, and other resources to do their work. The most faculty-friendly work-for-hire policies are often won after hard-fought battles. Work-for-hire issues are also relevant for student writers, who will very quickly leave educational settings and become employees at organizations where their notions of individual authorship may be seriously challenged (Reyman, 2008; Rife, 2010).

Authorized or Licensed Use

Sometimes writers do not need to worry about whether or not they are within the perimeters of fair use because they receive express permission from a copyright holder, or they use work within the confines of a pre-attached license. Creative Commons and ccmixer, for example, provide a number of boilerplate copyright licenses that writers and musicians can affix to their work, allowing future authors and composers to appropriate under certain conditions as stated in the license. Creative Commons is a “major player shaping the production and distribution of creative works” (Katz, 2006, p. 391). Creative Commons licenses do not enhance nor detract from fair use; rather, they simply allow users to avoid fair use determinations in most cases (Rife, 2007).

More Information

The U.S. copyright web site, copyright.gov, is perhaps the best reference for the law itself and also plain-language discussion of the law. Many, many other helpful online resources exist, offering access to the full-text of various governmental statutes, proposed laws, enacted policies, copyleft advocacy information and support, and more. The combined references cited in the chapters of this collection offer an abundance of work from fields with stake in and interesting perspectives on intellectual property issues.