

# UC Santa Barbara

## CCCC Intellectual Property Annual

### Title

The CCCC-IP Annual: Top Intellectual Property Developments of 2015

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The Intellectual Property Caucus of the Conference on College Composition and Communication

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The CCCC-IP Annual:  
Top Intellectual Property Developments of 2015

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

March 2016

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Clancy Ratliff

## Introduction to the 2015 CCCC-IP Annual

I remember being in John Logie's rhetoric and intellectual property seminar at the University of Minnesota in 2003.

**RHETORIC 8550:**  
**Rhetoric, Intellectual Property, Piracy,  
and the Internet**



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4:05 - 6:30pm, Mondays  
Monday, January 27 - Monday, May 5, 2003  
Magrath 6 , St. Paul Campus

### Class Overview

Shortly before the start of this class, the United States Supreme Court, by a 7 to 2 vote, refused to overturn the 1998 Copyright Term Extension Act, which added 20 years to the term of copyright. For the foreseeable future, the minimum copyright terms will be 95 years for corporate efforts, and life of the author plus seventy years for individually developed works. This decision was only the latest in a series of decisions and laws which have, collectively, placed significant restrictions on the general public's opportunities to access and use copyrighted material.

Despite the increasingly long arms of laws, and the dramatic rise in litigation over copyright and trademark violations, the high-bandwidth Internet connections found on most American college campuses are routinely used by students to download music, films, and other copyrighted materials, for uses that would generally be understood as unethical, and in some cases, illegal. Peer-to-peer software applications are enabling activities described variously as "sharing" or "theft," depending on whether the person doing the describing is a copyright consumer or copyright holder.

This class will examine the rhetoric associated with intellectual property and copyright in American culture. After establishing a historical frame of reference, we will focus on the increasingly polarized rhetorics rising out of the debates over peer-to-peer technologies, and related Internet technologies for the development and circulation of creative work.

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From my personal archives: a photo of the course syllabus.

He would often ask us to find news stories about, to use his phrase, the IP landscape, and in class we would juxtapose our discussions of critical theory of

authorship and complex analysis of copyright law with current news about intellectual property issues. This began a habit of mind for me, which after about a decade I have systematized: all through the year, I see interesting stories in my social media feeds and my other reading, and I paste those URLs into a TextEdit document (and I'm increasingly doing screen capturing to augment this), which I turn into a CFP around the end of each year – a wish list of topics I hope people will want to write about, and they do, and very well.

In the 2015 Caucus meeting, we decided to start including a dedicated pedagogy section in the *Annual*. All the articles have had connections to rhetoric and composition in some way, but the three articles in the **Pedagogy** section this year are more explicitly directed toward classroom application and reflections on teaching writing. Kristi Murray Costello's excellent analysis of the FI (failure for cheating or plagiarism) course grade is the first scholarly examination in our field of this new institutional development. Steven Engel gives us several clever classroom activities about the misattributed quotation on the Maya Angelou postage stamp that help students better understand authorship. Kathrin Kottemann helps us reflect on what we're asking students to do as authors; through her research about catfishing, an online dating phenomenon, she raises the question: are we asking our students to be catfish? To pretend to be someone else? In future years, we hope to have not only pieces such as these, but other teaching genres as well: syllabuses for new courses on IP issues, lesson plans, assignment descriptions, and curated lists of resources for teaching about copyright and authorship.

After the section of articles that are closely related to pedagogy is the section I'm calling **Copyright and Authorship in Culture**. The six articles in this section all look at 2015 events in *the IP landscape* and situate them in rhetoric and composition broadly. Matthew Teutsch illustrates the stakes of appropriation in his analysis of a political cartoon on Twitter that perhaps some of us saw: the lowering of the Confederate flag followed by the raising of the LGBT pride flag, a visual comment on two of the most important (and in one case, tragic) historical moments of the year. Craig A. Meyer writes about an artist who enlarged and printed Instagram photos of members of SuicideGirls, an adult lifestyle brand, as they describe themselves online. I will admit that I found the moving of the Instagram images across contexts to large gallery-quality prints to be an inventive and chic stylizing. However, the artist did not inform anyone in SuicideGirls that he intended to do this, and he sold the images for \$90,000 each. Meyer's analysis of this case is insightful.

William Duffy provides an impressively thorough explanation of the complexities and stakes of the "defeat devices" in Volkswagens: software that reported false data about emissions. Freedom to tinker in this case has implications for the environment, road safety, and much more. Wendy Warren Austin has taken the news story about the emergence of the kilo-author – which is exactly what it sounds like: 1000 or more co-authors – and made a substantial

contribution to composition scholarship in her analysis of authorship in the sciences.

Laurie Cubbison continues her tracking of Taylor Swift's copyright advocacy, which began in the last *CCCC-IP Annual* with a report about Swift's decision to pull her album from Spotify. This year, Cubbison analyzes Swift's argument to Apple: she pulled her album from the Apple Music streaming service because artists would not be paid for songs streamed during the free trial period for users, and Apple reacted by agreeing to pay the royalties. Kim Gainer reports on the most recent legal developments involving the status of the song "Happy Birthday," a song that should have been in the public domain already but has not been. Now, however, those wanting to use "Happy Birthday" in audio or video compositions may do so without worry – though specific performances of the song may still be protected by copyright, of course.

The *CCCC-IP Annual* has always featured thoughtful and critical reviews of longer texts about copyright and intellectual property, particularly white papers from other organizations such as Creative Commons and the Electronic Frontier Foundation. Traci Zimmerman continues this tradition with a review of a new handbook from the Authors Alliance, *Understanding Open Access: When, Why, & How to Make Your Work Openly Accessible*.

In sum, I've learned a lot from reading this year's *Annual* articles, and I hope you do too. If you assign any of them in your classes (they would work so well not only in composition classes, but in technical writing and literature courses also), please contact me and let me know how it went.



Kristi Murray Costello

## Who's Failing Who? Six Questions to Consider Before Adopting the FI Grade

We've all surely submitted our fair share of As, Bs, Cs, Ds, and Fs. It's likely that we've also assigned Is for incomplete, Xs for audits, and possibly even the more recent FN (Failure: Never Attended) or FS (Failure: Stopped Attending), for purposes of financial aid reporting. Additionally, there are Ws, given for withdrawal, typically taken care of by the students and the registrar. In the last few years, a lot of campuses have added a new distinction to the key, the FI.

An FI grade, designated on some campuses instead as FX, XF, or >F<, indicates that a student has failed the course because of academic misconduct. Generally, FI grades can be earned as a result of plagiarism, cheating on a quiz, test, or exam, fabrication, and other actions counter to the institution's student bulletin, handbook, or honor code. Further, the FI grade ensures that there is a tangible record of the incident on the student's transcript. For the purpose of this piece, and given the nature of our discipline, I will focus on the FI grade as a response to plagiarism, though I expect much of the discussion could also be applied to the use of the FI grade for other incidents of academic misconduct.

### The FI Grade in Action

Some universities have elaborate systems of recording and interventions that precede earning the FI; others leave faculty members full discretion to assign the FI grade. The following information was gathered through examining the bulletins, handbooks, and honor codes of approximately 25 institutions of different sizes and statures from all over the U.S. whose approaches to plagiarism include the FI grade or its equivalent. Of course, there may be nuances to the policies not written formally into the handbooks, bulletins, or honor codes; however, since the material listed on the school's websites are likely to mirror the resources accessible to students, I felt comfortable not contacting the schools for further information. Based on my analysis, there seems to be four common systems for use of the FI grade.

The first system leaves the assigning of an FI grade largely to the discretion of the faculty member, as is the case at Samford University. According to their "Academic Integrity Policy 2013-2014," faculty members may assign the FI grade as they deem necessary, but only need to contact the Academic Council if they want to suggest suspension or expulsion as potential sanctions. This is likely in response to research that suggests that faculty are more likely to report incidences of plagiarism if the process is relatively easy (Golden). In an interview for *Inside Higher Ed*, James Lang explains that many faculty members "find

administrators siding with students over faculty, or they find the bureaucratic procedures required to pursue a case of academic dishonesty incredibly time-consuming (Golden). Some schools leave much to the faculty members, but also provide some accountability. Belmont University, for example, leaves much to the discretion of the instructor, but they also stipulate that all FI grades must be “reviewed by the Provost,” the university’s academic integrity office, the campus’ honor committee, or the school’s equivalent (“Academic Policies”).

The second system is one in which the FI is part of a larger academic integrity policy and process, not so dissimilar from the model used on many college campuses, though with the addition of the FI grade. For example, at Eastern Kentucky University, faculty members can impose internal sanctions, such as failure on the paper or in the course (“Academic Integrity Policy”), but if the student does not accept responsibility for the offense, the professor simply prefers to forward the situation to the Academic Integrity Office from the beginning, or if it is an egregious offense, the College Academic Integrity Committee will review the case, convene a hearing, and dispense sanctions. No matter what, faculty members are expected to report the incident to the Assistant Director for Academic Integrity so it can be recorded and kept in a central repository, aimed at helping faculty and the Academic Integrity Committee make informed decisions regarding sanctions. Further, Eastern Kentucky University’s Student Handbook states: “If the College [Academic Integrity] Committee or University [Academic Integrity] Committee or Assistant Director for [Academic Integrity] recommends that the sanction of suspension or expulsion is appropriate or if the "FX" grade is recommended as a sanction... the matter must be referred to the Student Disciplinary Council.” Thus, Eastern Kentucky University’s system is representative of those in which faculty members are given some autonomy to address plagiarism in their own courses, but sanctions with long-term consequences, such as the FI grade, suspension, or expulsion, cannot be assigned without oversight.

A third slightly less common use of FI grade is one in which the FI grade is part of a complex numerical system whose language seems to mirror our penal system. For example, the University of Arkansas uses “sanction points” ranging from 0-3 and differentiates quite prescriptively between Level Zero, Level One, Level Two, and Level Three offenses. For example, a Level Zero Offense is described as such:

For plagiarism/copying or unauthorized collaboration on homework assignments, if the suspect material constitutes less than 10% of the assignment, the student will be issued a Letter of Reprimand (first offense only). Regardless of whether the material constitutes less than or more than 10% of the assignment, the instructor must submit the case through the reporting process to the Academic Integrity Monitor, after which the normal process

will ensue. There will be no grade sanction for a Level Zero offense (“Sanction Rubric”).

A Level One or above offense includes an automatic XF grade. Though there is still some faculty autonomy in University of Arkansas’ system, some similar systems ask that as soon as a faculty member suspects plagiarism they forward it to the university’s Academic Integrity officer, committee, or its equivalent.

Finally, the fourth system is one in which the FI grades on students’ transcripts take the place of a central repository. Though this information was not readily available on university websites, it seems this particular self-governing system is one that is a response to depleted resources.

### Ask Questions **F**irst

So, why am I writing this and why now? Because my campus is one of many looking to move toward an FI grade. As the committee tasked with making a formal recommendation in regards to our university’s approaches to academic misconduct, works to decide whether or not we wish to adopt the FI at Arkansas State, I am consistently surprised how quickly some of my colleagues are willing to move forward without considering all of the angles and potential issues associated with such a system. As such, for schools considering or reconsidering their use of the FI grade, here are some questions you might want to ask before integrating the FI into university policy.

#### **1) How do you currently teach about plagiarism and academic integrity at your university and in your courses?**

Several of the universities researched require students to sign honor codes upon entry into the university; others ask students to complete an online plagiarism quiz before they can enroll in classes. We can (optimistically) assume that effective and ethical writing practices are covered in First-Year Composition; additionally, a couple of the schools’ First-Year Experience courses include required lessons on plagiarism and academic misconduct. That being said, none of the schools emphasized a shared campus approach.

#### **2) What sort of actions and evidence constitute an FI grade?**

As mentioned above, FI grades can be earned as a result of plagiarism, cheating on a quiz, test, or exam, fabrication, and other actions counter to the institution’s student bulletin, handbook, or honor code. Some campuses make additional distinctions in terms of major and minor offenses, varying widely on whether or not the FI grade is a sanction for a major or minor offense. The same can be said for systems that include levels. However, there are some universities who leave the FI grade completely to the discretion of the faculty member setting the parameter that the FI is awarded in situations that warrant immediate failure of the course. For example, Helena University’s policy is that “When a faculty

member assigns a failing course grade on the basis of academic dishonesty, he or she shall assign a grade of 'FX' ("Academic Information").

Further, some schools attempt to address intention or specifically allow for the possibility of cultural differences to have played a role in the incident, others do not. As an example, Bainbridge State College's policy states: "The particular consequences for academic dishonesty will depend upon the distinction between unintentional and intentional academic dishonesty... as well as the number of infractions committed by the student"; the policy then provides definitions for "Intentional" and "Unintentional Academic Dishonesty" ("Academic Integrity" 3). Though less detailed, Eastern Kentucky University too makes a distinction between a student "who *knowingly* assists in any form of academic dishonesty" and those who don't (emphasis added, "Academic Integrity Policy").

While many of the handbooks, honor codes, and bulletins I read address in length the consequences of plagiarism, none of them outlined what kind of evidence a faculty member needs to accuse a student of plagiarism, instead deferring to the appeals or grievance process as a safeguard for false accusations.

### **3) Who will assign the FI grade, and how will you ensure these colleagues are trained to use the FI grade fairly and consistently?**

James Lang explains that "the research clearly suggests that faculty inconsistently report instance of cheating in their courses" (Golden). Particularly in systems that leave assigning of the FI grade largely to the faculty member's discretion, without a shared approach, some faculty may be inclined to assign these grades without due cause or due process. Others may see the FI grade as too harsh and, as a result, not assign it.

It wasn't stated anywhere in any of the FI policy descriptions how faculty are trained to implement FI policies, but that isn't to say that these campuses and others don't have shared campus approaches not only about how and when to assign FI grades, but also about how to teach about appropriate source use, intellectual property, and plagiarism and appropriately respond to intentional incidents of academic dishonesty, unintentional acts of patch-writing and plagiarism, and how to recognize the difference.

### **4) Will you include an educational component along with consequences?**

Many of the FI policies lean far more punitive than pedagogical, with some campuses not including a pedagogical component at all. At Coastal Carolina University, faculty members can require a student attend an academic integrity workshop in addition to, or instead of assigning an FX grade, as part of their sanction ("Academic Integrity Code"). At Helena University, "The student may... remove only the "X" portion of the grade after successfully completing an ethics course with a grade of "B" or better..." ("Academic Information").

Additionally, Belmont University requires that “The student must propose and perform an activity or program that promotes academic integrity on campus and which will be mutually agreed upon by student and the Honor Court” (“Academic Policies”).

**5) Will there be an appeals process for getting the FI grade removed from students’ transcripts and, if so, what will this process be?**

Many schools include a grievance procedure in their policy so students who feel as though they have been wrongfully accused or unduly punished can appeal the decision. Some of these systems are relatively simple; others are layered and complex. For example, University of Massachusetts Lowell has a four-tier appeals process beginning with appealing to the Academic Dean and ending with an appeal to the Provost (“Academic Policies”). To the contrary, Bainbridge State College has only one means of appeal: “The ultimate determination of the consequences for student academic dishonesty or for grade appeals involving alleged academic dishonesty is decided by the Vice President of Student Affairs, with the recommendation of the Student Judiciary playing a key role in this determination” (“Academic Integrity” 5).

Additionally, while some schools provide an opportunity for the FI to be expunged from the student’s record following a certain amount of time and/or through an appeals or “forgiveness” process, others do not. At University of Arkansas, students can initiate the “grade forgiveness” process “after two semesters of acceptable performance at the university following the imposition of a penalty, with no student conduct or academic dishonesty infractions... for a first offense of any Level One or Level Two violation, or a second offense of a Level One violation” (“Sanction Rubric”). Some universities further specify that opportunities for appealing the decision can be exhausted (and not to mention exhausting). For example, Eastern Kentucky University’s policy clearly states:

The "FX" grade is a final and permanent notation on the student's transcript... Upon exhaustion of the appeals process set forth in the Academic Integrity Policy, 4.1.3, the notation cannot be removed. (“Academic Integrity Policy”)

**6) Why do you *really* want the FI grade?**

At my university, there is the understanding that instituting the FI grade will allow for better communication between various academic units on campus and off. Based on wording in their policies, I imagine some institutions at least initially instituted the FI grade as a way to ensure that students who engaged in academic misconduct don’t withdraw from a class before receiving a failing grade in the course. And these things may be true, but they are not the whole truth.

Predominantly punitive systems, such as the FI grade in its current state at many universities, arise out of frustration or fears that “ethics, integrity, and

honesty are flying out the window on digitized wings” (Howard B24). These kinds of policies and systems are academics’ responses to students who we suspect/feel/worry don’t value what we (academics) do and the ways in which we (academics) do them. Many of us live in the middle-of-nowhere working into the wee hours of the night grading student papers and writing our own because academics are our lives. So when a student plagiarizes, it can be easy to feel as though our very values are under attack. And hell, maybe they are. This may be why schools like University of Arkansas include in their policy that students may “request grade *forgiveness*” (emphasis added, “Sanction Rubric”).

Why *forgiveness*? Why does it seem more important in many university plagiarism policies that students show remorse rather than understanding? Now, I don’t want you to think I’m soft on plagiarism crimes. Like many hard-working Americans, I feel it is important to teach students to work, write, and develop their own thoughts, words, and constructions and not steal from others without giving them credit. This is why we spend time in composition and other courses teaching students to read rhetorically, paraphrase, summarize, and place their views within ongoing conversations. But let’s be real here. This is why we *teach* about plagiarism, not why we *punish* plagiarism. We punish plagiarism and have students demonstrate their remorse when they’ve committed plagiarism, cheating, and other incidences of academic misconduct because these acts make us angry and, let’s face it, sometimes they even hurt our feelings.

James Lang said it best when he said, “Don’t take it personally. Students cheat on assignments or exams; they don’t cheat on you” (Golden). I can’t help but fear that this is why our policies so closely mirror our penal systems and use words like offense, offender, infraction, and repentance; In fact, a set of “Cheating Reduction Strategies” written by Safary Wa-Mbaleka include in the section titled “Policing,” tips for “catch[ing] and punish[ing]” students who “practice[e] academic dishonesty.” University plagiarism policies may skew more punitive than pedagogical because the university feels it has adequately prepared students not to patch-write, plagiarize, and engage in other forms of academic misconduct, or perhaps because the university feels that students should simply *know better*. However, just as plagiarism is counter to our universities’ honor codes, punishing plagiarism without providing an educational component seems counter to our institutional missions. As James Lang further suggests:

Cheating is an inappropriate response to a learning environment that’s not working for the student. Both sides of that sentence are important. It’s inappropriate, which means that we have to hold the student accountable for the dishonest action, and ensure that we maintain high standards of academic integrity. But it’s equally true that something in that learning environment doesn’t seem to be working for that student. He might see the course as a curricular requirement that means nothing to him; he might be confused by

the assignment or see it as busywork; he might see himself as not having the knowledge or skills he needs to complete the assignment.

As someone who researches students' source uses, information literacy, and research writing practices and as a participating researcher on Rebecca Moore Howard and Sandra Jamieson's Citation Project, too often I hear about these requirements for liability-oriented, decontextualized online plagiarism quizzes and requirements to sign honor codes and integrity pledges before being able to enroll for classes. As Steven Engel, Kerry Howell, Jacklene Johnson, and Jessica McGinnis point out in "Plagiarism and PTSD: The Case of Senator John Walsh's Plagiarized Paper," "proper engagement with sources is a challenge for novice writers as well as master-level students. Simply reciting the school or university's plagiarism policy is not enough for students" (9). Along these lines, a colleague shared with me recently that a student in her First-Year Experience course handed her two honor code pledges saying that she signed her classmate's for him because he was away sports-balling on behalf of the university. My colleague said she stood agape for a few moments before ultimately responding, "you just signed and gave me [Henry's] honor pledge. Do you see why this is problematic?" to which the student responded, "because he's not very honorable?"

Similar to conversations in the field of composition about the best way to teach grammar, plagiarism instruction should be highly contextual, otherwise it's unlikely that students are going to engage in the transfer necessary to make these values inherent and meaningful. It's not enough to know the mechanics of plagiarism. Students need to understand why intellectual property, citations, and accurately ascribing others' words are important and have these lessons clearly and consistently reinforced by experts in their disciplines in contextualized and compelling ways. We've tried policing and it doesn't seem to work. Instead, let's try inviting and encouraging students to enter, learn about, and participate in the academy's "community of shared academic values, foremost of which is a strong commitment to intellectual honesty, honorable conduct, and respect for others" (Eastern Kentucky University "Academic Integrity Policy").

Now, this isn't to say that there aren't schools, even some of those discussed in this article, that aren't making strides toward more contextualized, meaningful instruction in regards to plagiarism. For example, Aalto University's policies are far more rooted in academic discourse than correctional discourse. Their policies opt for phrases, such as "responsible conduct of research and good artistic practices" ("Code of Academic Integrity").

Long story short, if your campus, like mine, is considering the FI grade or its equivalent, make sure you do it right... and for the right reasons.

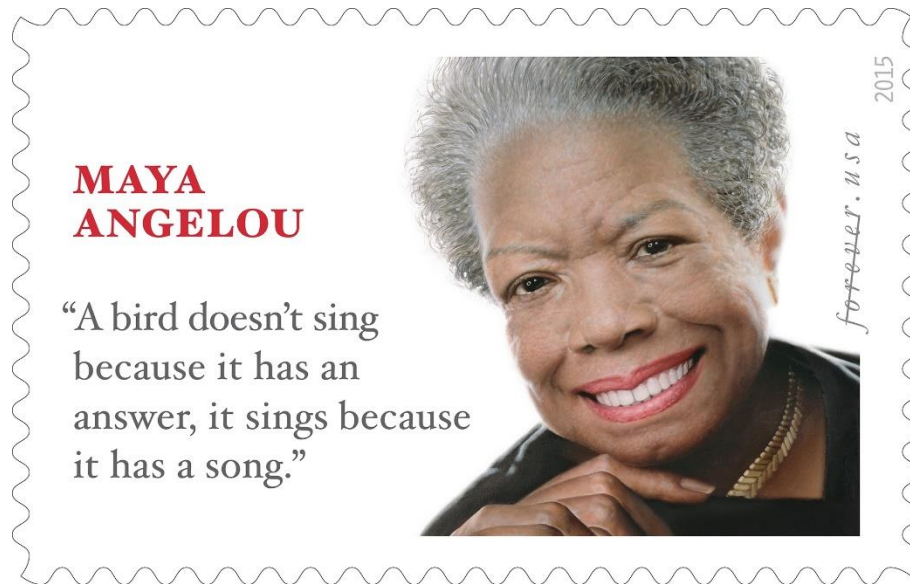
## Works Cited

- "Academic Information." Helena College. (2015-2016): n. pag. Web. 21 Feb. 2016.
- "Academic Integrity." Bainbridge State College. (2016): 1-5. Web. 26 Jan. 2016.
- "Academic Integrity Code." Coastal Carolina University. (2016): n. pag. Web. 26 Jan. 2016.
- "Academic Integrity Policy." Eastern Kentucky University. (2016): n. pag. Web. 26 Jan. 2016.
- "Academic Integrity Policy." University of Massachusetts Lowell. (2016): n. pag. Web. 21 Feb. 2016.
- "Academic Integrity Policy 2013-2014." Samford University. (2013): n. pag. Web. 22 Feb. 2016.
- "Academic Policies." Belmont University. (2012): n. pag. Web. 22 Feb. 2016.
- "'Cheating Lessons' Author of New Book on Academic Dishonesty Discusses Strategies for Reducing Cheating While Improving Student Learning." Interview by Serena Golden. *Inside Higher Ed*. Inside Higher Ed, 11 Sept. 2013. Web. 26 Jan. 2016.
- "Code of Academic Integrity and Handling Violations Thereof." (2013) Aalto University. n. pag. Web. 22 Feb. 2016.
- Engel, Steven, Kerry Howell, Jacklene Johnson, and Jessica McGinnis. "Plagiarism and PTSD: The Case of Senator John Walsh's Plagiarized Paper." *The CCCC-IP Annual: Top Intellectual Property Developments of 2014* (2015): 5-10. Web.
- Howard, Rebecca Moore. "Forget About Policing Plagiarism. Just Teach." *The Chronicle of Higher Education* (2001): B24. 16 Nov. 2001. Web. 26 Jan. 2016.
- "Sanction Rubric." (2016) University of Arkansas. n. pag. Web. 22 Feb. 2016.
- Wa-Mbaleka, Safary. "Cheating Reduction Strategies." *Teaching Online Pedagogical Repository*. Orlando: U of Central Florida Center for Distributed Learning, 2013. N. pag. *Teaching Online Pedagogical Repository*. 2013. Web. 28 Feb. 2016.



Steven Engel

## Stamp of Authenticity: Using The Maya Angelou Forever Stamp to Explore Quotation and Authorship



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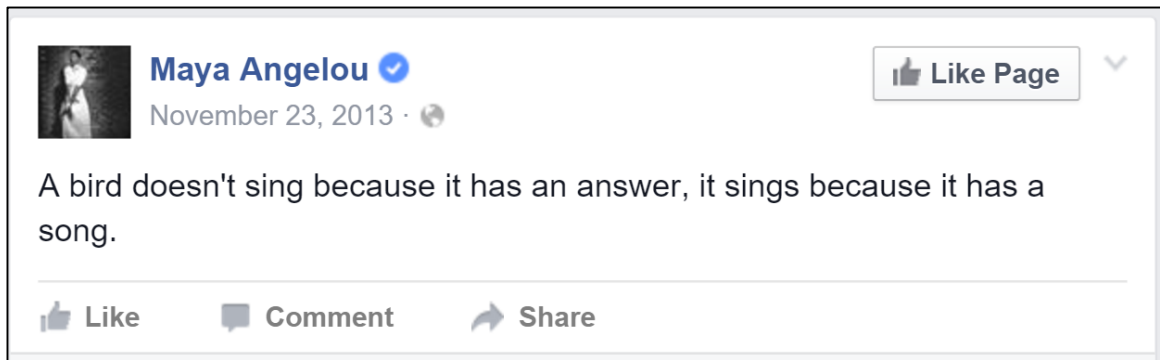
### The Background

On April 7, 2015, the United States Postal Service unveiled a limited-edition, “forever stamp” honoring Maya Angelou. The stamp featured a realistic portrait of the author along with the quotation that evoked one of Angelou’s most famous works, *I Know Why the Caged Bird Sings*: “The bird doesn’t sing because it has answers; it sings because it has a song.” At the dedication of the stamp’s official date of issue, dignitaries such as Michelle Obama, Valerie Jarrett, Eric Holder, Nikki Giovanni, Roberta Flack, and Melissa Harris-Perry gathered to remember and celebrate Angelou’s legacy (Andrews-Dyer). It was a nearly perfect ceremony. The only problem? The quotation on the stamp is not from Angelou’s book; instead, it is a slight variation of a line from Joan Walsh Anglund’s *A Cup of Sun*, which was published in 1967, two years before *I Know Why the Caged Bird Sings* (O’Neal, “Maya Angelou”). After *The Washington Post* reported this misalignment of the image with the quotation, US Postal Service spokesperson Mark Saunders at first sent out a statement that read, “The Postal Service used [Angelou’s] widely recognized quote to help build an immediate connection between her image and her 1969 nationally recognized

autobiography" (O'Neal, "Book Author").<sup>1</sup> Later that same day, Saunders communicated with the *Washington Post*, acknowledging that "[h]ad we known about this issue beforehand, we would have used one of [Angelou's] many other works...The sentence held great meaning for her and she is publicly identified with its popularity" (O'Neal, "Book Author"). And since it is a "forever stamp," the misattributed stamp can remain in circulation for a long time. The Postal Service currently has no plan to re-issue the stamp (Nixon).

## The Source

A quick internet search supports this claim that Angelou is "publically identified with its popularity." For instance, "President Obama falsely attributed the sentence to Angelou during the presentation of the 2013 National Medal of Arts and National Humanities Medal" (McSpadden); Greek journalist Michalis Linnios posted an interview with Angelou in which repeated the statement without any indication that she was quoting Anglund (Crouch); and Angelou's own Facebook page includes the unattributed quotation.




Garson O'Toole on the website *The Quote Investigator* explores the origins of the phrase, and in a detailed (and well-documented) blog post notes that the quotation is attributed to not only Angelou (most often), but also Anglund, former Notre Dame football head coach Lou Holtz, and as a Chinese proverb. Similar versions can be found in works by William Hazlitt, Tennyson, and several newspaper columns prior to Anglund's 1967 book. The line also appears on many quote aggregator websites, pages that "cater to a growing appetite for

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<sup>1</sup> It is interesting to note that the *New York Times*' reporting of this story contains the same statement from the US Postal Service, but attributes them to another spokesperson, David Partenheimer (Nixon). I don't believe that this is a case of misattribution by a journalist but rather a case of the Postal Service "being on-message" and delivering a clear statement across multiple contacts with the media.

filleted wisdom, for deboned wit, for the mechanically separated meat of literature" (O'Connell).



beliefnet  
**Inspirational Quotes**

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*" A bird doesn't sing because it has an answer; it sings because it has a song. "*

*-Maya Angelou*

**CATEGORIES:** Inspiration Quote, Sing, Bird Doesn't Sing, Answer, Doesn't, Bird, Joy, Creativity, Maya Angelou

## Opportunities

Beyond the lesson in double-checking one's sources—especially before going public with a document—and highlighting the challenges of getting everything right, I offer five postage-stamp size opportunities to incorporate this story (and stamp) into a class.

### ONE: Foucault's Author Function on a Stamp

In "What is an Author?" Michel Foucault begins with a quotation from Samuel Beckett, "What does it matter who is speaking?" in order to explore the discursive function of the author and some of the difficulties. Using St. Jerome as an "author function," Foucault offers ways in which authors are culturally constructed: through quality, coherence, stylistic uniformity, and historical sense. Using the Maya Angelou stamp, explore the ways in which the attribution of the quotation to Angelou—and the subsequent conversations about this misattribution—relate to Foucault's essay. Note, for instance, playwright Liana Asim's thought that the quotation didn't sound like Angelou: "Her rhythm and her cadence are things you don't hear in other places" (O'Neal, "Maya Angelou's").

### TWO: History of the Quote

Using O'Toole's research on *The Quote Investigator*, explore the various versions and repetitions of the statement. At what point is the quotation the same idea? At what point has it been re-imagined? Could it be a Chinese proverb, or is that just

a way to attribute something that a writer or speaker thinks is “wise”? How could the same idea be attributed to Lou Holtz, Maya Angelou, and a Chinese proverb? What does seeing the various references juxtaposed do for our understandings of authorship, originality, and attribution?

### THREE: Create Your Own Stamp

If you had to create your own stamp, what would it look like? Would you use something you said, or would you quote someone else? If you had to capture your life in a stamp, what would those few words be? Could you (or would you) include a citation on your stamp? Are there reasons beside the space limitations for leaving it out?

### FOUR: Culture of Quotation

What are the affordances and constraints of the Internet’s culture of quotation? Investigate your own social media to look for the ways in which you and your friends use quotations. What are the purposes? When do you attribute? How important is attribution? Why would you want to not attribute? What do you make of articles like Amanda Harnocz’s “13 of Maya Angelou’s Most Inspirational Quotes” that offer up a list of the most famous things people said? Look at other celebrities who are often quoted saying things they may or may not have said: Oscar Wilde, Mark Twain, and Schopenhauer. Remember the famous Yogi Berra quotation about all of the Yogi-isms he was supposed to have said: “I might have said ‘em, but you never know” (qtd. in Mather and Rogers). Look at the quiz in Nathalie Boyd’s article about “Famous quotes that are always misattributed.” It might be interesting to look at Ruth Finnegan’s *Why Do We Quote? The Culture and History of the Quotation* or Susan Blum’s *My Word! Plagiarism and College Culture*.

### FIVE: Who owns a stamp?

This article republishes the image of the Maya Angelou stamp. Looking at the US Postal Services’ website, note the restrictions and suggestions for reprinting the image. What is protected? What is alterations did we have to make? Why is the stamp treated differently from other government documents? Look at some of the parodies that emerged after the story broke (Google: “Maya Angelou stamp parodies”). Are these images violations of copyright laws? Are they protected?

### Works Cited

Andrews-Dyer, Helena. “Oprah, Michelle Obama, others attend poet Maya

- Angelou's 'forever' stamp dedication." *Washington Post*. *Washington Post*, 7 Apr. 2015. Web. 1 Mar. 2016.
- Blum, Susan D. *My Word! Plagiarism and College Culture*. Ithaca, NY: Cornell UP, 2010.
- Boyd, Nathalie. "Quiz: Famous Quotes that are always misattributed." *The Rundown*. PBS Newshour. Web. 10 April 2015.
- Crouch, Ian. "Maya Angelou and the Internet's Stamp of Approval." *The New Yorker*. Conde Nast, 10 Apr. 2015. Web. 1 Mar. 2016.
- Finnegan, Ruth. *Why Do We Quote? The Culture and History of Quotation*. Cambridge: Open Book Publishers, 2011. Web. 1 Mar. 2016.
- Harnocz, Amanda. "13 of Maya Angelou's Most Inspirational Quotes." *Cleveland.com*. Advanced Digital. 28 May 2014. Web. 1 Mar. 2016.
- "Inspirational Quotes: Maya Angelou" *Beliefnet: Inspire your everyday*. Beliefnet. n.d. Web. 1 Mar. 2016.
- Mather, Victor and Katie Rogers. "Behind the Yogi-isms: Those Said and Unsaid." *New York Times*. *New York Times*, 23 Sept. 2015. Web. 1 Mar. 2016.
- McSpadden, Kevin. "This Maya Angelou Stamp Has a Quote from Another Poet and Won't Be Reissued." *Time*. Time, Inc. Network, 9 Apr 2015. Web. 1 Mar. 2016.
- Nixon, Ron. "Postal Service Won't Reissue Maya Angelou Stamp." *New York Times*. *New York Times*, 8 Apr. 2015. Web. 1 Mar. 2016.
- O'Connell, Mark. "'Hang in There!' -Arthur Schopenhauer: Quotation Websites and the Outsourcing of Erudition." *Slate*. The Slate Group, 19 May 2014. Web. 1 Mar. 2016.
- O'Neal, Lonnae. "Book Author Joan Walsh Anglund says of Angelou Stamp: 'That's My Quote.'" *Washington Post*. *The Washington Post*, 6 Apr. 2015. Web 1 Mar. 2016.
- . "Maya Angelou's new stamp uses a quote that may not be entirely hers." *Washington Post*. *The Washington Post*, 6 Apr. 2015. Web 1 Mar. 2016.
- O'Toole, Garson. "A Bird Doesn't Sing Because it has an Answer, it sings because it has a song." *Quote Investigator*. 3 Dec. 2015. Web 1 Mar. 2016.
- United States Postal Service. "Rights and Permissions Overview" *USPS.com*. USPS. n.d. Web. 1 Mar.

Kathrin Kottemann

## Catfishing, Authorship, and Plagiarism in First-Year Writing

In popular discourse, a “catfish” is an internet user who, through fabrication of a fake online profile or profiles, deliberately deceives other internet users into friendships or relationships. If a catfish creates a profile that is believable enough, then we may be duped. To avoid being duped, we must be able to spot these deceptions and not fall into the catfish’s traps. Unfortunately, in authoring their profiles and in correspondence with victims, catfish are master deceivers – they feed off of trust and create belief. Just as literary forgers base their creations on the original author’s productions in order to facilitate deception, so too do catfish engineer their profiles to correspond with users’ expectations of presentation. In “Toward a New Content for Writing Courses: Literary Forgery, Plagiarism, and the Production of Belief,” Amy Robillard and Ron Fortune discuss how forgeries should not be dismissed as “anti-writing” but should be examined as nuanced creations with rhetorical properties. A forger’s success hinges on his ability to inspire belief in the reader – if the reader can recognize inconsistencies between the forged document and documents by the original author, then the deception falls apart. This production of belief is similar to the process a catfish must follow in order to ensnare a victim. Sometimes, first-year writing students become complicit in this process as well when asked to complete prescriptive writing activities or when resorting to plagiarism to complete assignments.

By writing the self, catfish do not participate in forgery, per se, but they do create a new text with borrowed properties to meet other users’ expectations – they create a technically new but outright false text and attempt to convince others to believe it. Robillard and Fortune use the example of William Henry Ireland who forged a series of documents supposedly written by Shakespeare, including a long-lost and never produced play entitled *Vortigern*. In order to carry out his deception, Ireland not only inked the play in the style of Shakespeare but he also included several documents: “legal papers, a profession of religious faith, a love letter, correspondence between Shakespeare and various business associates (including Queen Elizabeth), a purported original manuscript of *King Lear* and a fragment from *Hamlet*, the fragment of another play (*Henry II*), and various receipts and notes” (190). Ireland had to produce not only the play but other artifacts in order to prove the manuscript’s authenticity and in order to fulfill his audience’s expectations. A catfish operates in a similar way – working to persuade other users that he or she is a real and desirable person. If internet users expect to see an image, then the catfish will find an attractive image of someone else as a profile picture. If users expect a profile to have numerous “friends,” then the catfish will befriend other users or create a constellation of profiles to stand-in as friends. If the catfish is skilled enough to preempt his or

her victim's expectations, then the victim may be fooled into believing that the catfish is a legitimate person.

As first-year writing teachers, we sometimes ask our students to be catfish. When we ask our students to compile a portfolio at the end of the semester with drafts of papers, peer review worksheets, and reflective essays on progress and writing attitudes, are we not asking our students to forge or create a highly mediated form of proof that they have met the goals and objectives of the class? One of the most common criticisms about portfolio systems is artificiality – that we are asking our students for proof that they may create simply to provide proof, not because those drafts arose in any organic way. The standard five-paragraph essay is also a highly mediated form of writing; requiring our students to produce this type of writing suggests that their ideas and arguments should fit neatly in that prescriptive format. These assignments fulfill certain expectations about writing – argument, structure, and organization. But, by asking our students to create either this constellation of documents as proof of learning or to compose this prescriptive version of writing, we are asking them to deceive, to create forgery, to author immoral writing. The same could be said for acts of plagiarism in our first-year writing classrooms. Robillard and Fortune contend that “immoral” writing acts like forgery and plagiarism “can teach writing specialists a great deal about the production of belief” (185) and the same can be said for “immoral” acts like creating a catfish profile. Just as Robillard and Fortune call for a shift in writing specialists’ understanding of these documents, allowing them to inform the teaching of writing, I too call for a shift in collective understanding of both online deception and deception in our classrooms. Instead of being taught to avoid forgery or plagiarism and instead of being taught to avoid catfish, we should foster a change in writing instruction and in our understanding of the internet as a place to create and play with identity.

When the catfish hoaxes are revealed, the victims wonder how they let themselves be duped and usually resign to more closely evaluate online profiles to avoid this type of deception in the future. This causality is similar to the teaching of academic integrity – students are taught how to avoid plagiarism or to avoid immoral writing. However, if we were to shift our understandings of both online authorship and student authorship, we would be able to see these types of forgeries not as punishable and reviled but as indicators of the need to change the system as a whole. Robillard and Fortune state that a student may commit whole text plagiarism because of a “lack of recognition on the students’ part that authorship is valuable and that published writing is more than a product for the taking” (201). Similarly, some online users no longer value their online relationships as much as their real world relationships, making it easier to carry out such deception. If a student does not see the value in authorship and if internet users devalue cyberspace as a place to create lasting bonds, then deception becomes effortless. Catfishing, then, is not anti-identity creation;

instead, it is indicative of a larger problem – not one that needs to be avoided on an individual basis but one that may require an overhaul of the system itself.

### Works Cited

Robillard, Amy, and Ron Fortune. "Toward a New Content for Writing Courses: Literary Forgery, Plagiarism, and the Production of Belief." *JAC: A Journal of Rhetoric, Culture, and Politics* 27.1 & 2 (2007): 183-208. Print.



Matthew Teutsch

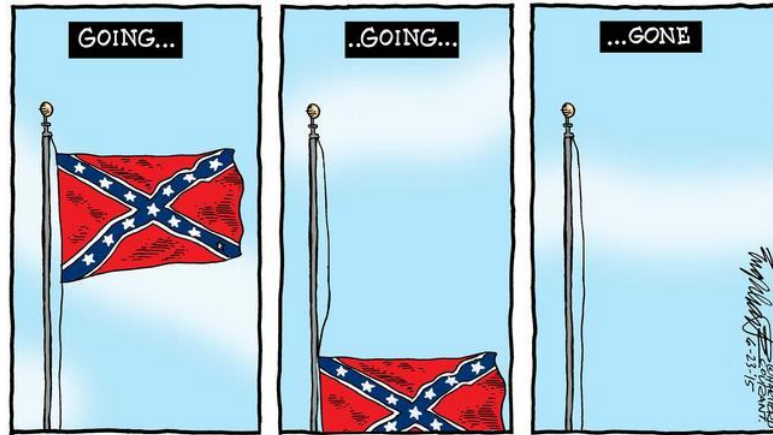
## Cultural Commentary and Fair Use: Bob Englehart, the Southern Poverty Law Center, and Two Flags

June 17-June 25, 2015: The Descending Flag

On June 17, 2015, Cynthia Marie Graham Hurd, Clementa Pinckney, Myra Thompson, Susie Jackson, Ethel Lee Lance, Depayne Middleton-Doctor, Tywanza Sanders, Daniel Simmons, and Sharonda Coleman-Singleton attended Bible study at Emanuel African Methodist Episcopal Church in Charleston, SC, and at the end of that meeting were shot dead by a white visitor, Dylann Roof. In the days that followed, debates surrounding the heinous incident began to take shape. The debates, of course, focused on the continued presence of racism in this nation, and those arguments coalesced around a central symbol of that oppression in the South: the Confederate Battle Flag.

Many called for the removal of the Confederate Battle Flag from the Statehouse in Columbia, SC; however, others argued that the red, white, and blue fabric with the image of a cross emblazoned across it represents more than just the long history of racism, oppression, and subjugation of African Americans and others in this country. Speaking with CNN on June 19, South Carolina Senator Lindsey Graham claimed that the people of South Carolina needed to revisit the issue of the flag flying above the Statehouse and other government buildings. He continued by saying, "The flag represents to some people a Civil War, and that was the symbol of one side. To others it's a racist symbol, and it's been used by people, it's been used in a racist way." For those championing the link to the Civil War, the flag symbolizes their Southern heritage; for those who see it as a "racist symbol," it represents the hate and vehemence against African Americans and other minorities that has long plagued this nation.

As the debate raged, Bob Englehart, a political cartoonist at the *Hartford Courant*, wrote an opinion piece which was accompanied by a cartoon. Englehart's commentary focuses on the upcoming election season and on the political historical context surrounding the Republican and Democratic positions on Civil Rights from the Civil War through the twentieth century. While Englehart's comments provide some cultural context for politics in regards to race, his three-panel cartoon became a representation of the what some thought should happen with the Confederate Battle Flag. The three panels show the flag being lowered with the words "Going...Going...Gone" accompanying the descending piece of cloth:



Bob Englehart's Original Cartoon

### June 26-June 29: The Ascending Flag

Ten days after the horrific events in Charleston, on June 26, the Supreme Court of the United States (SCOTUS) ruled same-sex marriage legal in all 50 states. Almost immediately, profile pictures on my Facebook page started to have a Rainbow flag layered on top of them. To mark the Supreme Court decision, Facebook rolled out “a tool that lets users superimpose a rainbow over their profile pictures” (Kelly). By June 29, over 26 million Facebook users had added the Rainbow flag overlay on their profile pictures (Dewey). Countering this trend, some chose to create an American flag filter to cover their profile pictures (Beredjick).

Over the course of ten days, two flags became the focal point of debates surrounding race, gender, sexuality, history, and the state of the American nation. No image highlights this fact more than the one that the Southern Poverty Law Center (SPLC) put on its Facebook page the day of the historic SCOTUS decision. Containing five panels, the cartoon shows the lowering of the Confederate Battle Flag and the ascendancy of the Rainbow Flag up the flagpole. The cartoon only contains images and the website Caglecartoons.com; Bob Englehart’s signature does not appear anywhere. In fact, when the SPLC took the image from Twitter, they felt that it perfectly encapsulated the current social and political milieu. Many commentators went on to praise the cartoon’s symbolic message of victory. Others saw the image as conflating two similar yet disparate struggles for equality. Responding to the cartoon and speaking in regards to the events in Charleston, Tamara Williams wrote that it “dangerously allows viewers to ingest that image and subconsciously assume the work has been done, and the fight has been won. To rewrite current events in this way will only make it harder for activists fighting against racism.”

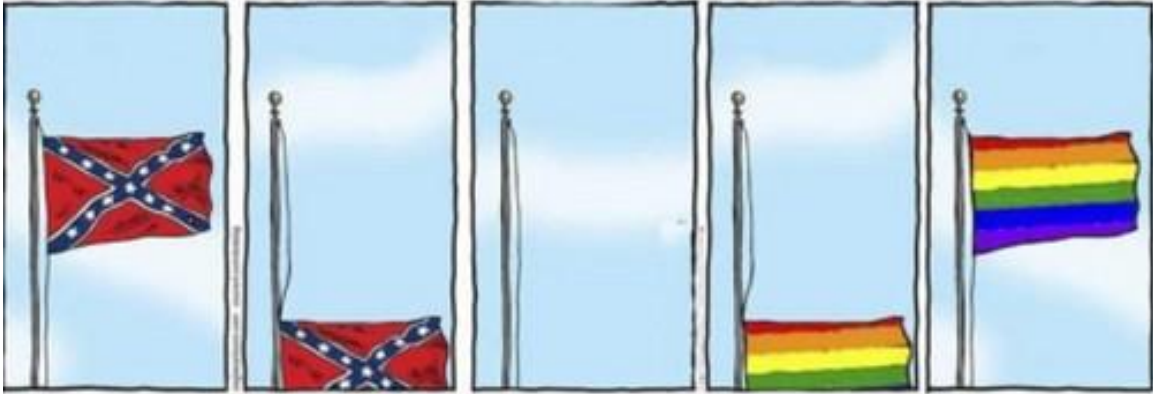


Image the SPLC used on their Facebook page

While some agreed and some disagreed with the overall message of the political cartoon, another issue soon arose. After doing some research, some took issue with the fact that the SPLC took an appropriated image from Twitter and posted it on their social media feeds to commemorate the monumental decision. Alan Gardner gave the SPLC the benefit of the doubt, claiming they were overly exuberant and wanted to share that exuberance: "Unlike other cases of plagiarism that have been in the news lately, I'm going to chalk SPLC's actions up to exuberance overwhelming common sense, but it also serves as a warning that not all cartoons and memes on the internet are original." Just as Gardner does not charge the SPLC with culpability by using an appropriated image from Caglecartoons.com, he provides a warning for organizations and web surfers to realize that all of the memes and cartoons on the Internet are not original.

Englehart did not view the situation in quite the same way. After the SPLC displayed the image, Englehart wrote a post on his Facebook page addressing the issue:

Many of you have seen this cartoon circulating around the Internet. Somebody took my cartoon "Going...Going...Gone!," stripped off my caption and my name and altered it. This is in complete violation of copyright law and respect for an artist's work. In the spirit of new beginnings, I won't call whoever did this any names or what they might do with themselves. Use your imagination. This appeared on the Southern Poverty Law Center website. If they are lawyers, they're not very good ones. They certainly don't know, or care, about copyright law. (qtd. in Lynch)

In his response to the image, Englehart takes a shot at the SPLC for failing to catch the infringement, but his main focus zeroes in on the anonymous person who altered the cartoon in the first place. Possibly taking a cue from Englehart, another artist did provide a similar image to the anonymous one that the SPLC posted.

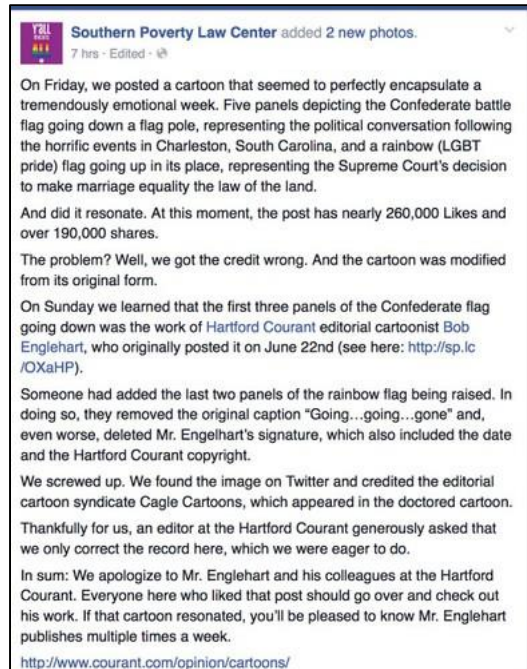
Andy Marlette's June 26 cartoon for the *Pensacola News Journal* shows two panels. In the first, Uncle Sam lowers the Confederate Battle Flag, and in the

other, he raises the Rainbow Flag. Here, Marlette does not take Englehart's cartoon and alter it; rather, he takes the initial idea of Englehart and adds his own twist. In this case, Marlette signs his name, authenticating the artwork, while the mysterious Twitter artist who created the image that the SPLC used did not provide any indication of his or her identity or the fact that part of the image came from Englehart.



Andy Marlette's June 26, 2016 Cartoon

While the artist who doctored Englehart's image obviously took specific drawings from the original, Marlette took the ideas that were prevalent during the period. I cannot say that Marlette used Englehart's image as inspiration, but his use of Uncle Sam lowering Confederate Battle Flag and raising the Rainbow Flag creates interesting correlations that could be discussed in relation to intellectual property and cultural studies in the composition classroom.



SPLC's Statement on Facebook<sup>2</sup>

On June 29, 2015, the SPLC offered an apology on its Facebook page about the accidental appropriation stemming from what Gardner refers to as “exuberance overwhelming common sense.” In its statement, the SPLC made clear that the

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<sup>2</sup> The text of the post is as follows:

On Friday, we posted a cartoon that seemed to perfectly encapsulate a tremendously emotional week. Five panels depicting the Confederate battle flag going down a flag pole, representing the political conversation following the horrific events in Charleston, South Carolina, and a rainbow (LGBT pride) flag going up in its place, representing the Supreme Court’s decision to make marriage equality the law of the land.

And did it resonate. At the moment, the post has nearly 260,000 Likes and over 190,000 shares.

The problem? Well, we got the credit wrong. And the cartoon was modified from its original form.

On Sunday we learned that the first three panels of the Confederate flag going down was the work of *Hartford Courant* editorial cartoonist Bob Engelhart, who originally posted it on June 22nd (see here: <http://sp.lc/OXaHP>).

Someone had added the last two panels of the rainbow flag being raised. In doing so, they removed the original caption, “Going...going...gone” and, even worse, deleted Mr. Engelhart’s signature, which also included the date and the *Hartford Courant* copyright.

We screwed up. We found the image on Twitter and credited the editorial cartoon syndicate Cagle Cartoons, which appeared in the doctored cartoon.

Thankfully for us, an editor at the *Hartford Courant* generously asked that we only correct the record here, which we were eager to do.

In sum: We apologize to Mr. Engelhart and his colleagues at the *Hartford Courant*. Everyone here who has liked that post should go over and check out his work. If that cartoon resonated, you’ll be pleased to know Mr. Engelhart publishes multiple times a week.

<http://www.courant.com/opinion/cartoons/>

image they found “perfectly encapsulate[d] a tremendously emotional week” that saw the tragedy in Charleston and triumph in Washington. Three days after posting the cartoon, over 260,000 users had responded to the image either by liking it or sharing it on their own feeds. In the apology, the SPLC correctly cited Englehart and the *Hartford Courant* for the first three panels, noting that someone removed the signature and copyright. The SPLC claims the misattribution occurred because the cartoon only contained Cagle Cartoons (a site that collects political cartoons) below it, so they assumed that the name provided the citation. However, if they searched the Cagle Cartoon website, the SPLC would not find the Englehart cartoon unless they knew to look for it. As well, a current search of the site does not produce the image that the SPLC used on its Facebook page.

When the SPLC initially displayed the image, some proclaimed that the cartoon encapsulated the moment, and Bob Dreyfuss of *Mother Jones* titled his post on the picture “This Cartoon is Going to Become Iconic,” hinting at the cultural significance of the image. Dreyfuss even attributes the image as the SPLC did, to Cagle Cartoons, which appears at the bottom of the illustration. He concludes by saying that he will do more research and post an update when he finds the appropriate information; however, no update appears. Instead, the image from the SPLC’s Facebook account has the corrected attribution for Bob Englehart.

Englehart and others called out the SPLC for posting the altered image; however, there does not appear to be anyone calling out Cagle Cartoons for the illustration. Commenters on specific posts brought this topic up, but no article discusses it. Cagle Cartoons serves as a syndication service for political cartoonists, charging its users fees to reproduce the images on the web and in print. In regards to this case, what role does Cagle Cartoons play? Should they receive greater criticism than the SPLC? These are questions that need to be asked since the SPLC did everything to attribute the picture, or at least part of it, to its rightful creator.

## Classroom Connections

The SPLC’s promotion of the altered version of Englehart’s cartoon presents interesting topics that we could, and should, consider in the composition classroom. Specifically, the issue creates an opportunity for students to think about the collaborative nature of texts, even if the perceived notion is that the text, or object, appears as the sole creation of the author. James P. Purdue argues that rather than focusing on the “private and personal” creation of a text, we need to push against the “denial of collectivity [that] still exists within academia” (316). Of course, Lisa Ede and Andrea Lunsford made a similar point back in 1990 with *Singular Texts/Plural Authors* where they note that whatever a person produces “is anchored in [his/her] experiences with others” (xii). In the SPLC’s case, the image arose out a social milieu that sparked responses from various

groups of individuals, and with technological tools, it is no wonder that someone turned Englehart's image into a new rhetorical message.

With all of this in mind, I want to take the opportunity to highlight a few questions and activities that could take place within the composition classroom surrounding plagiarism and intellectual property.

- Could we incorporate Rebecca Moore Howard's ideas about patch writing into this discussion? In what ways does the cartoon take work with the idea of patch writing? Does the creation appear to be fraudulent or malicious in its appropriation of Englehart's cartoon? Does that change the perception?
- Should the SPLC be held culpable for its use of the image on its social media feed? Or, should we chalk their use up to what Gardner calls "exuberance overwhelming common sense"? What culpability should we place upon Cagle Cartoons?
- Thinking about the SPLC's issue, how do we view other "mashups" such as the "Avatar/Pocahontas" movie trailer mashup or the music of Girl Talk? In these cases, what role does the appropriation of ideas, music, images, etc. serve? Are these pieces, and others, creating new rhetorical documents and situations?
- Does the fact that we do not know who created the image that SPLC used make any difference?
- What role do Bob Englehart's illustration and the anonymous cartoon the SPLC used play in regards to free speech and cultural critique? As well, how does the SPLC image, and even Andy Marlette's cartoon, respond to the *kairos* of the period in which they appeared?
- Thinking about the issue of fair use, students could examine Englehart's original illustration in relation to both the anonymous drawing and others like Marlett's. To assist with this exercise, have students use the University of Minnesota's "Thinking Through Fair Use" tool.
- Does the message being conveyed by the altered image, or plagiarized text, determine how harshly we view the act? If so, how does it affect our feelings towards it?

The SPLC's case raises interesting questions about plagiarism, appropriation, fair use, and intellectual property for the composition classroom. It asks us to consider when we should hold someone responsible for plagiarizing and whether or not the condemnation of that act corresponds to the message being conveyed and stance of the person presenting the material. It also causes us to question how patch writing can create new messages from previous ones. Ultimately, for students, what does the SPLC's use of the image say? What does their response say? What does Englehart's response say? These are questions we should be asking them in regards to plagiarism and intellectual property throughout the semester.

Works Cited

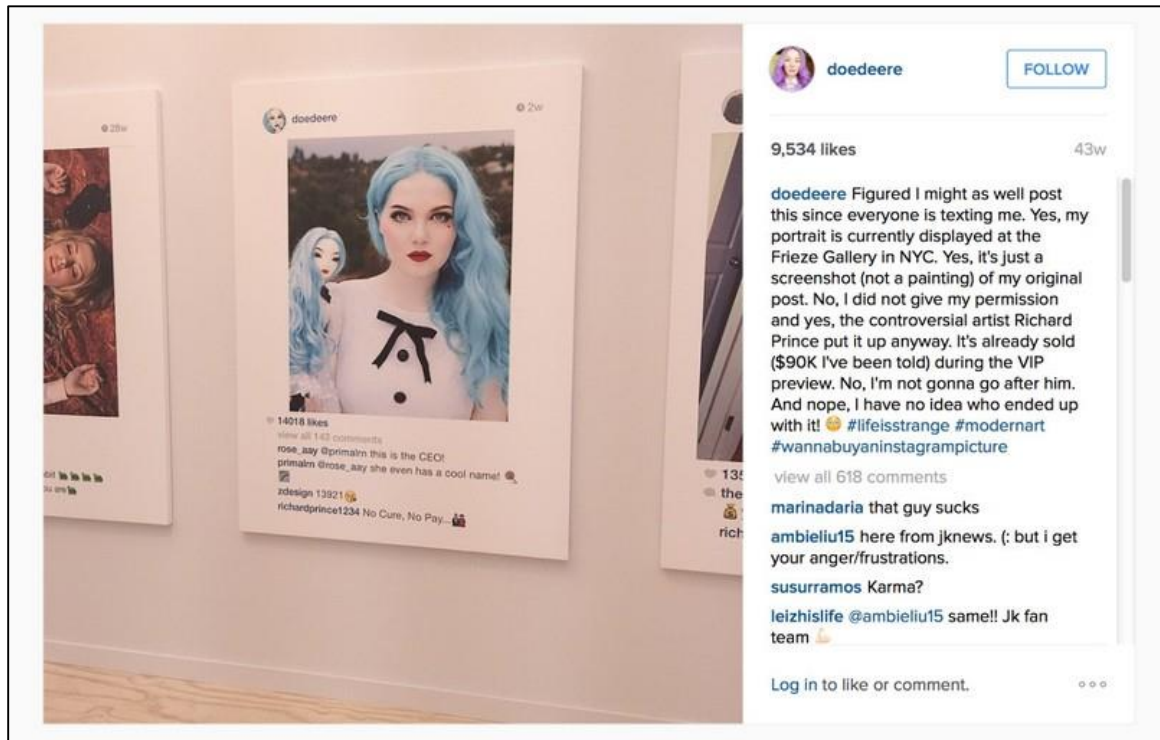


- Beredjick, Camille. "If You Don't Like Those Rainbow Profile Picture on Facebook, Conservatives Made an American Flag Version." *Friendly Atheist*. Patheos.com, 1, July 2015. Web. 2 Feb. 2016.
- Cunha, Darlena. "That Cartoon of the Rainbow Flag Replacing the Confederate One is Dangerous." *Time.com*. Time Inc., 30 June 2015. Web. 4 Feb. 2016.
- Dewey, Caitlin. "More than 26 million people have changed their Facebook picture to a rainbow flag. Here's why that matters." *Washington Post.com*. *The Washington Post*, 29 June 2015. Web. 2 Feb. 2016.
- Dreyfuss, Bob. "This Cartoon is Going to Become Iconic." *Motherjones.com*. *Mother Jones*, 26 June 2015. Web. 20 Feb. 2016.
- Ede, Lisa and Andrea Lunsford. *Singular Texts/Plural Authors*. Carbondale: Southern Illinois University Press, 1990.
- Englehart, Bob. "Flag Flagged Maybe." *Courant.com*. *Hartford Courant*, 22 June 2015. Web. 2 Feb. 2016.
- Gardner, Alan. "Southern Poverty Law Center Apologizes for Posting Plagiarized Englehart Cartoon." *Dailycartoonist.com*. *The Daily Cartoonist*, 30 June 2015. Web. 4 Feb. 2016.
- "Graham" Confederate flag is part of who we are." *Cnn.com*. Cable News Network, 19 June 2015. Web. 2 Feb. 2016.
- Kelly, Samantha Murphy. "You can put a rainbow filter over your Facebook profile photo in one click." *Mashable.com*. Mashable, Inc., 26 June 2015. Web. 2 Feb. 2016.
- Lynch, Mike. "Bob Englehart Editorial Cartoon Plagiarized." *Mike Lynch Cartoons*. Blogspot, 30 June 2015. Web. 4 Feb. 2016.
- Marlette, Andy (AndyMarlette). "New cartoon: America's flags #LoveWins #MarriageEquality #SCOTUS." 26 June 2015, 10:05 a.m. Tweet.
- Purdy, James P. "Calling Off the Hounds: Technology and the Visibility of Plagiarism." *Teaching Composition: Background Readings*. 3rd ed. Ed. T.R. Johnson. Boston: Bedford/St. Martin's, 2008. 305-324.



Craig A. Meyer

## A Prince, Some Girls, and the Terms: A Canary in the Cave?



The images [on display](#) at the Frieze Art Fair.

In May 2015, Richard Prince took pictures posted on the SuicideGirls Instagram account, added a comment, put them on large canvases, and sold them online — for \$90,000 each. An artist for forty years, Prince has made a career of taking others' work and making minor adjustments (if any) and selling them for profit. In this particular case, he used the SuicideGirls' Instagram pictures, which are edgy, often sexy, but always provocative. The word got back to Missy, a co-founder of SuicideGirls, and her [response](#) went viral for its candor and outcome. In her response, Missy disregards the copyright aspect, because she sees it as too big of an issue to try to go after the number of people who use their photos for commercial uses. She continues to explain this type of usage is part of the culture we live in, and while she appreciates the exposure, she thinks the cost of Prince's work is out of reach for most people. So the SuicideGirls began selling the exact same prints for 99.9% off Prince's price, that is, \$90. With the discounted price and a nod to the reality that in selling Prince's prints, she believes SuicideGirls has the same rights he did, which by all accounts is null. Any profit from the SuicideGirls sales was donated to [Electronic Frontier Foundation](#), a nonprofit that defends technological civil liberties.

In taking a quick look at Prince's recent career, this is not the first time he's taken other work and sold it as his own. While several instances can be found, I will briefly highlight two. First in 2008, Prince toyed with photographs from Patrick Cariou and sold them for upwards of 10 million dollars. While that case had some twists and turns – including Prince being found guilty of infringement, then on appeal another court finding his work was (mostly) not infringing and "[transformative](#)" – it ultimately ended up in a settlement between the two (Cariou v. Prince 14).

The second example of Prince's "art" may give English or literature professionals pause. In 2012, Prince printed 500 copies of the classic J.D. Salinger book, *The Catcher in the Rye*, using the original cover and text. Except for one change; "Richard Prince" was on the cover as the author, not Salinger. Apparently, nothing within the text was changed, save for the name and a comment on the colophon. According to [Kenneth Smith](#) (who himself has made some questionable publishing choices with his book, [Day](#)), Prince writes on the colophon, "This is an artwork by Richard Prince. Any similarity to a book is coincidental and not intended by the artist."

He cannot be serious. Most rational people would consider copying an entire novel verbatim to be outside the bounds of coincidental. Yet, he was serious, and a copy is currently on [eBay](#) for \$1500 bucks, which is more than an original Salinger copy – in case you're curious. At this point, it seems clear that Prince has routinely taken others' work and sold it. While some courts have considered this practice legal, the general public consensus demonstrates that this is unethical and wrong. But, what did Instagram, the website that Prince took these images from, have to say, specifically in their terms of service?

While Missy suggested in an [interview](#) that Instagram should go after Prince, Instagram's Terms of Use suggest a different interpretation. First though, let us look at the SuicideGirls account on Instagram in relation to its Terms of Use. The second point of the Basic Terms subheading of the more-than-5000-word [Terms of Use](#) states, "You may not post [. . .] partially nude, [. . .] pornographic or sexually suggestive photos." When looking at the [SuicideGirls postings](#), it seems fairly evident that some of the postings are partially nude and/or sexually suggestive. One caption noting, "[Double the SuicideGirls / Double the Fun](#)," as two women appear to be intimately lying together. Or another where the caption is "[That Moment When She Climbs on the Dinner Table and Asks Baby You Hungry?](#)" as a woman appears to be kneeling on a dining room table. We can certainly debate the partially nude element, but it would be difficult to demonstrate that the photos with the captions are NOT sexually suggestive (even if you do not look at the pictures). Many may take issue with body image portrayals, the patriarchal culture, and other areas of debate, but the issue at hand remains, whether or not the SuicideGirls violated these terms of service. Based on these examples, one may conclude they did.

For the sake of argument, let us assume the SuicideGirls did not violate these terms (the account is still live at the time of this writing). Let us turn, then, to Prince. At present, he only has [seven](#) posts to his account that all appear to have elements of other pieces of art. Whether these are his original works, one cannot know. Since it is unclear to the ownership of Prince's posts, let us consider his usage of the SuicideGirls posts. Again, under the Basic Terms, one can find verbiage noting that users should not use Instagram "for any illegal or unauthorized purpose [. . .] including but not limited to, copyright laws." Now this is where it gets interesting. My reasoning in reviewing the Cariou v. Prince case was to get here. Prince seems to have confronted this dilemma before with making minor changes to a piece of art. Therefore, the art piece becomes transformative and distinct from the original, which has been demonstrated in a court of law.

Up until now, I have not fully explained one important detail of Prince's SuicideGirls copies—I mean "art." That detail is that he would make a comment below the post, screen shot it, and blow it up to be sold. One could argue that that comment was "transformative" to the understanding of the art. Based on my research, his comments were somewhat offbeat, even odd (see this [link](#) for some examples). The comment, then, makes it a new piece of art. Another interesting detail, noted in the previous link, was that the SuicideGirls then posted a comment below Prince's and sold those at the substantial discount, which in turn made, based on this logic, another piece of art.

Now, we return to the responsibility of Instagram. Well, that's pretty simple. Since Prince never posted them on Instagram, Instagram has no responsibility. Prince's canvases were displayed at the Gagosian Gallery; they later appeared at the Frieze Art Fair. Further according to Instagram's Terms of Use, "Instagram reserves the right, but has no obligation, to monitor or become involved in disputes between you and other users." In other words, they could get involved but they do not have to, and, in this case, they did not. While this single, complex case is important to recognize as culturally influential, other important aspects remain such as the many terms of service or similar agreements many of us enter into, the exploration of how students interact and compose media, and the potential effects this may have on our culture.

Apple's iTunes and related services [Terms of Use](#) is over 20,000 words that probably less than a hundred people have read, and the ones that did read it probably had to write it. The point is that most people do not read the terms of service for most of the online apps, websites, or other media we use. It's just easier to click and use the service; perhaps we assume that if a gaggle of lawyers wrote it, it is probably alright to use because nothing bad is really going to happen (unless, [you give up your first-born child](#)). Many of us probably skim them over looking for something odd to catch our eye, or at the very least scroll down so we can click, *I Agree*. As evidenced by the length of the Instagram and Apple Terms and Conditions, these documents would take a considerable

amount of time to read and understand. Time that might be better used actually using the service the terms are generated to protect. But how much time might we lose?

A [study](#) by Aleecia M. McDonald and Lorrie Faith Cranor suggests that the amount of time to actually read all the policies one encounters in one year is over 240 hours. The study was published in 2008 from data compiled a few years earlier. 240 hours would be ten days of only reading these terms, 24/7. But wait, all hope is not lost for all us busy folk; the website [tosdr.org](http://tosdr.org) is a product, too, of that technological genius of ours that simplifies several websites into simple language and offers a grading system (thumb up or down for specific policies and an overall letter grade).

So, what's all this mean moving forward? Today's students have grown up with the Internet every day of their lives. Cell phones every day of their lives. Facebook, Twitter, and other social media most of their lives. For them, and increasingly everybody else, access, availability, and sharing have become a conversation with others. This conversation goes beyond traditional conventions and understandings of plagiarism. Students and society do not see this sharing as plagiarism. Perhaps the rationale might be because it could be traced back to its original source (but who would do that anyway?). What matters more is the information itself, not where it came from. Thus, it becomes a "did you hear?" compared to "John said." Most of us recognize how much information we are bombarded with on a daily basis. From e-mails to updates on Twitter, bits of information pepper us and season our day. This information has become too hard to trace back to an original source.\*

Nevertheless, the American academic system considers this sharing, which one can argue is essentially plagiarism, problematic and punishable. The punishments can be severe, but generally begin with a firm warning and some educational support. Many of us who teach writing have noted the public instances of plagiarism that may have occurred in The New York Times or other publications. Our society, however, glosses over them with not much afterthought. In our classrooms, if you are like me, you review intentional and unintentional plagiarism and cover how to properly cite information so students do not get into trouble. I have noticed this trend of sharing over the last several years, and by now recognizing how students interact with all sources (not just the ones we want them to), I feel this usage is our canary, our warning. Often academia is slow, even glacial, to respond to the pace of modern society. However, in our classrooms students are walking a line of trying to fit into the academic standards and the realities of functioning in society. Academia has not had this type of battle in at least a generation.

In response, as responsible scholars and teachers, we should find complimentary ways to enhance student understanding of sources, their usage and sharing, as well as ways of verifying and establishing credibility in a culture in which comments are credible and worthy of study. By responding proactively

with this recognition and a revived responsibility, we can help create critical consumers of all forms of media, even when an added comment makes a picture a new, transformative piece of art.

\*The document is hyperlinked to demonstrate part of this new direction of interaction and sharing. The links provide the sources for this article, which is why there is no traditional Works Cited.

*This article is dedicated to [Roger H. Meyer](#), my father, who passed away suddenly just before this article was due. A 25-year veteran of the Air Force who flew combat missions in Vietnam, who then became an electrical engineer (designing one of the first GPS systems and working on the Apache helicopter), and finally rounding out his working life as a well-known author of WWII, outdoor skills, and little oddities that interested him. Lovingly considered an old curmudgeon, he will be missed by my mother, me, and many friends and family. RIP Dad.*

I also offer a heartfelt “Thank You” to the CCCC Committee on Intellectual Property for their patience in the composition of this piece.

William Duffy

## Defeat Devices as Intellectual Property: A Retrospective Assessment from the DMCA Rulemaking

Most everyone is by now familiar with Volkswagen's "defeat device" scandal, which became international news in late September 2015 when the automaker admitted it had installed such devices in nearly 11 million of its vehicles, including half-a-million cars sold in the United States (Woodyard). Shorthand for technology designed to reduce the efficacy of emission controls on a vehicle when it's operating under certain conditions, "defeat devices" are nothing new. For example, Ford and General Motors were both sued by the EPA in 1973 and 1995, respectively, for installing some version of a defeat device in their vehicles (Vinsel). In Volkswagen's case, the software that operates the emission control units (ECUs) is the specific technology in question, software we now know was designed to fabricate data when the ECUs were tested. That software, like all the software that helps to operate the cars we drive, is proprietary and usually requires circumventing encryption to access the code. As such, and according to the anti-circumvention rules of the Digital Millennium Copyright Act (DMCA), doing so without a car manufacturer's authorization puts one at risk of copyright violation. At least that was the case before the U.S. Copyright Office exempted circumvention of vehicle firmware from the law's restrictions during the Sixth Triennial Section 1201 Rulemaking that took place in October.

The debate over whether to exempt vehicle firmware from the DMCA's restrictions was underway well before Volkswagen's revelations went public. Nearly a year earlier, for example, the Electronic Frontier Foundation (EFF) along with the University of California's Intellectual Property & Technology Law Clinic (USC Law) had already submitted proposals for exempting vehicle firmware to the Copyright Office in anticipation of the 2015 rulemaking procedure. What's remarkable, of course, is that even while Volkswagen actively campaigned against these exemptions through the industry's surrogate lobbying organizations, it took a group of researchers at West Virginia University to submit their discovery of the automaker's deception to the EPA before the company admitted its wrongdoing.<sup>3</sup> As one intellectual property attorney

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<sup>3</sup> Two points are worth mentioning. First, researchers at WVU didn't need to hack ("circumvent") the ECUs on the cars they tested; they simply took emissions readings during road tests and compared the results to data Volkswagen had already circulated. When a significant discrepancy between these two sets of data kept occurring, the researchers submitted their findings to the EPA ("Little Lab"), which leads to my second point. Even though the EPA is leading the charges against Volkswagen, the agency has been criticized for acquiescing to the auto industry by coming out in opposition of exemptions for vehicle firmware, which it did in a July 2015 letter to the Copyright Office as part of the Section 1201 rulemaking procedure (see Grimmelmann).

contends, the DMCA's restrictions almost certainly allowed Volkswagen to hide its use of defeat devices for as long as it did (Zhong).

While the Volkswagen scandal is what made headlines, it is this debate over whether to exempt encrypted firmware from the DMCA that I find most intriguing as a rhetorician and compositionist, largely because the debate itself turns on conflicting claims about the need for these exemptions in the first place, which in turn reflect each side's assumptions about what Copyright law exists to protect. In fact, it is easy to sift through the technical aspects of the debate's focus on vehicle firmware to see that even though each side relies heavily on legal explications of Section 1201 to defend their respective positions, they also utilize pathological appeals in such ways that allow both sides to infuse their arguments with a moral imperative. As such, this debate offers us an interesting case study in the interpretation of Copyright law where the class of works in question, encrypted firmware consumers "use" every time we drive a car, gets positioned metonymically to extend more abstract debates about the values underlining Copyright protection, intellectual property, and the ends of composition, or "tinkering," the term EFF repeatedly uses in the current case.

The documents I reference below are ones that were submitted to the Copyright Office over the course of three rounds of comment leading up to the October 2015 rulemaking. While multiple organizations filed comments on the proposed exemptions, I limit my review to the those submitted by the EFF and USC Law, the groups who initially proposed the exemptions, and the Alliance of Automobile Manufacturers (Auto Alliance) and the Association of Global Automakers (AGA), both of which were major opponents to the exemptions. These documents, including other official comments I do not discuss, are accessible in the "Law and Policy" section of the Copyright.gov website.

## Circumvention and Proposed Class 21

The DMCA's rules on circumvention protect works that have "technological measures" in place to prevent unlawful access and/or distribution of copyrighted material. The encryption of software, for example, is one such measure. The law reads as follows:

### § 1201

#### (a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL MEASURES. —

- (A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title (...)
- (B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that



particular class of works under this title, as determined under subparagraph (C). (17 U.S. Code § 1201)

Subparagraph (C) of the law indicates that every three years the Librarian of Congress, upon recommendation of the Register of Copyrights, shall convene a rulemaking proceeding in which exemptions to the circumvention clause are considered.

The EFF and USC Law's exemption requests for vehicle firmware took the form of two proposed classes, one focused on circumvention undertaken for "Diagnosis, Repair, or Modification" (Class 21) and the other on circumvention when undertaken for "Security and Safety Research" (Class 22).<sup>4</sup> The following is the proposed language for Class 21 that was initially circulated for comment:

*This proposed class would allow circumvention of TPMs [Technological Protection Measures] protecting computer programs that control the functioning of a motorized land vehicle, including personal automobiles, commercial motor vehicles, and agricultural machinery, for purposes of lawful diagnosis and repair, or aftermarket personalization, modification, or other improvement. Under the exemption as proposed, circumvention would be allowed when undertaken by or on behalf of the lawful owner of the vehicle. (Federal Register 65954)*

As I will detail subsequently, the argumentative strategies utilized by proponents of this exemption differ in important and telling ways from those utilized by the exemption's detractors. While each side will argue for their respective readings of what "noninfringing use" means in the context of established Copyright law, for instance, the most noteworthy points of difference between these arguments come through basic questions of stasis. For the purpose of "lawful diagnosis and repairs," is there an actual need for the exemption or are there already enough outlets for such services available to vehicle owners? What about "personalization"? Do its benefits outweigh its costs, especially given that tinkering with the software in an ECU might have unintended and potentially adverse effects that diminish the safety of a vehicle? As one can imagine, this debate doesn't just turn on applications of existing case law; it also turns on questions of probability and other speculative appeals that hinge on how well each side can marshal sufficient evidence for their respective claims.

### Comment Round 1: The Virtues of Tinkering

The economics of intellectual property don't just concern matters of remuneration but also questions of ownership and fair-use. As Jessica Litman has noted, these matters have grown increasingly complex with the erosion of the

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<sup>4</sup> While amended versions of both classes were ultimately exempted, I focus specifically on the arguments for and against the Class 21 exemptions.



first-sale doctrine, “which historically permitted the purchaser of a copy of a copyrighted work to sell, loan, lease, or display the copy without the copyright owner’s permission (17). For proponents of Class 21, the intellectual virtues often associated with this so-called first-sale doctrine are at the center of their case. For the EFF, these virtues are manifested in the work of “tinkering,” their preferred term for the collective activities of diagnosis, repair, and modification. While at first blush the use of “tinker” in this context might appear quaint, for the EFF tinkering is what ultimately leads to innovation. As the EFF says in its first official comment on Class 21, “Vehicle owners who tinker with their vehicles are engaged in a decades-old tradition of mechanical curiosity and self-reliance”:

This tradition continues in the age of computerized vehicles, but under a legal cloud. Modern tinkerers are adding vehicle features to the unused memory of their vehicles and fine-tuning the software to eke out better gas mileage or power. They are modifying their vehicles to work better for the specialized purposes they need, such as operating at high altitudes or racing on private courses. They alter their vehicles’ software to make sure the lights turn on when the windshield wipers activate, display miles-per-gallon in real time, or to cap the speed when they lend the car to their teenager children or to a valet” (EFF “Class 21 [Feb.]” 3,6).

As the EFF lays out their defense, there is an increasing emphasis on juxtaposing self-reliance with the limitations of locked-down firmware. “Copyright should not be a tool for manufacturers to create a monopoly,” the EFF says. Moreover, “Vehicle owners expect to have freedom to repair and tinker with their vehicles....But TPMs on ECU firmware block such legitimate activities, forcing vehicle owners to choose between incurring legal risk or losing the self-reliance that has been a hallmark of vehicle ownership in the United States” (16). While the EFF offers copious examples of actual tinkers who modify their vehicles for legitimate purposes, there is nevertheless this underlying appeal to the open-ended nature of tinkering as a creative activity. That is, even if tinkerers don’t have specific ends in mind when they open the hoods of their vehicles, such curiosity is integral to the ethic of self-reliance that is at the heart of the EFF’s argument. The reasoning is clear: anti-circumvention rules squash the spirit of discovery and independence.

While USC Law doesn’t use the term “tinker” in their first comment on Class 21, they nevertheless make similar appeals to the virtues of curiosity and self-reliance. What primarily differentiates USC Law’s comment from the EFF’s, however, is its emphasis on farmers and agricultural workers who use expensive trackers and loaders, that just like cars, are increasingly controlled by encrypted ECUs. While the EFF folds its appeals to the virtues of tinkering into and alongside descriptions of the specific types of activities they want to see protected, USC Law’s approach is more direct. Their opening gambit isn’t a description of the proposed exemption, but instead a quotation from Paul

Harvey's 1978 speech at the Future Farmers of American Convention in which the famous broadcaster praises the farmer as God's creation. The specific line of Harvey's they quote contends that God created farmers not just to "rustle a calf" or "call hogs," but to also "tame cantankerous machinery." As USC Law puts it, when Harvey delivered these remarks

...he conceived of a God who created a farmer possessing, among many other virtues, the ability to "tame cantankerous machinery." Back then, the Digital Millennium Copyright Act ("DMCA") and the term "technological protections measures" ("TPMs") did not yet exist. But if they had, Harvey probably would have found the very idea of a farmer facing potential legal liability for taming his own "cantankerous machinery" offensive. (USC Law "Class 21 [Feb]" 4)

USC Law's defense is noteworthy because it offers detailed examples of the nuances of circumventing TPMs on farm equipment in ways that don't violate fair-use while simultaneously maintaining a carefully constructed image of farmers who have neither the time nor money to worry about the legal consequences of doing so. By forcing farmers to follow the DMCA's restrictions on circumvention, USC Law's argument goes, the law makes it harder for them to complete their work.

When it comes to agricultural machinery, whether it's a tractor, loader, or anything else, farmers do not distinguish between the software and the physical machine because they are purchased and used as one piece of equipment. The machines rely on the software to operate, just as they rely on tires, oil, and fuel. Farmers are not in the software business. They are just trying to put the software to use to get the most value out of the machines they purchased. (USC Law "Class 21 [Feb]," 9)

Farmers just want to get the full value of the machinery they've purchased, in other words, and if the firmware that controls it is as critical to the machinery's operation as are its "tires, oil, and fuel," it should be legal for farmers to access it for purposes of modification and repair.

Just like the EFF's comment, USC's Law's comment also contains an abundance of technical information that details the nature of TPMs, the various methods available for circumvention, as well as previous rulemakings in which exemptions were granted for reasons similar to those currently proposed. But these appeals to the virtues of tinkering and images of farmers who labor to produce the crops and livestock that sustain us are appeals that tap into values fundamental to that part of the American ethos that celebrates self-reliance, hard work, and the freedom to innovate. Indeed, one can easily infer from these arguments that tinkering is what made possible the very technologies that are now in dispute.

## Comment Round 2: The Slippery Slopes of Exemption

The second round of comments, submitted in March, allowed for counterarguments to be posed in response to the first round of comments. The major detractors to the proposed exemptions, lobbying groups like the Auto Alliance and AGA, interestingly chose to focus their counterarguments on questioning whether an exigent need actually exists for these exemptions. That is, rather than directly responding to the arguments the EFF and USC Law forward that appeal to the fair-use doctrine in defense of idealistic conceptions of self-reliance and hard work, these organizations choose instead to suggest that circumventing ECUs is unnecessary given the options already available to vehicle owners. Moreover, they suggest accessing vehicle firmware without authorization can have potentially hazardous consequences. In short, rather than grounding their position against these exemptions within a recognizable value system connected to the creative rights of automobile manufacturers (and thus meeting the EFF and USC Law on the same field of argument), they instead use speculative appeals about the dangers of hacking delivered in a way that easily sounds patronizing.

The Auto Alliance's strategy in particular is to separate proponents' defense of the exemptions into two separate but related categories: those that on the surface are legitimate (the need to diagnose and repair vehicles) and those that are not (the desire to "personalize" vehicles). As the Auto Alliance contends, "Neither proposal should be adopted: the first, mainly because there are readily available alternatives to circumvention; and the second, mainly because it risks making the American motor vehicle fleet as a whole less safe, less fuel efficient, more polluting, and less compliant with binding regulatory standards on all these topics" (Auto Alliance "Class 21" 2). To defend this first claim, the Auto Alliance points to a "nationwide agreement" entered into by automobile manufacturers, aftermarket dealers, and repair service providers that allows all of these parties authorized access to vehicle firmware for the express purposes of diagnosis and repair. Thus if a car (or tracker) owner is having problems with his or her vehicle, there are multiple options for getting these problems resolved without the need to illegally circumventing the firmware. "Whatever the situation might have been before the adoption of this nationwide agreement," the Auto Alliance says, "today it makes circumvention almost completely unnecessary for the proponents to carry out these functions" ("Class 21" 3).

When it comes to the need to personalize vehicles, to experiment and "tinker," the Auto Alliance claims the risks far outweigh the benefits. The ECUs in today's vehicles are "carefully calibrated" to not only meet various regulatory

requirements with regard to emissions standards, but to also maintain vehicle safety. As the groups explains,

Much of the “personalization” that proponents seek to achieve disturbs these calibrations and would have the effect of putting the vehicle into noncompliance with these legally binding requirements. Whether or not the conduct of whoever carries out the modification is itself illegal, the end result of circumvention for the purpose of modification is highly likely to render the operation or re-sale of the vehicle legally problematic. Furthermore, to the extent that these unauthorized modifications make vehicles less safe and their operations less predictable, the potential liability risks to manufacturers increase dramatically. Even if the Copyright Office does not consider these risks to safety, the environment, and other important interests to fall within the rubric of “copyright interests” that it believes Section 1201 was enacted to protect, *it cannot responsibly turn a blind eye to the greatly heightened risk of these dramatic impacts that would inevitably follow if the exemption sought is recognized.* (“Class 21” 3, emphasis added)

Even though the group admits its concern for the “liability risks” that automakers potentially face if the exemptions are granted, the point of this comment is to underscore the adverse consequences to consumer safety and environmental regulation that granting these exemptions would effect, concerns that technically have no bearing in the law under consideration. More significant, however, is the way the Auto Alliance moves to shift the responsibility for consumer safety and environmental protection from the automakers themselves to the officials adjudicating the rulemaking. In fact, this is a remarkable attempt by the Auto Alliance to essentially have its cake and eat it too: to assert the need for automakers to retain Copyright privileges for vehicle firmware while simultaneously suggesting that vehicle safety and compliance is ultimately in the hands of lawmakers, not automakers.

In their own counterargument to the proposed exemptions, the AGA makes direct appeals to “public safety” no less than a ten times and “environmental wellness” no less than seven in their relatively short 9-page comment. They go further than the Auto Alliance, however, in positioning automobile manufacturers as custodians of the public trust:

Automobile manufacturers are not adverse to external input, but are justifiably hesitant to risk public safety, security, and environmental wellness without quality controls and oversight. Because automobile manufacturers already provide motor vehicle owners and the independent repair community with the same access to diagnostic and repair information as new motor vehicle franchise dealers, this risk is not only unnecessary, it is imprudent. (AGA “Class 21” 2)

Gesturing to the EFF's defense of an owner's right to tinker with his or her vehicle, the AGA bypasses any attempt to refute the romantic values of self-reliance infused in the EFF's argument to instead suggest that vehicle firmware is much too complex to leave at the hands of a casual tinkerer.

These systems contain millions of lines of code designed to ensure that the vehicle functions as intended. Given the interdependence between software modules that exist in the various ECUs, a change in one part of the system may result in entirely unknown or unintended consequences in another. For example, crash avoidance systems such as crash imminent braking, or lane keeping assist rely on data from vehicle sensors as well as data from other ECUs to determine appropriate braking force for reducing the severity or occurrence of a crash. (AGA "Class 21" 3)

In essence, only automobile manufacturers and licensed repair services have the knowledge and tools with which to safely engage vehicle firmware. Moreover, the reference to "crash avoidance systems" and "crash imminent braking" reinforce the underlying primary appeal to consumer safety that stands at the fore of the AGA's opposition to the exemptions. The line of reasoning they intend their audience to make is clear: grant a tinkerer access to his vehicle's ECU, risk that tinker causing a potentially life-threatening crash. Like the Auto Alliance, though, they also emphasize the futility of these exemptions; there are already existing outlets that will service and repair vehicles, and moreover, "Copying, modifying, and personalizing automotive software are not essential steps to using an automobile." In short, reasons the AGA, "Risking public safety, security, environmental wellness, and a thriving market, the exemption minimally increases the accessibility of what is already widely available. It is an imprudent risk for little gain" (AGA "Class 21" 6, 8).

In each of their respective arguments against the proposed exemptions, the Auto Alliance and AGA put consumer safety and environmental wellbeing front and center. And even though these organizations speak to some extent on the economic interests at stake for their clients, these concerns come across as not nearly as important for these advocates as is the public welfare that automobile manufacturers are supposedly committed to protecting, even though both organizations implicitly suggest they can only do this if they have the right to sue tinkerers who circumvent their code.

### Comment Round 3: Focusing the Facts

In a final round of comments advocating for the exemptions, the EFF and USC Law respond directly to the arguments of the Auto Alliance and AGA. The EFF, for example, opens their May 2015 comment pointing out how their opponents can at best "speculate about an unlikely array of harms that have no relevance to this rulemaking because, as 'non-copyright risks,' they fall within the purview of

other laws and regulatory schemes” (EFF “Class 21 [May]” 3). Despite the slippery slope quality of their appeals to public safety and environmental concerns, the Auto Alliance and AGA effectively task the Librarian of Congress with considering information unrelated to the actual issue at hand: Section 1201’s prohibition on circumvention and the protection of fair use. Moreover, the EFF returns to one of its original claims, namely that what’s ultimately at stake is making sure Section 1201 doesn’t unfairly stifle competition and innovation, i.e., the long-term benefits that comes with the freedom to tinker.

Vehicle manufacturers’ aggressive view of the DMCA, combined with their trend towards locking down vehicle software, casts a legal cloud over tens of billions of dollars of the aftermarket economy and chills innovation. Manufacturers describe a world in which competition, innovation, and vehicle-related services touching on vehicle software occur only to the extent they authorize it. This is exactly the sort of anticompetitive overreach that courts have warned about in the context of Section 1201 and that this rulemaking should help prevent. (EFF “Class 21 [May]” 3)

The EFF reminds its audience that interest in modification “is part of a vast universe of noninfringing conduct that has long been a part of vehicle enthusiasm,” and it criticizes the Auto Alliance and AGA’s bald attempts to sway the rulemaking procedure with hypothetical scenarios (“Class 21 [May]” 4). “Opponents broadly speculate about possible modifications that would be unlawful, but provide very limited evidence of conduct that has occurred in the real world” (19). Moreover, “People who don’t know how to modify cars and criminals are not waiting to see the result of this rulemaking; people with a particular interest in vehicle software, who care about obeying the law, are” (4). Finally, the EFF’s rebuttal comment includes several pages of personal testimony from vehicle owners explaining their specific (and legal) reasons for circumventing the ECUs that control their cars, as well as a list of 10,764 signatories – over 120 pages of names – who support EFF’s petition and agree “no one should need to hire a copyright lawyer before fixing their car” (34).

Like the EFF, USC Law also criticizes how opponents to the exemptions “speculate about far-fetched safety and environmental impacts, and try to paint vehicle owners who want to customize their equipment as reckless and irresponsible” (USC Law “Class 21 [May]” 3). More pointedly, they criticize how opponents fail to support their claims with actual evidence, and they underscore how the myriad sources of evidence in support of the exemptions USC Law provided in their initial comment, evidence like testimony from family farmers, mechanics, and software developers, as well as research cited in “farm journals, technical journals, and manuals written by car-hacking pioneers,” was virtually ignored in the comments submitted by the Auto Alliance and AGA (“Class 21 [May]” 3). USC Law also points out that even though authorized repair services may in theory be available to farmers when their equipment malfunctions, such a

fact does not constitute evidence for why the exemptions shouldn't be granted. Having "limited access to diagnostics puts farmers in remote areas at the mercy of OEM and dealership timelines for much-needed vehicle repairs" (12). USC Law closes its rebuttal by taking to task the rhetoric in AGA's comment:

They have established that ECU code and vehicle engines can be complicated, but not that the exemption would incentivize vehicle owners unfamiliar with these systems to make dangerous modifications. They list a slew of them – for example, "sacrificing safety for horsepower," "disabling the brakes," or "tampering with security lock software," but provide no evidence to suggest that vehicle owners would ever be likely [sic] make these modifications. Respondents also provide colorful illustrations of the "potential" for modifications to go horribly wrong – for example, they paint the ominous pictures of a hapless vehicle owner whose innocent modification "incidentally create[s] a potential software malfunction that undermines critical systems" and a woefully unlucky owner whose "ill-considered software changes," combined with "certain operating circumstances[,] conspire to result in a runaway vehicle on an extended downhill." Respondents cite no sources to support these stories. (14-15)

In sum, the EFF and USC Law refocus the debate by pointing to the facts that matter for the actual rulemaking procedure. Those facts, including the myriad examples of cited evidence that demonstrates why circumvention is necessary for protecting fair-use (and *not* the slippery slope scenarios suggested by the Auto Alliance and AGA) are the only facts directly relevant to the rulemaking.

### Conclusion: Implications for the Study of Rhetoric and Copyright

On 8 October 2015, the Register of Copyrights sent her summary of recommendations for Section 1201 exemptions to the Librarian of Congress. Two of those recommendations included exemptions for the firmware that controls motorized land vehicles, including farm equipment, for the purposes of 1) diagnosis, repair, and modification, and 2) security research. The final rule from the Librarian was published on 28 October 2015. Regarding the Class 21 exemptions, the statute reads:

Computer programs that are contained in and control the functioning of a motorized land vehicle such as a personal automobile, commercial motor vehicle or mechanized agricultural vehicle, except for computer programs primarily designed for the control of telematics or entertainment systems for such vehicle, when circumvention is a necessary step undertaken by the authorized owner of the vehicle to allow the diagnosis, repair or lawful modification of a vehicle function; and where such

circumvention does not constitute a violation of applicable law, including without limitation regulations promulgated by the Department of Transportation or the Environmental Protection Agency and provided, however, that such circumvention is initiated no earlier than 12 months after the effective date of this regulation. (Federal Register 65954-55)

Despite the addition of language that defines what practices should be excluded from the exemption (tinkerers can't hack their cars' entertainments systems), the Librarian's final ruling favored the initial proposals from the EFF and USC Law. One significant exception, however, is that tinkering is allowed only when conducted "by" and not "on behalf of" a vehicle owner, an issue the EFF and USC Law will surely revisit at the next rulemaking procedure in 2018. The environmental concerns suggested by the Auto Alliance and AGA, namely that modified vehicles might violate clean air standards, the Librarian deftly addresses by simply stating that circumventions that "violate applicable law" are not protected. Of further note, the Librarian more or less ignores the slippery slope claims about consumer safety, mentioning them only in passing in his summary of the case. In fact the Librarian's summary, which spans just seven paragraphs, functions as a useful indicator of the reasons and evidence that actually made a difference in the final ruling.

In a very general sense, the deliberations turned on defining the relevant facts and underscoring the needs for the exemptions in the first place. The EFF and USC Law held up copious examples of vehicle enthusiasts and agriculture workers who benefit when free to make repairs and modifications to their vehicles without the threat of legal action. The Auto Alliance and AGA, choosing to largely ignore these appeals, instead pointed to the potential safety and security risks, including potential threats to the environment. Significantly, and as the EFF and USC Law make clear in their rebuttals, neither of these organizations could offer convincing evidence that would substantiate such hypothetical claims. Indeed, the only claim the Auto Alliance and AGA could substantially defend is that vehicle owners have access to dealers and service providers, which is to say that owners don't need to undertake repairs and modifications themselves. But this argument is perhaps the one that most backfired, at least when it concerns the idea of fair-use, because in propping up official memorandums of agreement entered into by automobile manufacturers and service providers that define who has "authorized" access to firmware, what was essentially being proffered was evidence of a *business interest* unrelated to the rights of consumers to make nonfringing uses of a copyrighted work. The most relevant "fact" presented by the Auto Alliance and AGA, in other words, is that vehicle owners can *pay* those who have been authorized by auto manufacturers themselves to access the ECUs on their cars.

When considering the implications of this debate for those of us in rhetoric and writing studies with interests in copyright and intellectual property,



two observations are worth making. The first concerns what on the surface is a familiar refrain in copyright disputes, namely the juxtaposition between economic interests and fair-use. The second concerns something slightly more imprecise but nevertheless noteworthy, and that's the potential connections between composition and notions of tinkering.

When it comes to the juxtaposition between economic interests and fair use, this debate taps into those perennial discourses that weigh the rights of those who produce creative works with the rights of those who use them. As well all know, however, this is a false dichotomy. Copyright blurs the line between notions of creation and control, just as what it means to "use" a work in any given case often exceeds simple definitions of reception or consumption. Underscoring the ideals of invention and innovation while signaling the risk thereto by unfair copyright law, just as IFF and USC Law do, is a recognizable trope in such discourses, which makes it all the more noticeable that Auto Alliance and AGA don't attempt to directly counter those appeals. In this way, the Section 1201 rulemaking's consideration of vehicle firmware presents itself as an interesting case study in the ways that certain commonplaces in copyright discourse get deployed when the disputed work in question is itself difficult to classify as a type of intellectual property. Of course, the elephant looming in the room during the final days of the procedure was Volkswagen's defeat device firmware, a point that should not be ignored.

Even though the arguments for and against the exemptions had already been submitted by the time Volkswagen's deception became public, it stands to reason the automaker was probably on the minds of all those involved in the rulemaking. But given the quality of the arguments forwarded by the EFF and USC Law, and given that opponents to the exemptions could at best forward their own business interests as a defense, it also stands to reason that had Volkswagen not cheated with their defeat devices the outcome of the rulemaking would still be the same. What should be encouraging here is that good arguments about the benefits of fair use won out over poor, slippery slope arguments that attempted to shift the terms of debate away from actual copyright law.

The second observation worth making, the one about potential connections between composition and notions of tinkering, points us to our own copyright discourses. While the debate over exempting vehicle firmware may not on the surface directly relate to the everyday concerns of rhetoric and writing instructors, it nevertheless points to the increasing complexities of authorship and definitions thereof with which copyright law has to keep up. This is especially true if we recognize the practice of "tinkering" as a kind of composition. Indeed, those of us interested in the rhetorical practices of imitation, appropriation, and remix, those of us who like to tinker "under the hood" of texts, often point to a similar set of concerns as those raised by the EFF and USC Law regarding the rights of individuals who want to literally get under

the hood of their vehicles. We're curious; we see potential in the ways that existing works can be transformed into novel ones.

If this comparison sounds like a stretch, so be it, but the debate over vehicle firmware evidences that despite the levels of complexity involved in hashing out what constitutes fair use of such technology, at the end of the day this debate still comes down to questions about the nature of intellectual property and what it means to put limits on what we can and cannot do with the works we take up as readers and authors ourselves. Indeed, there may well be virtue in taking on the identity of the curious tinkerer.

## Works Cited

- Alliance of Automobile Manufacturers. Second Round Comment on Notice of Proposed Rulemaking. Section 1201 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works. U.S. Copyright Office. 27 Mar. 2015. PDF.
- Association of Global Automakers. Second Round Comment on Notice of Proposed Rulemaking. Section 1201 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works. U.S. Copyright Office. 27 Mar. 2015. PDF.
- Electronic Frontier Foundation. Comment on Notice of Proposed Rulemaking, Class 21. Section 1201 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works. U.S. Copyright Office. 6 Feb. 2015. PDF.
- Electronic Frontier Foundation. Reply Comment, Class 21. Section 1201 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works. U.S. Copyright Office. 1 May 2015. PDF.
- "Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Final Rule." *Federal Register* 80 (28 Oct. 2015): 65944-65961.
- Grimmelmann, James. "Harry Potter and the Mysterious Defeat Device." *Slate*. 22 Sep. 2015. Web. 14 Oct. 2015.
- "How a Little Lab in West Virginia Caught Volkswagen's Big Cheat." Narr. Sonari Glinton. *Morning Edition*. NPR. Natl. Public Radio. Web. 24 Sep. 2015.
- University of Southern California Intellectual Property & Technology Law Clinic. Comment on Notice of Proposed Rulemaking, Class 21. Section 1201 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works. U.S. Copyright Office. 6 Feb. 2015. PDF.

University of Southern California, Intellectual Property & Technology Law Clinic. Reply Comment, Class 21. Section 1201 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works. U.S. Copyright Office. 1 May 2015. PDF.

17 USC. Sec. 1201. 2011. Print.

Vinsel, Lee. "Emission Controls, Defeat Devices, and Computerization: The Volkswagen Debacle in Historical Perspective." Web blog post. *Taming the American Idol*. 22 Sep. 2015. Web. 18 Dec. 2015.

Woodyard, Chris. "Chronology: How VW's Emissions Scandal has Mushroomed." *USA Today*. 20 Nov. 2015. Web. 5 Jan. 2016.

Zhong, Meng. "Did the Digital Millennium Copyright Act Hinder Researchers in Discovering VW's Emissions Defeat Device?" *The National Law Review*. 11 Oct. 2015. Web. 18 Dec. 2015.

Wendy Warren Austin

## How Does the Rise of the “Kilo-Author” Affect the Field of Composition and Rhetoric?

In August 2015, NPR’s *All Things Considered* host Robert Siegel featured Zen Faulkes, the University of Texas research biologist who coined the term “kilo-author.” Siegel’s piece was prompted by a *Wall Street Journal* article about a physics article listing 5,514 authors (Hotz). Faulkes, who monitors the growing practice of excessively multi-authored journal articles, explained, “A kilogram is a thousand grams, [so] a kilo-author is 1,000 authors,” Faulkes’ career now focuses solely on monitoring this rising trend of excessively multi-authored journal articles. Three months later, “kilo-author” made its way onto *Wired*’s “Jargon Watch” list (Keats 36).

As I began to dig deeper into the multi-author phenomenon, I discovered that the renowned Indiana University library and information science scholar Blaise Cronin has been researching this trend for years, referring to it as “hyperauthorship” (Cronin, *Hand of Science*). Further research showed that a number of authors had identified this trend in a variety of disciplines:

- multiple authorship (Kennedy);
- multi-authored papers (Lozano);
- mass authorship (Grove);
- distributed authorship;
- co-authorship networks (Kumar);
- distributed cognition (Cronin, “Bowling”);
- group writing (Sutton); and
- team writing, as in “self-directed teams” (Scott).

Rhetoric and composition scholars, technical writers, and language arts teachers generally refer to writing that involves more than one author as “collaborative writing,” whether it involves one other individual, a small team, entire organizations, or large-scale projects.

Whether it involves a single author or thousands of them, the concept and definition of authorship are rapidly evolving, fueled by a huge infusion of universally available technology tools for all the tasks and roles authorship involves. No matter what level of writing we teach and study, as composition scholars, we must be cognizant of the issues these convergences raise. And, we must be ready to adapt our thinking and our practices to better ensure students success in school and in the workplace.

In addition to evolving and varied terms for multi-author works, the methods and categories of “authorship allocation” (Claxton) are also frequently in flux. How might we designate individual contributions when they contribute to an overall written result? Instead of *authors*, should we designate them as

*contributors*? High-ranking supervisors or directors may receive a “gift authorship” because they supported the overall project, yet they may not have done anything more than sign off on an article without having actually read it. Jeremy Birnholtz points out that especially in the High Energy Physics field (HEP), hundreds of physicists over long periods may have contributed to a single project, including those who simply put a bolt in the Large Hadron Collider (LHC) or worked on a remotely related lab project as an undergraduate. Some authors may even be dead or retired, and rarely have all contributors read the entire article.

Should we represent individual “micro-credits” in an article (or the “sub-atomic portions of a paper,” or SKOs – “Scientific Knowledge Objects,” Casati, Origgi, and Simon)? Team recognition is another issue, Roberto Casati, Gloria Origgi, and Judith Simon point out. Once credit is apportioned to sub-atomic SKOs, the collective work of a team is no longer represented in the SKO” (968). Elisabeth Davenport and Blaise Cronin suggest using XML-based metatags as “paratext” to denote “micro-credits,” while Hu, Rousseau, and Chen propose a “role-based h-index” to show different types of author roles. Do we also include people who may not have contributed to an actual result in a section called “acknowledgements”? Or do we specifically identify the roles that an author plays in producing a document, similar to how Hollywood movies assign primary credits for starring roles before the title appears, and then at the end roll a long list of individual credits with titles for jobs like cinematographer, gaffer, best boy or animal handler? All collaborative writing projects create temporary kinds of organizations or groups. If we view a team-based writing project as a temporary organization, Paul Lowry, Aaron Curtis, and Michele Lowry suggest using the movie-credit approach to designate one’s roles in a writing project and thus, declare authorship. Certainly, collaborative writing can involve a range of tasks and activities, whether it involves pulling together documentation, notifying participants, setting team objectives, researching and writing, reviewing documents, or signing off on final approval.

Likewise, perhaps the kilo-authored journal article with 5,154 authors involved at least 5,154 roles. Articles with a “cast of thousands” appear most often in fields such as physics, information science (Frandsen and Nicolaisen), medicine and health sciences (Hu, Rousseau, and Chen), the natural sciences ((Yukawa, Kitanaka, and Yokoyama), astronomy, mathematics, robotics, ecology, and economics (Milojevic). However, each discipline has differences in multi-author trends and practices.

To examine what physicists think about authorship, Birnholtz conducted interviews with 32 of them who were affiliated with two major LHC projects at CERN. Not all disciplines organize their total list of authors in the same way, but in the field of physics, authors’ names appear alphabetically. While this practice may seem more egalitarian in principle, I can tell you firsthand, as a writer whose family name is Warren but whose married name is Austin, that I get far

more opportunities to be first than I used to. The physics community has a highly community-oriented ethos, but, as Birnholtz was surprised to discover, this method of alphabetizing the author list was “a highly contentious topic among the physicists [he] interviewed” (13).

As cloud-based technology and cloud-based software have re-ordered our working and private lives, it has changed our educational spaces as well. For example, many teachers, researchers, and students use Google Docs to collaborate, and instructors often use wikis to construct group-written documents. Sarah Garmon, who researched undergraduate physics classes to analyze the practical use of cloud technologies for the workplace, urges composition teachers to take advantage of cloud technologies like Google Docs, Podia, and Prezi, to eliminate student excuses and facilitate collaborative projects and presentations. In business, education, science, and medicine, writers are not only turning to Google Docs, but products such as Fidus Writer, Overleaf, LaTeX, and Authorea, all of which are free or inexpensive, offer version tracking, and allow easy insertion of mathematical figures and imported citations or reference managers like Zotero (Perkel). Launched in 2013 by astrophysicist Alberto Pepe and Nathan Jenkins, Authorea bills itself as a “collaborative typewriter for academia” and serves as a Google Docs for scholars.

Jessica Reyman cautions us, however, to remember that whenever we use cloud technologies, we are not only storing our writing online, but we are generating and storing numerous bits of data about us online, too; we don’t even realize it most of the time. Just as we have bits of information embedded within our credit cards, computer cookies, and social media sites, when we use cloud technologies, whether we are writing iterative versions of a document by ourselves or collaborating on a workplace document with a team, we store many, mostly invisible bits of data within our writing technologies. According to Reyman:

The mismanagement of user data can have real and often severe consequences for individual users (including many university students), for the future of the Internet, and for the future of citizenship and culture. Data-mining practices, for instance, can lead to social implications, such as revealing personal purchasing and viewing habits to unintended audiences, . . . [and] a culture of surveillance on college campuses . . . [and] in a global context, monitoring users’ searches, content creation, and activity in social media spaces. . . (517)

Using cloud technologies such as Google Docs, we are also connected to everything else that Google owns. Google’s business philosophy offers a 10-point listicle called “Ten Things We Know to Be True,” that features slogans such as #6: “You Can Make Money Without Being Evil.” If we have learned anything about writing with technology tools since the World Wide Web entered our lives, it is that technology is never neutral. We should always keep in mind that the

tools we use often dictate how we write, with whom we write, what we may or may not write, and what means we use to communicate with fellow writers.

In the classroom we may use wikis or Google Docs to create collaborative documents, while in the workplace, we have an enormous selection of collaborative tools at our disposal. The offerings can be truly mind-boggling; the market an app-creator's paradise. Simply take a look at the top page of a single website that proclaims "2000+ businesses use Capterra each week to find the right software" (<http://www.capterra.com/collaborative-software/>). The term "collaborative software" refers to a category of product that might alternatively be called "groupware," ICT (information and communication technology), "workgroup software," or "workflow solutions." Examples of popular groupware products include Wrike, Asana, Nutcache, Workfront, Podio, SamePage, LiquidPlanner, and Basecamp. Depending on what features the software includes, collaborative work groups and writing teams can create and share calendars, milestone charts, email, and instant messaging functions, to name just a few. Indeed, Scott Jones, who researched the frequency and type of collaborative writing activities of 1,790 technical communicators, noted that respondents did not always specify what media their writing was conducted with, whether through email, collaborative software, websites or help files, although a majority were paper documents.

When we have writing tools--and by writing tools, I mean the different tasks included in creating one or more written documents -- that record or facilitate any actions involved in collaborative writing, both in the workplace and in the classroom, the actions entailed in producing the written documents can all fall under the umbrella of authorship. In this way, as Lowry, Curtis, and Lowry declare, collaborative writing "becomes a group and social act that requires other activities not involved in single-author writing, such as building consensus, . . . communicating, negotiating, coordinating, group researching, monitoring, rewarding, punishing, recording, socializing" (72) as well as many other activities, such as team planning and actual writing. Authorship, in this sense, is everywhere and anywhere in the process of a collaborative writing project. Authorship in a collaborative writing project may also be outside the team. As Peter Kittle and Troy Hicks point out:

When a group composes a text, its members might agree and aim toward the goal that no one voice stands out; everyone retains responsibility for his/her own contributions, but the synergy of the group produces a new text that no one could have produced alone. (527)

At the same time, Karen Weingarten and Corey Frost, whose integration of wikis into the college composition classroom generated an analysis of the role authorship plays in writing in a wiki, see the role of author becoming more abstract, "relieved of its immediacy" at least, as the students translate the "actual work of writing" as a negotiation of labor. However, if we view student writing

as workplace professionals might (or physicists at the CERN lab), a writer who receives several sets of peer feedback, instructor comments, and perhaps a roommate's opinion, might correctly consider that the appropriate authorship of the student's paper would include not only the single writer's name, but also her peers, the instructor, and the roommate. Perhaps it might even include the software she used, the textbook whose prompt provided a springboard for her ideas, and writing center tutors who may have helped her along the way.

That conclusion might sound ridiculous, but consider the additional concerns Jake Weltzin, et al., introduce. In the field of ecology, the name that goes first in the author position is determined by who has contributed the most time and effort to the project. However, what if all of the authors put in equal time and effort? Sometimes "ghost" authors or "guest contributors" are included or those who secured the funds for the project, or honorary authorship is awarded (Weltzin, et. al.). Finally, what about writers who employ paid language specialists (whether ghostwriters or proofreaders) to "clean up" their writing? The International Committee of Medical Journal Editors (<http://www.icmje.org>) sets forth four criteria for claiming authorship credit and responsibility, one of which is that each author should be able to explain their contributions and be accountable for the whole work. However, these guidelines do not necessarily apply to all fields.

In his interviews with the physicists at CERN, Birnholtz found a single subject whom he said was atypical of his whole group of interviewees in that this one conscientious interviewee had read all but two of the 250 papers that listed his name as author. He told Birnholtz that he had to ask himself if he could represent the work at a conference and whether he agreed with its results. If he couldn't and/or didn't, he asked that his name be removed from the paper's list of authors. However, it is critical to point out that this subject was atypical of the interviewees.

Although the work of the LHC in Cern is a deeply serious endeavor, the communal atmosphere among the physicists can sometimes reveal a lighthearted side. Robert Lee Hotz, among the first to report on this phenomenon in the Wall Street Journal, disclosed that one researcher cited his computer model number, translated into Hebrew – Shalosh B. Ekhad--as one of the authors. A Michigan State University mathematician included his Siamese cat as his co-author on a paper, while an immunologist cited her dog, an Afghan hound named Galadriel Mirkwood. A Nobel Prize winner in 2010 even included H.A.M.S. ter Tisha (his pet hamster) in the author list. On a loftier note, one of the most frequent first authors of published articles features a French physicist named Georges Aad. "In a field notable for seeking the 'God particle,'" Hotz notes, "the pronunciation of the name as it usually appears in technical citations -G. Aad – has stoked suspicions."

Works Cited



- "Best Collaborative Software." *Capterra*. N. p. N. d. Web. 11 Mar. 2016.
- Birnholtz, Jeremy P. "What Does It Mean to be an Author? The Intersection of Credit, Contribution, and Collaboration in Science." *Journal of the American Society for Information Science and Technology* 57.13 (2006): 1758-1770.
- Casati, Roberto, Gloria Origgi, and Judith Simon. "Micro-Credits in Scientific Publishing." *Journal of Documentation* 67.6 (2011): 958-974. *Emerald Journals*. Web. Feb. 20, 2016.
- Claxton, Larry D. "Scientific Authorship: Part 2. History, Recurring Issues, Practices, and Guidelines." *Mutation Research* 589 (2005): 31-45. *ScienceDirect*. Web. Jan. 21, 2016.
- Cronin, Blaise. "Bowling Alone Together: Academic Writing as Distributed Cognition." *Journal of the American Society for Information Science and Technology* 55 (Apr. 2004): 557-560. *ProQuest Central*. Web. Feb. 21, 2016.
- Cronin, Blaise. *The Hand of Science: Academic Writing and Its Rewards*. Lanham, MD: Scarecrow Press, 2005. Print.
- Davenport, Elisabeth, and Blaise Cronin. "Who Dunit? Metatags and Hyperauthorship." *Journal of the American Society for Information Science and Technology* 52.9 (July 2001): 770-773. *ProQuest Central*. Web. Feb. 21, 2016.
- "Defining the Role of Authors and Contributors." *Recommendations*. *The International Committee of Medical Journal Editors*. *Annals of Internal Medicine/American College of Physicians*. 2016. Web. Mar. 11, 2016.
- Frandsen, Tove Faber, and Jeppe Nicolaisen. "What's in a Name? Credit Assignment Practices in Different Disciplines." *Journal of Informetrics* 4 (2010): 608-617. *ScienceDirect*. Web. Jan. 3, 2016.
- Garmon, Sarah Caroline. *Writing with Others: The Rhetoric of Cloud Technologies in the Workplace*. MA Thesis. Clemson University, May 2011. Print.
- Grove, Jack. "Is Mass Authorship Destroying the Credibility of Papers?" *Times Higher Education*. Aug. 24, 2015. Web. Mar. 1, 2016
- Hotz, Robert Lee. "Off the Wall: How Many Does it Take to Write a Paper? – Scientific Papers Name Thousands of Co-Authors; Immunologist Credits Dog." *The Wall Street Journal* 11 Aug. 2015: 27.
- Hu, Xiaojun, Ronald Rousseau, and Jin Chen. "In Those Fields Where Multiple Authorship is the Rule, the H-Rule Should Be Supplemented by Role-Based H-Indices." *Journal of Information Sciences* 36.1 (2010): 73-85. *Sage Premier*. Web. Feb. 20, 2016.
- Jones, Scott L. "How We Collaborate: Reported Frequency of Technical Communicators' Collaborative Writing Activities." *Technical Communication* 54:3 (Aug. 2007): 283- 294.
- Keats, Jonathan. "Jargon Watch." *Wired* 36.11 (Nov. 2015): 36. Print.
- Kennedy, Donald. "Multiple Authors, Multiple Problems." [Editorial]. *Science* 301 (Aug. 8, 2003): 733. *Medline*. Web. Jan. 3 2015.

- Kittle, Peter, and Troy Hicks. "Transforming the Group Paper with Collaborative Online Writing." *Pedagogy* 9:3 (2009): 525-538. *Academic Search Complete*. Web. Mar. 9, 2016.
- Kumar, Sameer. "Co-Authorship Networks: A Review of the Literature." *Aslib Journal of Information Management* 67.1 (2015): 55-73. *Emerald Journals*. Web. Jan 21, 2016.
- Lowry, Paul Benjamin, Aaron Curtis, and Michelle René Lowry. "Building a Taxonomy and Nomenclature of Collaborative Writing to Improve Interdisciplinary Research and Practice." *Association for Business Communication* 41.1 (Jan. 2004): 66-99. *Communication and Mass Media Complete*. Web. Mar. 9, 2016.
- Lozano, George A. "Ethics of Using Language Editing Services in an Era of Digital Communication and Heavily Multi-Authored Papers." *Science & Engineering Ethics* 20 (2014): 363-377. *Humanities International Complete*. Web. Jan. 21, 2016.
- Milojević, Staša. "How Are Academic Age, Productivity and Collaboration Related to Citing Behavior of Researchers?" *PLOS ONE* 7.11 (Nov. 2012): 1-13. *OpenAccess*. Web. Jan. 3, 2016.
- Perkel, Jeffrey M. "Scientific Writing: The Online Cooperative." *Nature* 514 (Oct. 2, 2014). *Medline*. Web. Mar. 9, 2016.
- "Research Biologist Coins Term 'Kilo-Author' For Scientific Journal Articles." Narr. Robert Siegel. *All Things Considered*. NPR. Natl. Public Radio. Aug. 17, 2015. Web. Dec. 1, 2016.
- Reyman, Jessica. "User Data on the Social Web: Authorship, Agency, and Appropriation." *College English* 75.5 (May 2013): 513- 533. Print.
- Scott, Gray. "Gathering Our Thoughts: How and Why We Should Help Students Write Together" *Pacific Coast Philology* 42.1 (2007): 86-109. *JSTOR*. Web. Jan. 21, 2016.
- Sutton, Malcolm. "Group Writing." *C Magazine* (Spring 2014): 121. *ProQuest Central*. Web. Jan 21, 2016.
- Weingarten, Karen, and Corey Frost. "Authoring Wikis: Rethinking Authorship through Digital Collaboration." *Radical Teacher* 90 (2011): 47-57, 79-80.
- Weltzin, Jake F., R. Travis Belote, Leigh T. Williams, Jason K. Keller, and E. Cayenne Engel. "Authorship in Ecology: Attribution, Accountability, and Responsibility." *Frontiers in Ecology and the Environment* 4.8 (Oct. 2006): 435-441. *JSTOR*. Web. Mar. 8, 2016.
- Yukawa, Yayoi, Chisato Kitanka, and Mieko Yokoyama. "Authorship Practices in Multi-Authored Papers in the Natural Sciences at Japanese Universities." *International Journal of Japanese Sociology* 23 (2014): 80-91. *SocIndex*. Web. Jan. 21, 2016.

Laurie Cubbison

## All She Had to Do Was Stay: How Apple Music Got Taylor Swift and Avoided Bad Blood

In the 2014 *CCCC-IP Annual*, I reported on the dispute between Taylor Swift and her record label Big Machine Records on one side and the streaming service Spotify on the other over the royalty payments for streaming plays of her music. In 2015 Swift continued to make the news on this issue, this time confronting and winning over Apple Music, Apple's new streaming music service.



Image from *Fist in the Air* ([fistintheair.com](http://fistintheair.com)).

Apple Music proposed to launch its service in 2015 with a three-month trial period during which royalties would not be paid to artists and their labels. The proposal angered many independent recording labels and artists, from Beggars Group, a collection of British independent labels that count Adele among their artists, to Swift's label Big Machine, run by Steve Borchetta. Beggars Group announced on June 17, 2015 that at that time it had not reached an agreement with Apple Music, saying that:

We are naturally very concerned, especially for artists releasing new albums in the next three months, that all streaming on the new service will be unremunerated until the end of September. Whilst we understand the logic of their proposal and their aim to introduce a subscription-only service, we struggle to see why rights

owners and artists should bear this aspect of Apple's customer acquisition costs.

Merlin Network, which handles digital rights for independent labels, also resisted working with Apple Music. Charles Caldas, CEO of the Merlin Network, pointed out that while the major labels (those controlled by Sony, Universal, and Warner) might agree to the terms the independent labels and their artists could not afford to (McDuling). Ben Sisario of *The New York Times*, observed that many record executives, particularly at small labels where margins are thin, had described a frightening scenario in which income from important new albums that came out during the free period would not only lose out on crucial download income [from sales], but also get nothing from Apple's new streaming feature.

So if the labels were already asserting their resistance to Apple's terms, why does Taylor Swift get the credit for Apple's change of mind?

To put it simply, one of the most popular artists in the world, with a best-selling album and a wide social media fanbase, leveraged that power and called Apple to task. On Father's Day, 2015, Taylor Swift posted a letter to Apple on her Tumblr account. Titled "To Apple, Love Taylor", the blog post explains to her fans the problem with Apple Music's proposal, counters potential criticisms of her position, and concludes by addressing Apple directly and asking them to change their policy.

Swift opens by stating that "I'll be holding back my album, 1989, from the new streaming service, Apple Music" and then declaring that she needs to provide an explanation, given her partnership with Apple for music sales and her respect for the company as a whole. She then moves into the explanation of Apple Music's terms, saying to her fans that "I'm not sure you know that Apple Music will not be paying writers, producers, or artists for those three months. I find it to be shocking, disappointing, and completely unlike this historically progressive and generous company." The latter sentence forecasts her characterization of Apple throughout the post: flattering the corporation's reputation by expressing disappointment in a proposal that in her opinion works against that reputation.

Swift then anticipates potential criticisms – that she makes too much money to worry about not being paid or that by speaking out, she is "a spoiled, petulant child" by asserting the basis of her ethos, that she represents

[T]he new artist or band that has just released their first single and will not be paid for its success. This is about the young songwriter who just got his or her first cut and thought that the royalties from that would get them out of debt. This is about the producer who works tirelessly to innovate and create, just like the innovators and creators at Apple are pioneering in their field...but will not get paid for a quarter of a year's worth of plays on his or her songs.

She goes on to say that “These are the echoed sentiments of every artist, writer and producer in my social circles who are afraid to speak up publicly because we admire and respect Apple so much.” Again, she stakes her claim on Apple’s own ethos even as she sets herself as championing the careers of artists, writers, and producers less successful than she is.

Swift goes on to praise Apple’s ultimate goal of a subscription-only service, the point of conflict between her and Spotify and the reason she pulled her music from the latter service. In praising Apple, she points out that Apple can easily afford to pay royalties during the three-month free period meant to hook customers on the service, adding that “Three months is a long time to go unpaid, and it is unfair to ask anyone to work for nothing.” Finally, she concludes by addressing Apple on business terms: “We don’t ask you for free iPhones. Please don’t ask us to provide you with our music for no compensation.”

The quality of Swift’s argument can be evaluated by examining its effectiveness. According to Sisario, Apple conceded within the day of June 21st, with Eddy Cue, the senior vice president of Internet software and services, calling the singer to let her know the change in policy, that Apple would pay royalties to both record companies and music publishers. *Billboard Magazine* reported that Cue discovered Swift’s letter when he woke up that morning, sent to him by Scott Borchetta. Swift’s letter came as Borchetta had been negotiating with Apple executives that week and became the impetus for Apple changing the policy, as the issue became understood as a concern of the artists and not the record companies alone.

Music industry analysts observed that few artists would be able to take the kind of stand that Swift did. Lucas Shaw quoted Ethan Kaplan, a Gracenote executive, saying ““She didn’t have a lot to lose. She’s the biggest artist in the world, she owns her own masters. She has a leveraged position.”” While other musicians have been taking similar stands with regard to streaming services through their managers and record labels, Swift is the only one using her social media presence as a position from which to speak. As such, she provides a case of a popular current artist addressing intellectual property issues rhetorically, and thus the letter could be a useful example of an argument in the writing classroom.

## Works Cited

- “‘Don’t Be Mad’: Scott Borchetta Talks Apple Negotiations, How Taylor Swift Told Him about Her Letter.” *Billboard*. Billboard, 15 July 2015. Web. 27 March 2016.
- McDuling, John. “Meet Charles Caldas, the Aussie who Took on Apple with

- Taylor Swift." *Australian Financial Review*. Fairfax Media Publications, 23 October 2015. Web. 24 March 2016.
- Shaw, Lucas. "Why Taylor Swift Succeeded Where Record Labels, Indies Failed." *Australian Financial Review*. Fairfax Media Publications, 23 June 2015. Web. 24 March 2016.
- Sisario, Ben. "Taylor Swift Criticism Spurs Apple to Change Royalties Policy." *The New York Times*. The New York Times Company, 21 June 2015. Web. 3 March 2016.
- Swift, Taylor. "To Apple, Love Taylor." *Tumblr*. Yahoo, 21 June 2015. Web. 24 March 2016.
- "With Regards to Apple Music." *Beggars Group*. Beggars Group, 17 June 2015. Web. 25 March 2016.

Kim Dian Gainer

## A Copyright Ruling Puts the “Happy” Back in Happy Birthday (and Brings an End to the Mortification of Restaurant Servers and Patrons)

When people think of Girl Scouts, they are more likely to think of cookies than copyright, but in 1995 the organization was drawn into a dispute over the lyrics to “Happy Birthday.” In what was described as a “public relations debacle,” the American Society of Composers, Authors and Publishers (ASCAP) attempted to collect licensing fees from the Girl Scout organization for the lyrics on the grounds that singing “Happy Birthday” around the campfire was a “public performance.” When word got out (as well as a video of Girl Scouts performing the “Macarena” *sans* music out of fear of similar monetary demands) the resulting ridicule and outrage caused ASCAP to back off and to even deny that they had ever intended to charge the Girl Scouts in the first place (Bumiller). The unhappy history of the lyrics was not, however, at an end. Warner/Chappell, a branch of Warner Music Group and the (supposed) copyright owner at that point (henceforth ‘Warner’), continued to vigorously pursue licensing fees, a practice that led restaurants and other businesses to adopt creative workarounds in order to observe the birthdays of their customers without being charged for the practice. The television and film industry, too, either had to pay licensing fees, substitute alternative songs in birthday party scenes, or engage in a practice called ‘lampshading’ that made use of the melody but substituted alternative lyrics, often with parody in mind and sometimes with lines that alluded to Warner’s copyright enforcement (Beggs; Weller). Enough organizations and businesses paid licensing fees to allow Warner to pull in nearly \$2 million a year, with plans to continue to do so through the year 2030 (Brauneis 18).

Nearly twenty years after the Girl Scout campfire contretemps, however, Warner’s claim to hold a copyright on the lyrics began to crumble faster than a Caramel DeLite ®. The end of charging lucrative licensing fees for the performance of the iconic ditty came about, ironically, when a filmmaker balked at paying a fee for the use of lyrics in a documentary about the song.

### Background

In “Copyright and the World’s Most Popular Song,” Robert Brauneis has given a very full account of the history of “Happy Birthday,” and on an associated web site he has assembled more than a hundred documents relevant to the controversy. The roots of the song go back at least as far as 1893. That year the melody that became associated with “Happy Birthday to You” was first published, but without the lyrics that became subject to dispute. The first lyrics

known to have been attached to the melody were those of “Good Morning to All.” The lyrics to “Good Morning to All” were written by Patty Smith Hill, and the music was contributed by her sister, Mildred Hill (Brauneis 10). Questions have been raised about how original the music was (11-12), but as the melody is indisputably in the public domain, litigation regarding Warner’s claim has not address that debate.

“Good Morning to All” was included in *Song Stories for the Kindergarten*, published by the music company Summy, which as a result of acquisitions became the Summy-Birchard Company, which then became a subsidiary of Birchtree. Finally, in 1988, Birchtree was purchased by Warner (Brauneis 20). At this point, ninety-five years had passed since the publication of “Good Morning to All.” In the meantime, in 1935, the Summy Company had published the lyrics of “Happy Birthday to You” in combination with the melody for “Good Morning to All.” This combination was published in a songbook with the permission of Jessica Hill, one of Patty Smith Hill’s sisters (26). Yet it is not clear whether Jessica Hill was authorizing anything other than the use of the melody. Little evidence exists to prove that Patty Smith Hill wrote the lyrics to the song that her sister was giving the company permission to publish, and the evidence that does exist is equivocal. In depositions, Patty Smith Hill and her sister Jessica did report that other lyrics, including “Happy Birthday to You,” were sung to the melody of “Good Morning to All,” but only at one point, in a deposition in 1935, did Patty Smith Hill ever claim to have written the lyrics to “Happy Birthday to You” (26-30).

Another possible issue was the fact that lyrics to “Happy Birthday to You” had been published as alternative wording for “Good Morning to All” as early as 1912, and without their being attributed to Patty Smith Hill (Brauneis 31). Since these publications predated 1923, it might be possible to argue that the lyrics were in the public domain regardless of authorship. However, the lawyers for Warner would argue that these were unauthorized publications that had no bearing on the question of copyright. The copyright was established, they argued, with the authorized 1935 publication (Sisario, “Clue”).

## The Proceedings

The challenge to Warner’s claim to a copyright on the lyrics began in June of 2013 with the filing of a class action complaint in the United States District Court for the Southern District of New York (*Good Morning to You Productions v. Warner/Chappell Class Action Complaint*). This complaint was swiftly withdrawn, to be replaced within the month by three separate complaints filed in the United States District Court for the Western Division of the Central District of California. These three complaints were consolidated into one complaint, *Rupa Marya v. Warner/Chappell Music*.



The initial class action filed in New York was intended to accomplish three goals: to invalidate Warner's claim to ownership of the lyrics to Happy Birthday to You; to prove that no one could claim ownership of the lyrics, putting them in the public domain, and to recover the licensing fees that had been collected by Warner. These continued to be the goals throughout the litigation process.

The roadmap to the initial and subsequent challenges had in part been provided in the article by Brauneis, who went on to serve as an unpaid consultant for the litigants challenging Warner's claim to copyright ownership. Brauneis had broached arguments such as the following:

- The initial copyright registration, in 1935, was invalid because it did not reference the actual copyright owner.
- The claimed copyright may not have been renewed and the lyrics had thus entered the public domain in 1963.
- The individuals to whom the lyrics were attributed could not be proven to be its authors.

Another matter, the pre-1923 publication of the lyrics, may not have seemed particularly important. From the plaintiffs' point of view, date of publication would not matter if Warner failed to prove that Patty Smith Hill was in fact the author of the lyrics and therefore capable of assigning a copyright for the lyrics to the Summy Company. From Warner's perspective, pre-1923 publication was irrelevant if the lyrics were published without authorization. Yet the year of publication did momentarily look as if it might be highly significant. Brauneis' collection of primary sources, although extensive, was missing one potentially important document. In 2015, in the course of discovery, another pre-1935 publication was uncovered. Warner had provided the plaintiffs' lawyers with a scanned copy of an earlier, 1927 edition of a Summy songbook with the "Happy Birthday to You" lyrics. The scan included a permission line, but the image was blurred. The plaintiffs' lawyers searched for additional copies. In the end, the plaintiffs' team located a copy of this 1927 songbook in the University of Pittsburg library. The librarians were gratifyingly thorough, however. They located another copy in a storage facility. This copy was published in 1922. If this pre-1923 publication was an authorized one, then the lyrics to "Happy Birthday to You" would have been unequivocally in the public domain (Sisario, "Clue").

Had that been the case, the question of whether the 1935 copyright registration was defective would have been a moot issue. Another moot question would be whether the copyright was properly renewed in 1963 as there would be no copyright to renew at that point if the lyrics of "Happy Birthday to You" had been in the public domain all along. Unhappily, two questions muddle the issue. First, who actually is the author? Secondly, whoever the author is, did he or she authorize the publication of the lyrics in the 1922 volume?

The Court's Decision

The ruling on the case was handed down in September of 2015 by Judge George H. King of the United States District Court for the Central District of California. In his summary judgment, he first surveys the history of “Happy Birthday to You,” documenting references to the song as early as 1901 and 1909 and its publication in 1911 in a copyrighted book, but with no author credited. The lyrics were also included in books published in 1924 and 1928 and other years, again with no author credited. Judge King also documents the presence of the song in movies from the 1930s and its performance in a play in 1933. He also notes that a lawsuit for copyright infringement filed by Jessica Hill in 1934 was with regards to the “Good Morning to All” melody and not the “Happy Birthday to You” lyrics that accompanied it. Finally, he acknowledges the 1922 publication whose existence had been uncovered by the plaintiffs’ lawyers.

Judge King states at the outset that the plaintiffs’ argument that the company “cannot establish its chain of title from Summy Co.” is “underdeveloped” and that in any event it is not necessary to address this argument as he is able to reach a ruling based on other elements of the case (*Rupa Marya v. Warner/Chappell Summary Judgment* 10).

Next, Judge King agrees with the plaintiffs that the 1935 copyright registration is problematic on two grounds: arguably only the rights to the melody and not the lyric are being claimed, and the person referenced in the registration is not Patty Smith Hill but one “Preston Ware Orem, employed for hire by Clayton F. Summy Co.” Writes Judge King, “To our knowledge, no one has ever contended that Orem wrote the *Happy Birthday* lyrics.” Judge King concludes that registration of the copyright is “flawed,” with Warner trapped in a no-win situation because if one element in its argument is valid, then the other must be invalid:

If, as Defendants assert, the new matter being registered included the lyrics, then, contrary to the registration certificate, Mr. Orem could not have been the author of the new matter. Conversely, if Mr. Orem were the author of the new matter, then the lyrics could not have been a part of the registration. (14)

Judge King next makes short work of Warner’s argument that this “mistake” (14) should not invalidate the registration by pointing out Warner’s reasoning would require assuming that the company’s copyright was valid when the entire point of the exercise was to examine the registration for its “evidentiary” value. The registration provides no evidence that a member of the Hill family was the author of the lyrics to “Happy Birthday to You” and fails to make it clear that the lyrics are the subject of the registration. The judge concludes that the court “cannot presume this registration reflects the Copyright Office’s determination that Summy Co. had the rights to the lyrics to copyright them” (15).

Judge King then turns to the question of whether there is evidence as to the authorship of the lyrics. Even though Warner is the defendant rather than the

plaintiff, the onus is on the company to show that their claim to have an interest in the lyrics “can be traced back to the true author” (16). This burden arises from the fact that the plaintiffs brought suit in an effort to prevent Warner from charging them with copyright infringement. As Judge King observes, it is necessary to prove that one actually possesses the copyright before a case can be made for copyright infringement, so he cannot determine whether to issue a ruling protecting the plaintiffs from Warner without looking at Warner’s arguments.

Here Judge King returns to the history of the song: the early references to it, the publication of the lyrics in six separate years prior to 1935, and the performance of the song in several movies. In no instance is credit given to Patty Smith Hill, and in some instances copyright for the publications is asserted by others, with authors named in certificates of registration. “This evidence,” Judge King writes, “is sufficient to shift the burden to Defendants to proffer admissible evidence” that would be sufficient to require a trial rather than a summary judgment (18). He concludes that Warner has met this burden by entering into evidence a 1935 deposition by Patty Smith Hill in which she answers “I did” when asked, in the context of questions about “Happy Birthday to You,” whether she did “write the words for this particular tune of ‘Good Morning To All’.” It is true, he observes, that

a reasonable fact finder could...find that the *Happy Birthday* lyrics were written by someone else...and that Patty’s 1935 claim to authorship was a post hoc attempt to take credit for the words that had long since become more famous and popular than the ones she wrote for the classic melody. (18-19)

On the other hand, it was also true that “reasonable fact finder may choose to believe that Patty wrote the lyrics in 1893 but, for whatever reason, failed to publically say so until some forty years later” (18). Had authorship turned out to be the crux of the matter, Judge King might have held a trial instead of written a summary judgment, but in the end another consideration outweighed the question of whether Patty Smith Hill wrote the lyrics.

Judge King next addresses the issue of whether Patty Smith Hill had lost the copyright to the lyrics by knowingly allowing their distribution without an accompanying copyright notice. The plaintiffs pointed to the publication of the lyrics in the 1922 songbook as evidence to support their argument that this loss of copyright had occurred. The publisher of that songbook had received permission to publish “Happy Birthday” from Summy Co. Since the Summy Co. had been publishing Mildred Hill and Patty Smith Hill’s melodies and lyrics, Judge King acknowledges that a “fact finder could reasonably infer” that the sisters had authorized the Summy Co. to give another company permission to publish the lyrics. If that were the case, the printing of the lyrics could be considered a “general publication (without proper copyright notice)” that would have resulted in the loss of the sisters’ ownership rights (21). On the other hand,

Judge King takes notice of Warner's argument that there is in fact no actual evidence that the sisters ever gave such an authorization. Once again, it appears that the issue is arguable. The judge reaches a similar conclusion when addressing the question of whether Patty Smith Hill had abandoned her rights to claim ownership to the lyrics by not making any attempt to put a stop to their (presumably) unauthorized use.

At this stage, the only issue remaining (other than that of standing, which is decided in favor of the plaintiffs) is the question of whether, if Patty Smith Hill did have rights to the lyrics, there had been a "valid transfer of rights" from her to the Summy Co. (17). Warner's copyright to the lyrics of "Happy Birthday to You" ultimately depends upon its possession of the Summy Co. catalogue. If the Summy Co. never possessed the rights to the lyrics in the first place, then Warner never did either.

It is at this point in the decision that Warner's fortunes 'go south'. Judge King reports that three agreements were reached between the Summy Co. and the Hill sisters regarding the transfer of intellectual property. One agreement, entered into in 1934 and 1935, he designates the Second Agreement, and Warner in part relies upon it to support its claim to the lyrics of "Happy Birthday to You." Unfortunately, no copies or descriptions of the Second Agreement exist (nor do any copies of the First Agreement survive). Its content must be deduced from the record of a 1942 lawsuit. Parsing the pleadings in this lawsuit, Judge King concludes that the Second Agreement had nothing to do with the lyrics of "Happy Birthday to You." Both parties to the agreement describe it

as transferring rights in "piano arrangements... Obviously, pianos do not sing. Thus, it is not logical to infer that rights to "piano arrangements" would include rights to any lyrics or words as well. (31-32).

Judge King also rejects Warner's claim that its case is supported by the Third Agreement, a copy of which does survive. What the 1944 pleadings imply, the Third Agreement confirms: what was being conveyed were the rights to piano arrangements.

This one finding – that the Summy Co. was never assigned the right to the lyrics – is what determined the outcome of the case. It made it unnecessary to hold a trial to determine whether Patty Smith Hill authored the lyrics and whether she had ever lost or abandoned the rights to them. Regardless of whether she was or was not the author, regardless of whether she had held on to any rights to the lyrics – if no one from the Hill family conveyed those rights to Summy Co., then Warner could never have acquired those rights when it acquired that company's catalogue.

Settlement

Judge King's ruling meant that that the plaintiffs could not be pursued for copyright infringement and that Warner could no longer collect licensing fees for performances of "Happy Birthday to You." Warner considered appealing but in the end chose not to do so.

The plaintiffs had declared in their initial court filing that they would seek reimbursements for themselves and for similarly situated individuals who had paid Warner for the right to perform "Happy Birthday to You." Judge King had separated the matter of reimbursement of licensing fees from the other issues raised by the plaintiffs, and after Warner decided not to appeal his ruling, the company and the plaintiffs began to negotiate a settlement. An agreement approved by Judge King in March of 2016 will require Warner to return to claimants an amount roughly equivalent to seven years' worth of licensing fees, as well as to reimburse the plaintiffs \$ 4.6 million for their litigation costs (Sisario, "Details").

For the purpose of the settlement, people or companies who paid licensing fees are divided into Period One Settlement Class Members, who paid fees on or after June 13, 2009, and Period Two Settlement Class Members, who paid fees at any point between September 3, 1949, and June 13, 2009. To cover the refunds, Warner is required to set aside \$14 million dollars, plus an additional \$100,000 to cover administrative costs. Period One Settlement Class Members may potentially recover all licensing fees. Period Two Settlement Class Members will recover no more than 15% of what they paid (*Good Morning to You Productions Corp. v. Warner/Chappell Revised Class Action Settlement Agreement*).

## Implications

The decision was handed down in a Federal District Court, and since it was not appealed, no ruling will be issued on a higher level. In that respect, the ruling's applicability is limited. Moreover, Judge King meticulously followed precedents but did not set any. Still, one observation that may be made about the case is that it illustrates how, for an extended period of time, a company making spurious copyright is able to collect licensing fees without fear of challenge. The enormous imbalance between the resources available to Warner and the resources available to individual licensees allowed the company to engage in what might as well have been copyright trolling because for each licensee the costs and risks of challenging the copyright claim were simply too high. The simplest and safest solution was simply to pay up whatever Warner demanded. Had an individual not set out to create a documentary about the song and begun to ask questions, licensing fees might have been charged for another fifteen years. With a large revenue stream at its command, Warner retained its huge advantage over individual licensees until the documentarian and several others banded together to bring a class action suit (Brauneis 59-60). The irony, of course, is that up until

that point the licensees were providing the funds to Warner that made it difficult to challenge the company.

Another lesson is how difficult it can sometimes be to determine the status of a work, such as whether it is or is not in the public domain. The discovery of the 1922 songbook led to breathless a-smoking-gun-has-been-found coverage, but this pre-1923 publication did not unequivocally demonstrate that the lyrics to “Happy Birthday to You” were in the public domain (Ochoa; Fleishman; Higgins). Instead, “Happy Birthday to You” is in some ways akin to an orphan work because there is no one to apply to in order to determine to a certainty that one may perform the song without infringing on someone’s copyright. Technically, the answer would hinge on whether the lyrics were published with or without authorization before 1923. If not authorized, its status would depend on who, if anyone, could have claimed ownership to the lyrics post-1923. Practically speaking, however, celebrants may sing the lyrics without fear that ASCAP will come after them. Patty Smith Hill is the person most closely associated with the song, but her descendants have no real chance of claiming ownership of the lyrics. Although Judge King failed to find for the plaintiffs on the issue of authorship, his concluding comments telegraph skepticism about whether Hill ever owned the lyrics, for none of her behavior suggested such ownership. He observes that the question of whether Patty Smith Hill wrote the song’s lyrics was arguable. Yet he also observes that neither she nor any other member of her family

ever did anything with their common law rights in the lyrics. For decades, with the possible exception of the publication of *The Everyday Song Book* in 1922, the Hill sisters did not authorize any publication of the lyrics. They did not try to obtain federal copyright protection. They did not take legal action to prevent the use of the lyrics by others, even as *Happy Birthday* became very popular and commercially valuable. In 1934, four decades after Patty supposedly wrote the song, they finally asserted their rights to the *Happy Birthday/Good Morning* melody – but still made no claim to the lyrics. (42)

Now that Warner can no longer collect licensing fees, and with no other copyright claimant on the horizon, restaurant servers now will be able to avoid the mortification of singing tacky substitutes for “Happy Birthday to You,” and customers will be able to escape being on the receiving end of those embarrassing performances. Instead, servers and customers alike will be able to publically enjoy “the world’s most popular song” (Brauneis 1). On a more serious note, servers and campers and musicians and directors and business people no longer will face the threat of being sued for public performances. What is disturbing is that it is now apparent that no one should have been subject to such a threat in the first place.

## Works Cited

- Beggs, Scott. "A Very Brief History of Movies Singing Happy Birthday." *FilmSchoolRejects*. 23 September 2015. Web. 15 March 2016.
- Brauneis, Robert. "Copyright and the World's Most Popular Song." 56 *Journal of the Copyright Society of the U.S.A.* 335 (2009); GWU Legal Studies Research Paper No. 392. Web. 15 March 2016.
- . "Copyright and the World's Most Popular Song": Appendices, Documents and Sound Recordings. *George Washington University Law School*, n.d. Web. 15 March 2016.
- Bumiller, Elisabeth. "Ascap Asks Royalties from Girl Scouts, and Regrets It." *The New York Times*. 17 Dec. 1996. Web. 15 March 2016.
- Fleishman, Glenn. "The Tangled History and Mysterious Legality of 'Happy Birthday'." *Fast Company*. 25 Sept. 2015. Web. 15 March 2016.
- Good Morning to You Productions Corp., et al., v. Warner/Chappell Music, Inc., et al. Revised Class Action Settlement Agreement, No. CV 13-04460-GHK (MRWx)*. (U.S. District Court for the Central District of California Western Division). 2 March 2016. Web. 15 March 2016.
- Good Morning to You Productions Corp. v. Warner Music, Inc. Class Action Complaint, No. 1:203cv4040* (U.S. District Court Southern District of New York). 13 June 2013. Web. 15 March 2016.
- Higgins, Parker. "Happy Birthday to Everybody: Victory for the Public Domain (with an Asterisk)." Electronic Freedom Foundation. 23 Sept. 2015. Web. 15 March 2016.
- Ochoa, Tyler. "Chain of Title Proves Fatal to 'Happy Birthday' Copyright Claim." *Technology and Marketing Law Blog*. 5 Oct. 2015. Web. 15 March 2015.
- Rupa Marya, et al. v. Warner/Chappell Music, Inc., et. al. Memorandum and Order re...Summary Judgment, No. CV 13-4460-GHK (MRWx)* (U.S. District Court for the Central District of California Western Division). 22 September 2015. Web [Justia]. 15 March 2016.
- Sisario, Ben. "A Clue in the Case of 'Happy Birthday.'" *The New York Times*. 5 August 2015. Web. 15 March 2016.
- . "Details of 'Happy Birthday' Copyright Settlement Are Revealed." *The New York Times* 10 Feb. 2016. Web. 25 Mar. 2016.
- Weller, Chris. "The Many Weird Ways TV and Film Have Avoided Expensive 'Happy Birthday' Copyright Fees." *Tech Insider*. 23 Sept. 2015. Web. 15 March 2016.

Traci Zimmerman

Review: *Understanding Open Access: When, Why & How to Make Your Work Openly Accessible* (2015). Prepared for Authors Alliance by Lexi Rubow, Rachael Shen, Brianna Schofield, and Samuelson Law, Technology and Public Policy Clinic (Berkeley Law). 130 pages.

As its title makes clear, *Understanding Open Access: When, Why, & How To Make Your Work Openly Accessible* is a guide to understanding the contexts and purposes of open access publishing so that authors might evaluate and consider it as a viable way to make their work more widely accessible. Co-authored by current students and a past fellow of the Samuelson Law, Technology and Public Policy Clinic, the guide is the second volume in a series of educational handbooks from the non-profit organization, Authors Alliance, and was released in November 2015.

The first volume in the series, *Understanding Rights Reversion: When, Why & How to Regain Copyright and Make Your Book More Available* was published in April 2015 and was also co-authored by students and fellows of the Samuelson Law Clinic. Both volumes are available as free downloads and licensed under a Creative Commons Attribution 4.0 license, which allows not only for sharing (copying and reproducing) but also for adapting (remixing and transforming) the work, even for commercial purposes, so long as appropriate credit is given and clear indications of any changes are made.

## Context

Like these two publications, the Authors Alliance is itself a recent creation and is also linked to Professor Pamela Samuelson, Professor of Law at Berkeley. She is a founding member of the Authors Alliance, and currently serves on its Board of Directors; in addition, she is both co-founder and namesake of the Samuelson Law, Technology and Public Policy Clinic, where she serves as an advisor.

In an interview with Peter Brantley (for *Publishers Weekly*), Samuelson articulates the purpose of the Authors Alliance as having both “inward and outward facing” roles: the “inward facing” role being that of providing information “about copyrights, licensing agreements, alternative contract terms, the pros and cons of open access, the reversion of rights, and the termination of transfer” and of encouraging authors to “take advantage of the opportunities of networked digital environments that were not in place 10, 15 or 20 years ago;” and the “outward facing role” being that of “representing the interests of authors who want to make their works more widely available in public policy debates” (Brantley).



She distinguishes the Authors Alliance from the Authors Guild, in part, by citing their differing interpretations of copyright law and fair use. While the Authors Guild brought forward lawsuits against Google and HathiTrust, the Authors Alliance “would not have brought forward” such suits; in fact, Professor Samuelson asserts that “the class action lawsuit [the Authors Guild] brought [against Google] should not be certified as a class action lawsuit because they don’t represent the interests of the majority of authors whose books were being scanned from the research library collections; most of those books were written by scholars, for scholars” (Brantley).

Still, Samuelson acknowledges the fact that “the Internet has been an enormously disruptive force in the creation and publication of information...upending many conventions, traditions and practices that have had stability for quite a long time” (Brantley). What Samuelson makes clear in her own articulation about the changing face of publishing is that she wants to encourage constructive and substantive dialogue with publishers in order to “find new ways to work together in a manner that will foster mutual interests” (Brantley).

This spirit is manifested in both the mission of the Authors Alliance and in their publication of *Understanding Open Access*. Their mission statement illustrates the many roles that the group inhabits as well as creates a clear space of inquiry:

Authors Alliance promotes authorship for the public good by supporting authors who write to be read. We embrace the unprecedented potential digital networks have for the creation and distribution of knowledge and culture. We represent the interests of authors who want to harness this potential to share their creations more broadly in order to serve the public good.

Unfortunately, authors face many barriers that prevent the full realization of this potential to enhance public access to knowledge and creativity. Authors who are eager to share their existing works may discover that those works are out of print, un-digitized, and subject to copyrights signed away long before the digital age. Authors who are eager to share new works may feel torn between publication outlets that maximize public access and others that restrict access but provide important value in terms of peer review, prestige, or monetary reward. Authors may also struggle to understand how to navigate fair use and the rights clearance process in order to lawfully build on existing works.

The mission of Authors Alliance is to further the public interest in facilitating widespread access to works of authorship by assisting and representing authors who want to disseminate knowledge and products of the imagination broadly. We provide information and tools designed to help authors better understand

and manage key legal, technological, and institutional aspects of authorship in the digital age. We are also a voice for authors in discussions about public and institutional policies that might promote or inhibit the broad dissemination they seek.

([authorsalliance.org/about/](http://authorsalliance.org/about/))

Similarly, *Understanding Open Access* is designed to support authors by providing information, answering questions and addressing concerns about open access through a variety of lenses: in fact, the information in the guide “is the product of extensive interviews with authors, publishers, and institutional representatives who shared their perspectives on open access options in today’s publishing environment” (*Understanding Open Access*, 8-9). Thus, the guide encourages authors to weigh their options and look for the possibilities within open access rather than positing that open access should be the only path.

## Content

The guide is made up of seven chapters organized into four sections that are designed to “trace the process of how an author would decide...to make a work openly accessible” (17). But the guide can also be used as a kind of reference work for specific questions or particular interests, and so the Guide Overview in Section I makes clear that users should feel free to “skip to the relevant section[s]” that address those needs. Below I offer a brief overview of the elements of each section:

### **Section I: Introduction (pp. 2-17)**

This section contains the Introduction and Chapter 1 and provides an overview of the purpose and audience for the guide as being “largely geared to the needs of authors working for academic institutions or under funding mandates,” though not exclusively so, as “many chapters are suitable for authors who write in other contexts” (8). The section also foregrounds the complexity of the topic by pointing out that open access is defined variously and might best be thought about “as a continuum that considers variables of both price and permission barriers” (5). For the purposes of this guide, open access is defined as “the practice of making a work available to readers free of charge on the Internet, regardless of whether subsequent reuse is permitted” (5).

This section makes clear that the guide is neither a substitute for legal advice nor a flat assertion that making works openly accessible “is the only way to promote broad dissemination” of those works (9). The final pages of the section deal with the most “common reservations” about open access, such as the relationship between open access and peer review, the costs associated with open access, and the concerns about preserving the integrity of work made openly accessible. Ultimately, the purpose of Section I is to help its readers ascertain

what open access is, what the concerns are about it, and whether it might be something worth pursuing.

## **Section II: Why Make Your Work Openly Accessible? (pp. 18-40)**

This section contains Chapters 2 and 3 and is designed to provide a means of evaluating whether open access is the right choice for a given work by explaining both the background of open access policies and the benefits that can come from open access pursuant to those policies (17, 20). Beyond providing clear, jargon free explanations of open access practices, the guide also illustrates the benefits of such practices through powerful, specific, individual stories of how they have “worked” for different authors in different situations. The thumbnail narratives in Chapter 2 provide windows into how open access can increase print sales, help authors reach a global audience, and allow readers to connect with new ideas, among other things (25-27). Chapter 3 focuses exclusively on those authors/researchers who are “subject to an open access policy” (such as those producing research for federally sponsored entities, like NIH, or for larger foundations or institutions). This chapter addresses the “why(s)” behind such mandates and offers guidance about how to navigate particular requirements of public access policies.

## **Section III: How to Make Your Work Openly Accessible (pp. 41-109)**

This section is the largest, containing Chapters 4-7, and is centered on two key questions: “How ‘open’ do you want to make your work?” and “Where do you want to make your work available?” (44). Chapters 4 and 5 take up these questions deftly, expanding into follow up questions that help readers to customize the information to their specific situations. In addition, these chapters provide a number of compelling thumbnail narratives to illustrate how open access has expanded the reach and audience for a number of works. But because these chapters are dealing with a lot of the “nuts and bolts” questions that inform the “how” of open access, they also include helpful “tips:” how to choose (and use) the various Creative Commons licenses; how to understand the impact of open access on derivative works; how to discern the differences among “open data,” “technical openness” and “temporal openness;” and how to choose between the benefits of self archiving (“Green Open Access”) and open access publishing (“Gold Open Access”). These chapters are rich with information, clear and easy to follow, and thoughtful in their line of questioning and in their anticipation of the needs of the reader. From these chapters, it is clear that the guide was designed from extensive interviews with stakeholders and not just standard research into the subject. The organization of these chapters follows the thread of human inquiry, moving seamlessly from question to question (as if in a conversation about the topic), without the disruption of artificial subject breaks, flat, declarative prose and chunked information.

Chapters 6 and 7 move to questions of how to talk about open access with conventional publishers (before or after signing a contract) and how to negotiate use of third-party content in openly accessible works (with a keen eye to permission costs and contractual restrictions). The narratives and tips provided in this section are particularly compelling, as they represent a confluence of philosophies and practices surrounding publishing in a way that attempts to balance the needs of the many parties involved; for example, how open access can be used to make a strong case for a conventional book contract.

#### **Section IV: Help Shape the Future of Open Access (pp. 110-112)**

This short, three-paragraph section serves as both an end and an invitation: while it closes the work of the guide, it opens the door to participate in the open access movement, not only for individual benefit but for the works of others to come.

#### **Endnotes (pp. 114-123); Index (pp. 124-130)**

The endnotes are a treasure-trove of resources, references, and initiatives. And the index, which was a pleasant surprise, allows users of the guide to pinpoint particular subjects of interest.

#### Coda

One month ago, an Ithaca S+R report was released entitled *The Costs of Publishing Monographs: Toward a Transparent Methodology*. What is unique about this study is not its subject matter but its “methodology”: “working with an advisory group of university press publishers [20 presses represented in total] to identify all of the cost components in scholarly monograph publishing...and to calculate the costs of each of those components in a bottom-up fashion” (Maron et.al.)

Just this week, Scott McLemee addressed another interesting component of the study: the report does not center on the cost of producing “traditional” hardback books (as was the old model) but instead focuses “on the costs of producing the first digital copy of ‘a high quality digital monograph’” something that, as McLemee notes, “is in keeping with the expectation that scholarship be made available in open-access form, as both federal mandates and the emerging academic ethos increasingly demand” (McLemee).

Thus, I would argue that *Understanding Open Access*, to the degree that it functions as a both a guide to open access and a representation of the “academic ethos” informing the demand for it, is a timely and useful publication. McLemee’s article essentializes a key question (and pressing concern) that lingers about open access: how can we sustain the high standards and support the highly-skilled labor of the university press while “simultaneously developing

ways of funding open-access publishing?" The Ithaka S+R report, McLemee observes, "reminds us that the problem is on the agenda, or needs to be."

What the Authors Alliance has done in publishing *Understanding Open Access* is to put the problem on the agenda and to invite as many people as possible to the meeting. By addressing the "whys" before the "hows," they look to a future where publishing models might be able to strike a balance between ownership and access, and between the cost of quality and the price of sharing.

### Works Cited

Authors Alliance. Mission Statement. Web.

Berkeley Law. "Samuelson Clinic Student Co-Author Authors Alliance Guide to Open Access." 2016. Web.

Brantley, Peter. "Founder of Just-Launched Authors Alliance Talks to PW." *Publishers Weekly.com*. 13 May 2014. Web.

Cabrera, Nicole, Jordyn Ostroff, Brianna Schofield, and Samuelson Law, Technology and Public Policy Clinic. *Understanding Rights Reversion: When, Why & How to Regain Copyright and Make Your Book More Available*. Authors Alliance, 2015. Web.

Maron, Nancy, Christine Mulhern, Daniel Rossman, and Kimberly Schmelzinger. *The Costs of Publishing Monographs: Toward a Transparent Methodology*. ITHAKA, 2016. Web.

McLemee, Scott. "Accounting for Scholarship." *Inside Higher Ed*. 2 March 2016. Web.

Rubow, Lexi, Rachael Shen, Brianna Schofield, and Samuelson Law, Technology and Public Policy Clinic. *Understanding Open Access: When, Why & How to Make Your Work Openly Accessible*. Authors Alliance, 2015. Web.

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**Traci Zimmerman** is Director of the School of Writing, Rhetoric and Technical Communication at James Madison University where she teaches classes in authorship; language, law and ethics; and digital literacies. Her research is inspired by her involvement with the CCCC-IP Caucus and CCCC-IP Committee and her interest in the ways in which authorship theory informs and interrogates current IP law. To enrich her legal education (and to better inform her advocacy work in copyright reform and protection of the Public Domain), she is currently pursuing a Master of Science in Jurisprudence (with an IP concentration) at Seton Hall Law. Her research has appeared in *Cultures of Copyright* (Peter Lang, 2015); *Legal Issues in Global Contexts* (Baywood, 2014); and *Engaging Audience: Writing in an Age of New Literacies* (NCTE, 2009).