

4-1-2013

Remix and Rebalance: Copyright and Fair Use Issues in the Digital Age and English Studies

Scott A. Singleton

Kennesaw State University, ssingle6@gmail.com

Follow this and additional works at: <http://digitalcommons.kennesaw.edu/etd>



Part of the [Curriculum and Instruction Commons](#)

Recommended Citation

Singleton, Scott A., "Remix and Rebalance: Copyright and Fair Use Issues in the Digital Age and English Studies" (2013). *Dissertations, Theses and Capstone Projects*. Paper 558.

Remix and Rebalance:
Copyright and Fair Use Issues in the Digital Age and English Studies

By
Scott A. Singleton

A capstone project submitted in partial fulfillment of the
Requirements for the degree of Master of Arts in Professional Writing in
The Department of English

In the College of Humanities and Social Sciences of Kennesaw State University
Kennesaw, Georgia

2013

College of Humanities & Social Sciences
Kennesaw State University
Kennesaw, Georgia
Certificate of Approval

This is to certify that the Capstone Project of

Scott Singleton

Has been approved by the committee
for the capstone requirement for

the Master of Arts in Professional Writing
in the Department of English

May 2013

At the (month and year) graduation

Capstone committee:

Jane McElrath

Member

[Signature]

Member

Table of Contents

Introduction	4
Chapter 1: Writing in the Twenty-First Century	10
Chapter 2: Creativity	19
Chapter 3: Remix	24
Chapter 4: Plagiarism	28
Chapter 5: Fair Use	35
Chapter 6: The Original Purpose of Copyright	44
Chapter 7: Creative Commons	51
Conclusion	53
Appendix A: Three Mini-Lessons	56
Appendix B: Three Small Assignments	61
Works Cited for Appendices A and B	67
Additional Resources	68
Works Cited	69
Curriculum Vitae	73

Introduction

“Never in our history have fewer had a legal right to control more of the development of our culture than now.” – Lawrence Lessig, *Free Culture*

This thesis addresses both the need and specific ways to increase conversations on copyright law, fair use, and intellectual property in the composition classroom. The field of English Studies, as some have noted, has experienced three distinct “waves” of scholarship on copyright and fair use (Dush 114). The first wave occurred around the mid-1990s in response to legislation expanding copyright protection to establish standards for intellectual property policies on the Internet. Additionally, the first wave also argued against the “romantic notion of solitary authorship that informed such policies” (Dush 114). The second wave, highlighted by a special issue of *Computers and Composition* that focused on intellectual property, extended to the topics of the public domain and fair use. The third wave, which this thesis joins, has developed around the growing need to address copyright issues as digital writing, multimodal composition tools, and Web 2.0 influence student work, both inside and outside the classroom.

In all three of the waves, as Lisa Dush notes, the prevailing tone of the scholarship has been a “wake-up call” (115). This call, in summary, has aimed at highlighting the issues of copyright, fair use, and intellectual property for educators to address in their own work and for students in the classroom. Looking beyond the wake-up call, Dush says, “The existing research, whether historical or theoretical, however, leaves unanswered the question of *how* we talk with students about copyright and IP issues” (115, italics in original). This thesis aims to help answer that question.

Scholarship in recent years from Steve Westbrook, Martine Courant Rife, Brian Ballentine, Lawrence Lessig, Peter Jaszi, Patricia Aufderheide, Jeffrey Galin, and others addresses the need for increased conversations on intellectual property both inside and outside the classroom. It is necessary, however, to set the stage for the *how* by reviewing some of the reasons *why* such conversations are increasingly important. Since the proliferation of digital writing tools and the steady influence of the Internet remains the primary reasons why discussing copyright issues in the classroom is important, the opening chapter of this thesis examines the digital composition process in the twenty-first century.

In Chapters 2-4, I consider specific ways to increase copyright conversations by linking copyright and intellectual property to three often discussed topics in the composition classroom: creativity, remix, and plagiarism. After providing suggestions on how to link these topics to conversations on copyright, I review three topics in Chapters 5-7 that are not typically discussed as often as the first three, yet are equally important: fair use, students' existing thoughts on intellectual property, and the original purpose of copyright.

In Chapter 8, I examine the innovative and helpful example of Creative Commons as a model for rethinking current ideologies of copyright and intellectual property. As a practical, pedagogical application of the ideas and theories developed throughout this thesis, three mini-lessons and three small assignments are included in Appendices A and B. Lastly, a list of additional resources is also included.

The goal of this thesis is to equip English Studies professionals with strategies and resources for discussing issues related to copyright, fair use, and intellectual property both inside and outside the classroom. The primary focus of the ideas, suggestions, and resources in

this thesis remains the first-year college composition classroom, although these strategies could be adapted to nearly any course within English Studies. Many of the topics suggested in this thesis for increasing classroom conversations on these issues are addressed in the first-year composition classroom, and this context also remains the proper place to influence and instruct the greatest number of students. Additionally, as a connection between the content of this thesis and common learning objectives for first-year composition, this thesis includes points from the “Writing Program Administrators Outcomes Statement for First-Year Composition.”

Increased conversations on this topic are important for both educators and students. Due to the steady increase of copyright protection through the past three decades, as this thesis will review in greater detail, the foundations of creativity, scholarship, and research are now threatened. For this reason, it is increasingly important for educators and students to exercise rights such as fair use, for if fair use is left to lawmakers and entertainment industry officials to define, it will likely disappear completely. The details of fair use application are reviewed in Chapter 5.

For students, it is essential for them to understand the details and complexities of copyright, fair use, and intellectual property for many reasons. I will mention two of them here. First, it is possible that copyright’s complexity and confusion on the topic can produce “a chilling effect” with student’s creativity, composing choices, and more. As a study by Martine Courant Rife shows: “With increased knowledge and certainty, comes increased agency in composing choices” (“Is There a Chilling of Digital Communication?”). And, as the study also shows, the opposite is true: lack of certainty leads to a lack of agency for students. Additionally, copyright law can prove to be an obstacle for more than composing choices. For example,

“Both students’ cultural knowledge and their critical powers can be short-circuited by copyright law” (Dush 122). A reduction in both cultural knowledge and critical powers for students is a result of increased copyright protection that greatly limits the number of works entering the public domain. As more creative works are protected for longer and withheld from the public domain, students have less freedom to use, remix, and critique them. Also, as students move beyond the classroom and continue to produce creative works in a digital world, they will inevitably encounter these problems to a greater degree. For writers, these creations are not limited to traditional conceptions of “creative” genres such as fiction or poetry. Copyright and fair use issues are just as relevant for writers in other fields, including technical writing, business writing, and grant and proposal writing. Although differences certainly exist, writers in these fields have the same task of navigating copyright and intellectual property issues. Additionally, students in the composition classroom are learning the process of academic writing and will likely go on to write and create in other fields in their academic and professional careers.

Second, today’s students will eventually decide the direction of future copyright protection. If important movements such as Creative Commons, Open Education, and Free Software Foundation are to continue to reclaim intellectual property from the overreaching arm of copyright law and realize, in words borrowed from Creative Commons, “the full potential of the Internet,” then students in today’s classrooms will need to lead the way. In order for students to do this, however, a solid understanding of intellectual property must be established, and the composition classroom remains one of the best places to build this foundation.

As Tharon Howard says,

We need educated citizens who can ask their legislators if allowing an artist and the inheritors of the author's estate to profit from a work for the entire life of the author plus 70 years is consistent with the kind of creativity the Constitution sought to stimulate. We need writers who question whether or not laws like the NET Act encourage creativity and protect society's right to use works for non-commercial purposes. We need students who, once they graduate and become future legislators and corporate executives, have had the kind of educational experiences that allow them to ask if it is really in the best interests of "Promoting the Progress of Science and useful Arts" in society to threaten students who create Web-based multimodal compositions [...] with criminal prosecution. (127)

If students are to become the type of educated citizens described by Howard, then they will need the previously mentioned educational foundation. The students in the scenario above are critical thinkers, evaluating works—the Constitution—in light of recent legislation and responding in an informed, thoughtful manner. Students are already learning these skills in the composition classroom, and by increasing the discussion on these issues, educators can help produce the types of students that will ask these important questions and seek the answers, both now and in the future.

Addressing the issues of copyright, fair use, and intellectual property in the composition classroom is no easy task for instructors, but it is a necessary one. As the following chapters will show, the methods for writing and creating have changed. The laws have changed. It is time for

a change in the composition classroom, in both pedagogy and curriculum, in order to produce educated citizens fully equipped to use their knowledge and skills in a digital world for the good of everybody. This thesis aims to provide educators with knowledge, ideas, and resources to help make this change in the composition classroom.

Chapter 1: Writing in the Twenty-First Century

Anyone who produces creative works on a consistent basis thinks about copyright law to a degree. The extent of the influence of copyright on creativity and composition depends on many factors, including the level of understanding and confidence of the creator. The influence might be minimal, or it could even be subconscious. Either way, it exists in the background, and occasionally the foreground, of the production of creative works. This doesn't mean that copyright law, at its heart, is a bad idea, but what if a lack of understanding about copyright negatively affected student writers? What if the vague threat of being sued for intellectual property infringement stays in the back of students' minds, influencing their composing decisions? On the other side, what if students making composing choices in the classroom do not consider the possibility of copyright infringement? In both situations, the topic of copyright law needs to be discussed and highlighted in the classroom to prepare students for when they encounter issues related to copyright and intellectual property.

For the past thirty years, copyright law and the concept of intellectual property has increased significantly. Copyright is now longer and stronger than ever before (Aufderheide 16). For example, copyright protection now lasts for the life of the author plus seventy additional years (U.S. Copyright Office). It was originally twenty-one years. Many forces, of course, have contributed to this expansion. One of the primary forces remains the market economy, driven by entrepreneurs who are continually seeking new ways to monetize anything. As a result, intellectual property, the concept that creators can own and control the products of their intellect, has grown to dominate nearly every stream of creation. Some of the changes to copyright law were made in response to real and substantial changes in the communication

media landscape brought on by the Internet. Currently, however, a system that dates back to the printing press is being applied to a completely new situation, where information and creative works are neither created nor distributed in the same way.

Students in today's composition classroom face challenges previously unheard of for students before the digital age. As Troy Hicks observes, "Thus, when we ask students to be writers in this age, we are inherently asking them to be digital writers" (11). The world of digital writing and Web 2.0 is ripe with opportunities for writers, yet it is also a place where two worlds collide: the new way of producing creative works and the old way of protecting them. "Social media," Tharon Howard writes, "and other vast digital networks have complicated the intellectual property landscape in contemporary classrooms; writers must often have to differentiate plagiarism and copyright" (109). To begin, an examination of how the creation and distribution of new works has changed will be helpful.

Digital writing and Web 2.0 have transformed the way information is created and shared through social network sites, blogs, and more. Through these sites, information and new creative works move between individual users at an unprecedented pace, revolutionizing the way users interact with each other. These new methods of sharing and contributing go beyond textual information and include pictures, videos, and mixtures of all three. Nearly all of today's students in the composition classroom use these new communication tools outside of the classroom, and their use within the classroom is steadily increasing. Although more students are participating in new forms of digital writing, they often lack the rhetorical knowledge needed to effectively employ these tools. Discussions in the composition classroom can aid students in understanding the rhetorical implications and possibilities of their digital works.

Due to the new and growing nature of digital writing and social media, these terms are continually being redefined and updated. For this reason, it is important to define some terms and establish some context. Web 2.0 has numerous definitions that completely depend on the source. For its use in this thesis, Web 2.0 broadly refers to the collaborative and social features of the Internet that started to develop at the beginning of the new millennium. Social media, which will be defined as any website or mobile app where users share and interact with each other, is contained under the umbrella of Web 2.0. A social network site, which is an aspect of social media, is defined by danah boyd and Nicole Ellison as any site that allows users to “(1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system.” The most popular of these sites are Facebook, YouTube and LinkedIn.

Micro-blogging represents another important piece of Web 2.0, and it has become an equally influential and powerful medium for sharing information. Twitter is the most popular of the micro-blogging sites. Additionally, many other popular sites offer similar services as Facebook and Twitter yet are more specifically focused. Spotify, for example, is a music-sharing site that contains many of the same features described in boyd and Ellison’s definition of social network sites. Likewise, Instagram and Pinterest function in a similar manner with photos rather than music or text. In this thesis, Web 2.0 is used to refer to all the aspects of social media discussed above. All of these sites and services contain dimensions of creation, distribution, and social interaction. As students continue to use these digital tools outside of the classroom, they are performing and practicing many of the skills required of them in the

composition classroom: creating, sharing, critiquing, and collaborating. As a result, these digital tools are often discussed and/or used in the classroom to a greater degree than before.

As previously mentioned, the digital age and Web 2.0 allow for information and creative works to be shared in new ways. One of the significant changes with information distribution is described as scalability (boyd 47). The Internet allows for information to be increased to a larger scale than ever before. "Technology," boyd writes, "enables broader distribution, either by enhancing who can access the real-time event or widening access to reproductions of the moment" (47). This has been true of all communication media. The Internet, however, does both. It simultaneously allows for both an increase in access to real-time events and the availability of reproductions of the event.

Clay Shirky, in "How Social Media Can Make History," makes a similar point concerning the digital age. All previous communication media in history, Shirky explains, fall into two patterns of information distribution. First, the "one-to-one" pattern offered by technologies like the telephone, allows for one individual to speak with another, one at a time. The second pattern is described by Shirky as the "one-to-many." Television, radio, and even books are examples of this pattern. In this method, one message is distributed to many individuals. The message, however, is not customizable to certain groups. Everybody receives the same message. The Internet, according to Shirky, does both. It allows for an unprecedented "many-to-many" pattern where many, customizable message can be distributed to many different groups. In *The Shallows*, Nicholas Carr describes this transformative nature of the Internet as bidirectional. "The Net," Carr observes, "differs from most of the mass media it replaces in an obvious and very important way: it's bidirectional" (85). These features and characteristics

provide a communication medium that remains strikingly different than previous media. One of the reasons why the system of copyright protection is outdated is that its foundations are built on the creation and distribution system of “one-to-one” rather than “many-to-many.” The system, at its origins, does not recognize any of the features of this new digital media landscape.

Permanence is another significant shift in information distribution afforded by the Internet. As opposed to the ephemeral nature of phone conversations and radio broadcasts, the Internet records everything. Every post on Facebook and tweet on Twitter is recorded in multiple places. The removal of that information, in fact, has proven to be very difficult, if not impossible. The permanence of the Internet, described by boyd as persistence, is an influential change in communication media. “While recording devices allow people to record specific acts in public, the default is typically that unmediated acts are ephemeral,” writes boyd (47). This change brings many results, both positive and negative. With issues of copyright, the Internet does not allow for any possible infringement to be forgotten, and this complicates the legal implications of creating and sharing in a digital space.

Furthermore, the Internet and Web 2.0 are in the process of achieving another new milestone: the transformation of all media before them. Shirky correctly notes that “as all media gets digitized, the Internet also becomes the mode of carriage for all other media.” As phone conversations, movies, newspapers, and books are digitally converted, they migrate to a single space. One of the results of one medium holding all other media is searchability. Not only does the Internet allow for information to be replicated and scaled on new levels, the migration of all major communication media, combined with the permanence of the Internet, allows for

greater access to information. The Internet, more than previous media, fulfills the words of Marshall McLuhan: “A new medium is never an addition to an old one, nor does it leave the old one in peace” (Carr 89). One important factor that allows for increased searchability is technology that “leaves traces” (boyd 48). Despite the clearly positive affordances of searching the Internet, a mediated method that “leaves traces” can increase already complicated legal issues. The world of digital writing and Web 2.0 produces a “new dimension of creativity” (O’Brien), but these new affordances continually collide with an outdated system of intellectual property protection. Although a review of the history of intellectual property and copyright law is outside the scope of this thesis, a few key points need to be mentioned.

The origins and developments of copyright law and intellectual property are defined and driven by technology. Without the many technological developments in writing and printing technology, from ink and papyrus to movable type and personal printers, there would be no need for copyright law. This is evident in the fact that no form of copyright law formally existed before the invention of the printing press, although the concept of creators maintaining control of their original works dates back to ancient Rome (Bielefield 3). This right, however, only extended to the original manuscript.

Copyright law is now placed under the umbrella of intellectual property with trademarks and patents. It is the concept of copyrights, however, that sparked the ideology that eventually produced the modern day concept of intellectual property. **(For a mini-lesson on copyright basics, see Lesson 1 in Appendix A.)** Before Gutenberg developed movable type in the fifteenth century, reproducing work was labor intensive and expensive. It involved hours and hours of focused labor by skilled scribes to copy a single work. Additionally, the expensive cost of copies

and low literacy rates due to limited access to educational materials caused little concern to original creators about the rights to the copies of their work. Consequently, the undeveloped concept of ownership for intellectual property that extends back to ancient Rome remained untouched and undeveloped for more than a millennium.

The primary reason that copyright law first developed was for the benefit of book publishers, not authors. At first, the only printers who had the rights to copy any work were approved and regulated by the government. The first such group was the Stationers' Company, chartered by Queen Mary in 1556 and a direct result of the first letters patent in 1518 (Bielefield 3). The Stationers' bylaws permitted only members of the company to produce printed works in England. "This system," Bielefield notes, "gave the Crown absolute control over publishing" (6). At first, there was no freedom of the press.

Members of the company, in accordance with its laws, would register each individual work with the company and thereby gain complete control over the production of the work. This process, and the records of the company, clearly indicates that the manuscript belonged to the individual stationer, not the creator of the work (Patterson 22). The fact that copyright originated as a publisher's right is hardly surprising. The remarkable transition, according to Patterson and Lindberg, is that it "somehow came to be generally known as an author's right" (20).

Since the remarkable transition to an author's right, copyright law has grown to be "long and strong" (Aufderheide 16). In response to the transformative changes brought by the Internet and Web 2.0, changes have been made to copyright law in recent years. The problem, however, is that these updates are often driven by copyright owners, not creators. The

entertainment industry has exerted tremendous influence in the creation of greater copyright protection, including the Digital Millennium Copyright Act of 1998. As a result of increased copyright protection and length, fewer works are entering the public domain. For creators and writers wanting to incorporate or build on the work of others, the public domain is the best-case scenario, where copyright protection is expired and the public is free to use the work as they wish. This, of course, does not mean that attribution should be disregarded, but it does free the user from any legal concerns. Furthermore, the influence of increased copyright protection in recent years, driven by the market economy, has produced a culture where at least one individual or institution owns nearly every creative product. Ownership is now the default for creative products. In the same way, the consequences for infringement are becoming harsher than ever before. **(For an assignment on the current state of intellectual property in the digital world, see Assignment 1 in Appendix B.)**

This is the world that composition students must navigate, and, more importantly, this is the world they will influence and guide after leaving the classroom. Even if English Studies professionals agree on the importance of addressing the issues of copyright, fair use, and intellectual property in the classroom, what is the best way to highlight these issues for students? The following chapters offer examples of how to address the complicated issues of copyright, fair use, and intellectual property in the composition classroom.

Within any English Studies course, time remains one of the biggest constraints. It is not uncommon for current curriculums or plans to already extend beyond the limits of the course. As a result, many instructors might refrain from highlighting the topics of copyright law and intellectual property in the classroom. The topic of copyright, however, can naturally be linked

to many other important topics in the composition classroom. “Talking about copyright with students,” explains Lisa Dush, “is likely to yield discussions that touch on many issues of relevance to English studies, including authors’ rights, the social nature of composition, the connection between art and profit, and the role of distributors and publishers in the creative process” (127). In addition to these topics, a discussion on copyright could easily be linked to a topic that is relevant in the composition classroom: the nature of creativity.

Chapter 2: Creativity

Creating begins with copying. “We,” as Kirby Ferguson notes, “are all building with the same materials.” Before any dancer begins to create and choreograph new movements, she or he learns to dance by copying the movements of other dancers. Likewise, all writers are readers first, and even when they begin to write, the process often starts with copying, to a degree, the work of others. Hunter S. Thompson, as an extreme example, retyped *The Great Gatsby* just to get the feel of writing a great novel (Ferguson). Although most writers, of course, do not copy in the way of Thompson, the ideas, style, and content of other works are essential to the creative process. Style, in particular, is a key piece of writing that is often informed by other writers. The stylistic connections between writers can be more difficult to establish than ideas or specific content, but since all writers first begin as readers, effective diction, syntax, punctuation, and sentence length are often observed by readers and incorporated into their own work. As Patrick Colm Hogan notes in *Joyce, Milton, and the Theory of Influence*, “Certainly writers are influenced by other writers individually and by schools. Prima facie, this may appear difficult to explain. However, once we understand aesthetic production and reception as principled activities, as matters of internalized schemas, etc., the nature of group influence becomes perfectly clear, and, indeed, expected” (35). This connection can be influential for all writers, from novelists and poets to technical writers.

In composition courses, students are learning the writing process, practicing collaboration, and developing their own writing styles. For some students, the composition classroom is the time they will establish writing habits and practices that they will use for the rest of their lives. As a result, the collaborative nature of creativity and writing is a key issue to

highlight for composition students. Also, as the previous chapter reveals, the process of collaboration in the twenty-first century is drastically different than previous times, and, not only is the process different, it is a key piece of many of the digital technologies used by today's students.

This process of learning through copying and collaborating also remains essential for musicians. Most musicians, like writers, begin by listening to music, then repeating what they hear or read on their instruments. Few musicians begin to play by writing their own music. Within the music world, thousands and thousands of examples exist that reveal the ways musicians copy each other by repeating similar or exact melodies, rhythms, and chord sequences. Although this copying is occasionally in the form of theft rather than reproduction, the careers of many musicians such as Bob Dylan and Ray Charles highlight the need for many artists to begin by copying, before going to make more original works. Dylans's early career, for example, involved copying the melodies and rhythms of other musicians to the extent that if modern musicians attempted to follow a similar creative path today, they would likely encounter enough lawsuits to halt their path completely (Hyde 204). Unlike Thompson's copying, Dylan's work was released to audiences and, although the work could be considered practice in the context of the music produced later in his career, it is different from Thompson's efforts in that it was published. This is a key difference worthy of discussion time in the composition classroom. As more writing is produced in a digital space, the work is often public and the writing is, in a sense, published. Since copying and collaborating remains a key component in the writing process for composition students, the degree to which copyright law conflicts with this process is essential for today's students to understand.

Also, although differences do exist between music compositions and written compositions, artists in each genre follow a similar creative process, and the ways in which musicians borrow the styles of other musicians remains comparable to how writers borrow and emulate the styles and methods of other writers. The examples from Dylan and Thompson illustrate two important points for composition students. First, it shows that nearly all artists, especially early in their careers, borrow from other artists. This highlights again the collaborative nature of creativity for students. Second, it illustrates the difference between publishing work to the public or and composing in a private space, which is, again, an important distinction for students to understand in the digital world. Furthermore, discussions on these topics can easily be connected to the important topic of plagiarism—another critical issue for composition students to comprehend. Plagiarism will be reviewed in greater detail in Chapter 4.

As previously mentioned, if a modern musician attempted to follow a similar creative path as Dylan, he or she would encounter numerous legal obstacles. The reason for such a chilling effect is largely due to recent updates to copyright law such as the Digital Millennium Copyright Act of 1998 that makes such copying difficult to get away with on the Internet. Notwithstanding recent strengthening of copyright, the law, even at its origins, fails to recognize the derivative nature of creativity (Ferguson). Ideas and the creative expressions they inspire are not easily divided into separate categories that can be assigned to specific individuals. Many of the Founding fathers and framers of the United States Constitution recognized this and not only worked this philosophy into the Constitution itself but also displayed this in their own creative endeavors.

For example, when Benjamin Franklin was offered a patent for his woodstove, he declined. Franklin declined the patent, primarily, because he recognized the extent to which any invention, in this case, the Pennsylvania fireplace, was a collaborative effort. To invent a wood burning stove that was placed in the middle of the room and radiated heat around rather than up a chimney, Franklin borrowed ideas and concepts from many different inventors and scientists (Hyde 120). Franklin was not stealing; he was simply following the process of any creator or inventor. He examined the ideas of others, took what was useful, and created something new. This is not a new process, but it is worthy to note that, due to the collaborative nature of the invention, Franklin didn't consider it his own. Franklin himself said it best: "That as we enjoy great Advantages from the Inventions of Others, we should be glad of an Opportunity to serve others by any Invention of ours, and this we should do freely and generously" (Hyde 120).

Franklin's historical example can help illustrate two more key points for composition students. First, it reveals the highly collaborative nature of creations and inventions, especially for incidents from history that, without proper context, appear isolated and independent. Second, Franklin's perspective on his inventions, as a result of his highly collaborative process, represents a refreshing alternative to the dominant modern discourse on intellectual property. In the process of educating students on current issues of copyright and intellectual property, alternative views, especially from well-known and credible sources, can help counter the ownership-dominant modern concept of creations and inventions. For students who are brought up in a culture dominated by this ownership ideology, alternative views are essential to developing mature and well-rounded approaches to intellectual property.

Although examples from history are helpful, they are not necessary to highlight the derivative nature of creativity and collaboration in a classroom discussion. The previously mentioned musical examples can be an effective and engaging method for revealing the creative process for both musicians and writers. Additionally, composition students often engage in a creative and collaborative process in the classroom through peer review. This common practice in the composition classroom can help highlight the collaborative nature of writing and can easily be linked to discussions on copyright and intellectual property. This also remains in line with the WPA outcome for students understanding the “collaborative and social aspects of writing processes.” As these topics are addressed in the classroom, instructors have the opportunity to engage students on complex issues related to intellectual property.

Chapter 3: Remix

Although the nature of creativity and its conflict with copyright law could easily be addressed in the composition classroom, the concept of remix should be discussed, in some degree, in any course that teaches the art of composition. A remix is simply a combination of content or ideas from different sources into a new creation. The concept of remix, however, is nothing new, and it is closely linked to the previous example of creativity beginning with copying. After copying, remixing is the next step in the creative process, and it remains at the heart of composition.

Remix remains so closely connected to the writing process that Brian Ballentine proposes, “The essence of writing is remix” and that “remixing is how we evaluate, criticize, reexpress, or simply put our own spin on the texts we read, the films we see, or the music we hear” (70). Many have argued that all we know and produce is a remix, including Kirby Ferguson in his web video series “Everything is a Remix.” Likewise, Harvard law professor and cultural commons proponent Lawrence Lessig notes that “all we know of culture and knowledge is a remix of information” (7). The increased protection of creative works provided to copyright owners through the recent strengthening of copyright law often conflicts with the remixing of content, to the extent that Ballentine writes, “The freedom to remix, that is, whether or not writing will be allowed, is now in question” (70).

Before considering how the new digital media landscape encourages remix, a look at more traditional means of producing content reveals that this process is nothing new. T. S. Eliot’s famous maxim, for example, declares, “Immature poets imitate; mature poets steal; bad poets deface what they take, and good poets make it into something better, or at least

something different” (Eliot 153). This is remix, and it is a process that writers have been doing since the invention of the alphabet. Remixing content, furthermore, is an exercise in balance. As another WPA learning objective reveals, students should learn “to balance the advantages of relying on others with the responsibility of doing their part.” The nature of academic work, for example, and its emphasis on context and literature reviews, which composition students are called on to learn, highlights the importance of taking the ideas and words of others and creating new works. Research, at its heart, is as much a remix as it is a conversation, for without using the ideas and words of others, any such work would become isolated and irrelevant. Whether instructors call this process remix or not, it remains an essential part of the writing process and the composition classroom.

Although the concept of remix is nothing new, the proliferation of digital media has increased the remixing of content in new and unprecedented ways, both inside and outside the classroom. In “Mashups, Remixes and Copyright Law,” Damien O’Brien and Brian Fitzgerald note that “We now inhabit a ‘remix culture,’ a culture which is dominated by amateur creators—creators who are no longer willing to be merely passive receptors of content.” The driving force behind this remix culture, O’Brien and Fitzgerald explain, is “the rise of new digital technologies, along with the Internet, which has made it even easier to re-use and remix the existing store of knowledge and culture, producing a new dimension of creativity.”

Outside the classroom, remixes are often seen in the form of mashups. Mashups are a form of remix that usually focuses on images or video, although the term originated from the practice of mixing two songs together (O’Brien). Recently, Internet mashups known as memes have increased in popularity. Memes usually combine a picture with a small amount of text to

form a new message. Popular memes have included everything from a sarcastically smiling Willy Wonka to pictures of cats with captions, known as “Lolcats.” These memes are primarily distributed through social network sites, where users share, like, comment, retweet, favorite, and, invariably, spread the new creation at an unprecedented speed. A retweet, furthermore, is a prime example of a remix that many current students participate in on a daily basis. The popularity of memes represents more than Internet user’s propensity to distribute trivial and humorous creations. Many memes are persuasive in nature and contain deeply political, social, and religious messages, and they are a form of composition that many students participate in through Web 2.0.

Inside the classroom, students are often asked to remix content in new ways. Multimodal compositions that involve students using text, images, video, and music to make something new are a common form of content remix in the classroom. Due to the use of many different media, such assignments have the possibility of including a copyrighted work, whether it is a song to play in the background of a slideshow or an image meant to build a theme developed in a photo essay. Multimodal assignments create a unique opportunity to discuss copyright, intellectual property, and the public domain in the classroom. Rather than simply directing students to free, public resources such as iStockphoto or something with a Creative Commons license, instructors can use multimodal assignments as an opportunity to review these important issues with students. Brian Ballentine offers a helpful summary: “The technology of writing/remix has indeed changed; a writing instructor’s mission to teach critical reflection along with writing/remix has not. The job is just more challenging” (80).

Despite the inherent challenges in navigating such complex topics, copyright and remix can be linked to other commonly discussed issues in composition courses. Ballentine also explains that “the composition classroom, where digital remix must now be taught, can become a space for ‘keeping ethics, rhetoric, and writing together as an intertwined set’” (81). Any classroom discussion on remix can easily be linked to the important topic of plagiarism.

Chapter 4: Plagiarism

Plagiarism and attribution are often discussed in the composition classroom, as they should be. Discussions on the concept of plagiarism, however, often miss the opportunity to examine copyright law and the larger concept of intellectual property. The most common form of plagiarism discussed in the composition classroom usually involves the absence of proper citations. Yet plagiarism is not an easily defined term, nor is it as black and white as most plagiarism policies suggest. For if everything is truly a remix, and all ideas are shared and built upon, then what is plagiarism? Some might suggest that it simply means to steal, but, as the next section on fair use will show, sometimes what's considered "stealing" is not theft at all.

Rebecca Moore Howard suggests that a definition of plagiarism involve categories, such as "cheating, non-attribution, and patchwriting" (788). Although the enforcement, in reality, of plagiarism policies in most academic institutions recognizes such categories, inviting discussions, especially linked to the concept of remix, into the classroom can help students understand the often complicated nature of creativity and composition. Granted, the nature of discussions or lectures on this topic should be placed in the appropriate order to help minimize confusion and misunderstanding for students. For one, it is important for students to fully understand the cheating aspect of plagiarism, and that certain actions are undeniably wrong and worthy of punishment. Once this foundation is firmly established, more in-depth conversations on plagiarism could prove helpful for many reasons.

For one, students are about to enter a workplace, or are already involved, that is full of plagiarism to various degrees. Again, that does not mean everyone is constantly cheating, but plagiarism, as Brian Martin notes, "is frequently the product of hierarchical relationships." For

example, “When an academic borrows another teacher’s materials to produce a class lecture with citations, that’s scholarship. When a supervisor takes credit for an underling’s work, that’s business” (Wiebe 34). Also, the nature of speechwriting could easily be considered a form of plagiarism, as the words of another are presented as the words of the speaker. The same is true for formal letters from executives, both inside and outside of higher education, where the “author” of the letter rarely participates in the composition process. Martin labels this kind of authorship as “honorary authorship.” Russel Wiebe, examining Martin’s thoughts, concludes that “the practice of presenting someone else’s text as one’s own is widespread and unremarkable in a variety of corporate and academic contexts” (34). This can be, as the previous section illustrates, a form of remix. It can also be, depending on the difference between the texts, closer to plagiarism than remix. The often-subtle difference between the two types highlights the need for engaging with students through discussions and examples on the complex nature of plagiarism and remix.

To cultivate classroom discussion on this topic, many recent events could serve as good examples. For one, Malcolm Gladwell’s experience with plagiarism, and his subsequent reflections in “Something Borrowed,” highlights the often complex and convoluted process of composition. In the piece, Gladwell recounts the experience of having his own work plagiarized by a British playwright. His initial reactions of anger and frustration eventually yield to the realization that neither his work nor his reputation was damaged by the “borrowings.” Additionally, the play that contains Gladwell’s words is transformative, and, in Gladwell’s view, a completely different work of art. He concludes, “The ethics of plagiarism have turned into the

narcissism of small differences: because journalism cannot own up to its heavily derivative nature, it must enforce originality on the level of the sentence” (241).

Since Gladwell does not offer answers to all the questions discussed in the piece, “Something Borrowed” could serve as an ideal piece for use in the composition classroom to review the small and subtle differences between plagiarism, remix, and allusions. In some cases, plagiarism is simply an idea or a sentence that is not remixed enough. Gladwell even acknowledges this subtle difference in the article: “A savvier writer would have changed all those references...and rewritten the quotes from me, so that their origin was no longer recognizable” (227). If the playwright had assumed this approach, the alleged plagiarism would have taken the form of a remix, or perhaps an allusion to Gladwell’s work. These delicate differences can be confusing and frustrating for composition students as they are called on to compose works that include the works of others while faced with the threatening possibility of plagiarism. Since remixing remains a key piece of the writing process taught in the composition classroom, the complexities and intricacies of plagiarism and attribution need to be highlighted and explored for students.

Lastly, Jonathan Lethem, in his essay “The Ecstasy of Influence,” applies the concept that everything is a remix to plagiarism. He writes,

The kernel, the soul—let us go further and say the substance, the bulk, the actual and valuable material for all human utterances—is plagiarism. For substantially all ideas are secondhand, consciously and unconsciously drawn from a million outside sources, and daily used by the garner with a pride and satisfaction born of the superstition that he originated them; whereas there is

not a rag of originality about them anywhere except the little discoloration they get from his mental and moral caliber and his temperament, and which is revealed in characteristics of phrasing. (68)

It is often the “characteristics of phrasing” that some creators can view as proof of ownership. Again, this is not to say that the legal provision to own copyrights is bad, but the derivative, shared methods for creating and writing are often omitted from discussions on plagiarism and attribution. As Lessig notes, “In ordinary language, to call a copyright a ‘property’ right is a bit misleading, for the property of copyright is an odd kind of property.” For example, a chair is a physical object that can be considered a traditional form of property. Yet the concept of intellectual property, by its very nature, is different than traditional property. What if, for instance, an individual who does not own the chair takes a picture of the chair? Does that individual now own all the rights to any copies, and any possible profits, of the picture? What if, to complicate the situation more, the owner of the chair is also its creator, for rather than buying the chair from someone else, he/she designed and built it? It is clear enough that the owner of the chair should yield any possible profits from the selling of the chair or replications, since he/she is both the designer and builder. Yet what benefits, if any, should the creator receive from copies of the photograph? Is it enough to credit the creator, or should he/she be compensated? On the other hand, the creator could benefit from allowing the photographs to be freely distributed, as it could result in increased sales of the chair.

These are the same questions Gladwell examines in “Something Borrowed.” Although he appears to be content with a simple acknowledgement, the fact that the play, which contains his sentences, was on Broadway and nominated for a Tony is an important factor to

consider. In other words, the playwright financially benefited from a product that contains work from Gladwell. Yet Gladwell did not lose anything. In fact, he acknowledges the enjoyment he eventually received from being included in a new, successful piece of art. For the truth is, intellectual property has never functioned in the same way as traditional property. Thomas Jefferson recognized this when he said, “He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me” (Lessig 84). In this case, anybody who offers ideas and works for the public good without seeking compensation or even recognition helps to fulfill the original purpose of copyright law, which will be further developed in Chapter 7.

This, of course, does not mean that seeking compensation or owning copyrights is wrong; it simply depends on the situation, and in the previously discussed examples—real and fictional—the owners not only did not lose anything in the alleged infringement; they benefited. The other reaction to infringement can often border on the outrageous, such as an individual wanting compensation for passing along a flame, as Jefferson reveals in his example. Although this example is an extreme one, the current ownership-dominant ideology of intellectual property does occasionally lead to ridiculous and outrageous claims. Yet if today’s students lack mature understandings of plagiarism and attribution, copyright owners, now and in the future, will continue to wield outrageous control over their intellectual creations.

By highlighting these issues for students, it can help them understand the substantial differences between intellectual property and physical property. Also, when students are encouraged to explore the differences and complexities of copyright, remix, and plagiarism, it can increase the likelihood that students will respect the work of others through attributions

and quotations. For if intellectual property is considered similar to physical property, students will inevitably lack the type of mature understanding that is likely to yield respect and careful attention to the ways that the ideas and works of others are treated. Students know that stealing a chair from someone is wrong; yet they will use the words and ideas of others without attribution. Granted, they sometimes understand that this is also a form of theft, which further highlights the need to explore this topic in the classroom. Ultimately though, they recognize the difference between the two kinds of property on a basic level and to not discuss and explore the differences can leave students with an incomplete understanding of intellectual property.

Furthermore, the quotation above from Jefferson on the free and open nature of ideas serves to illustrate the concept developed by Lethem in the quote above. It illustrates it not only through its content, but also by its origins. I first came across this quote in Hyde's *Common as Air*, which quotes often from the Founding Fathers. Then, the previously discussed piece from Gladwell quotes a lengthy passage from Lessig's *Free Culture*, another influential source for this thesis. I had read both *Common as Air* and *Free Culture* before "Something Borrowed." So the question of where I found this quote, and its proper attribution, is not easily answered.

Additionally, I read the Gladwell piece based on a friend's suggestion, yet the primary source for this section on plagiarism, Wiebe's article "Plagiarism and Promiscuity, Authors and Plagiarisms," reviews Gladwell's essay in detail and quotes heavily from it, including quotes I had already intended to include in this section since I read "Something Borrowed" before Wiebe's article. I am tempted to say that perhaps it is the topic of my readings that leads to such frequent and shared borrowings, but I think anyone who has ever conducted extensive research on nearly any given topic eventually encounters the inevitable intertextuality between

sources. In-depth research on most topics is likely to yield connections and similarities in the sources. As a researcher, I found that the secondhand sources did not provide enough depth to reach solid conclusions on plagiarism, so my continued search for more resources revealed the intricate web of connections between the sources. In other words, my research itself perfectly highlights the concepts of remix, attribution, and allusion, and I am certainly not alone in this discovery.

For students who lack an understanding of the complexities and the shared nature of writing and research, discoveries like this could prove more discouraging than illuminating, for they might consider their own work and ideas unoriginal and uninspiring. For example, students who find multiple sources that already contain the ideas and words they wish to express about a topic could see their own work as an unnecessary repetition rather than a contribution to an ongoing conversation and an important step in learning the process of academic writing. Since students are introduced to academic writing and research in the composition classroom, this remains an ideal place to discuss the complexities of plagiarism, attribution, and intellectual property. Also, as students continue to remix content inside and outside the classroom, they will experience more of the complexities of plagiarism and attribution. As students continue to experience the complexities of copyright and plagiarism, it is imperative that they have a solid understanding of the essential doctrine of fair use.

Chapter 5: Fair Use

Few concepts are more important for current and future writers to understand than fair use. Although all writing students use fair use, they can rarely articulate it or have enough of an understanding of it to fully benefit from the protection it offers. According to research from Martine Courant Rife, “There is substantial confusion about the difference between concepts of plagiarism and the fair use doctrine” (12). As this chapter will show, confusion or uncertainty on fair use can severely limit students’ abilities to write, research, and remix.

Fair use, in fact, is what allows students to quote, borrow, and copy from other sources in the first place. Attribution provides an ethical protection from plagiarism, while fair use provides legal protection from infringement. These are two different forms of protection from different consequences. Fair use is a doctrine built into copyright law that allows for copyrighted works to be used without the permission of the owner of the copyright. It can be used for “purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use, scholarship, or research” (U. S. Copyright Office). The fair use doctrine has strong constitutional roots, for without it, copyright law would continually conflict with the freedom of speech guaranteed in the First Amendment.

Despite the importance of fair use, it is not surprising that as copyright law and the concept of intellectual property has increased in recent years that fair use has suffered. In many ways, fair use has declined in the digital age. This decrease is the result of less knowledge and certainty on fair use among students, scholars, and artists and fewer instances where the benefits of fair use are claimed and defended. Although fair use has declined, Patricia Aufderdeide and Peter Jaszi explain in *Reclaiming Fair Use* that recent efforts on the part of

educators, scholars, journalists, writers, and more have helped contribute to a resurgence of fair use in recent years, including the first World's Fair Use Day in January 2010 in Washington, D.C. (70).

To determine what constitutes fair use, a four-factor system is used that was originally outlined in a landmark case, *Folsom v. Marsh*, in 1841. The response of Judge Story during the case later became codified in the Copyright Act of 1976 (Lee 34).

The four factors are:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work. (Lee 34-35)

The fair use factors are slightly vague and undefined at best. In many ways, the ambiguity behind the guidelines of fair use application is helpful. The first factor, the purpose and character of the use, is what allows copyrighted material to be used in educational settings. Without this, students and educators would be severely limited in the material used in the classroom. The unclear definition of the guidelines, in this case, allows for coverage of a wide range of uses. Precise definitions produce boundaries, and with a doctrine as important and influential as fair use, boundaries are not good.

Although the ambiguity of fair use is ultimately a good feature, it does produce some difficulties. Since fair use is flexible and applicable to a wide range of uses, it is decided on a case-by-case basis using the four factors. Fortunately for writers and educators, fair use functions as a defense, in that it only needs to be explained if the user is accused of infringement. In other words, fair use allows for the use of copyrighted works *without* permission, so if a user feels confident that a particular use is fair, then he/she is free to use the copyrighted work immediately.

For uses that are not clear, the best method is to apply the four factors to determine if the use is fair. It is equally important for both educators and students from all disciplines to be familiar with and confident in this process. Today, many students are instructed on how not to plagiarize and how to properly cite sources, yet they are not taught to apply the fair use doctrine to their work. For a use to be fair, it does not have to be attributed to the owner of the copyright. It is, of course, a good idea since it is a common requirement for academic work and it does help in fair use application if a problem arises. Previous court decisions have considered whether a use was made in “good faith” (Aufderheide 25), which means that the user made an attempt to think about if a use was fair or not, usually in the form of an attribution.

Due to the challenges and complexities of fair use application, discussions on fair use are often avoided in the composition classroom. Some might even view it as a hindrance and not a topic worthy of devoting any time. This is evident in the suggestions from some scholars for a change in fair use provisions to provide greater protection for students “composing for the web in educational settings” from liability (Rife 15). Although a move in this direction could help demystify copyright confusion for students and allow for more creative freedom, it could

ultimately hinder students' abilities to navigate complex copyright issues after school. If students are to be fully prepared to use the skills learned in college outside the classroom, then it is important to equip them with the knowledge they will inevitably need when producing creative works. Building a bigger bubble of protection would likely produce the opposite effect, where students learn even less about copyright and fair use while in school. Such protection could possibly aid students in building ideologies and approaches to copyright and fair use that are false and compromising. It could produce a crippling effect.

On the other hand, bringing fair use application into the culture of the classroom will help prepare students for the challenges they will face outside of the classroom and in their future academic work. One way to discuss it with students is to create an assignment that involves either hypothetical or actual court cases that involve fair use. In the assignment, students must review the alleged infringement and apply the four factors to determine if the use is fair. If a full semester does not allow for an additional assignment, then this could be applied on a smaller scale for a pre-existing assignment. In this case, the student would select a number of his or her sources for an assignment and attach a brief rationale that explains why the use of each source is considered fair. As in the previous example, the student would apply the four factors in order to arrive at the conclusion. The four-factor test requires the student to consider how her/his particular use of the work in the assignment is fair. Although this could be done for any assignment that involves research, such as a traditional research paper, it could prove more challenging, and thus more effective, for a multimodal assignment where students are more likely to use copyrighted works in different ways than traditional sources. **(For an example of this assignment, see Assignment 2 in Appendix B.)**

Rife also suggests teaching students that fair use can function as a tool rather than a rule. “When a law is a tool,” she writes, “the actor has maximum agency. But when the law is perceived as a rule, it is seen as immovable and certain, and therein the actor has less agency” (4). By making students “aware of the nuances and complexities of the fair use doctrine” they will gain “more agency in their composing practices” (4). One of the primary ways students can gain more agency in composing choices is that fair use is empowering. Fair use focuses on the rights and privileges offered to users of copyrighted material, while discussions on plagiarism often focus on what is not allowed. For students, a solid understanding of the complexities of fair use empowers them to make composition choices with confidence and certainty.

The necessity of teaching students to apply fair use in their composing choices is also revealed in the suggestions of Janice Walker in “Copy-Rights and Copy-Wrong: Intellectual Property in the Classroom Revisited.” In the article, Walker includes guidelines for navigating copyright issues in the composition classroom that she presents to students. Although much of the material is helpful, it, surprisingly, neglects to discuss fair use on a topic—permissions—where fair use is essential. To her credit, Walker does mention fair use later in the article, but its application is not apparent in any of the instructions for students. The final section of the outline, in fact, instructs students to ask for permission if they have any doubt about permission. Walker also provides students with articles on how to request permission for copyrighted material and sample copyright permission letters. Fair use is completely missing from the equation. Since fair use is about the use of copyrighted works without permission, it is an essential piece of the equation of using copyrighted works. If a particular use is considered fair under the four factors, then there is no need to ask for permission. Requesting permission

of copyrighted material without first considering fair use undermines and limits the power and influence of fair use and strengthens the protection of copyrighted works.

Before students are taught to ask for permission, they must be instructed to apply fair use. If not, then fair use is at risk of declining and perhaps disappearing altogether. Fair use, like most rights, must be constantly exercised for the sake of its preservation. Also, even if students ask for permission out of uncertainty, and permission is denied, “fair use is not negated under U.S. copyright law” (Galín 12). When students and educators allow copyright owners to determine the permissions and boundaries of fair use, the balance of rights between owners and creators shifts significantly in the direction of owners.

Walker also says that if students are unable to acquire permissions, she instructs them to include a note in the citations that says either “stolen from” or “used without permission” (215). “Once again,” she writes, “I am teaching students to steal” (215). If the use of a copyrighted work is fair, then the use is not theft. If students are not taught this, then they are likely to remain in “the culture of fear and doubt” (Aufderheide 1). The path out of this culture, according to Aufderheide and Jaszi, is to reclaim fair use. Only then, students will begin to view the usage of copyrighted works as a right, grounded in the Constitution, rather than thievery.

As Sohui Lee explains,

To be clear, what is at stake for scholars and the academic community is self-determination: rather than accepting current developments in which copyright holders define fair use standards according to their industry interests and commercial goals, our best practice policy on fair use can carry out the intended

goals of the Constitution to further public interest and knowledge, as well as ensure that the fair use doctrine continues to benefit research and teaching. (32)

For example, literary estates often attempt to exert unconstitutional protection through their copyright ownership. This includes, most notably, the estates of Martin Luther King, Jr., T. S. Eliot, and James Joyce. These estates “so regularly threaten lawsuits for what amounts to fair use citation that publishers typically would rather consent to arbitrary and sometimes outlandish demands rather than risk a lawsuit based on a fair use defense” (Galín 11). The irony of such overprotection of artists who so regularly borrowed from others borders on the outrageous. For example, Martin Luther King Jr.’s “I Have a Dream Speech” has received litigious protection from the King estate. Let’s consider, as a general example, how a scholar or biographer wanting to quote parts of the speech could employ fair use (This is a hypothetical example for illustration purposes and does not contain material from real court cases).

1. **Purpose and Character:** The purpose of the use in this case is academic and educational, which is in line with fair use.
2. **Nature:** The nature of this copyrighted work is a speech delivered in a public setting for political purposes. Inclusion in an article or biography is, to a degree, transformative. A part of the speech reprinted in an article or in the context of a biography is a different context, and therefore, transformative, from when the copyrighted work was originally created. The transformative nature of the use is often a factor in fair use application, which helps this particular use line up with fair use.

- 3. Amount:** Even if the author wanted to quote all of King's speech, fair use might still cover this use. For one, the speech is short in comparison to other political speeches. Second, much of the speech is comprised of quotes from other sources, such as the Declaration of Independence, the Bible, and African-American music and folklore. The King estate should certainly not have any ownership claims to these sources, which reduces the amount of original material even more, and would help keep any use of the speech protected by fair use.
- 4. Market effect:** This is often the most influential factor in court decisions, and the use of King's speech, even in its entirety, should have little to no effect on the market value of the work. For one, the speech was not created or delivered for financial purposes. It is, at the heart, a political speech on a civil rights issue in a public place. Additionally, courts would likely have a difficult time finding situations where reprinting the whole speech in an article or biography would negatively affect the financial gains of the estate due to the public nature of the speech.

As the four factor application shows, including King's "I Have a Dream Speech" in a work should hold up under fair use in court. Fair use application, however, is decided on a case-by-case basis, so the same process would need to be emulated to determine if any other use of a copyrighted work could be considered fair.

Lastly, the most notorious estate executor, as Galin notes, is Stephen James Joyce, the grandson of James Joyce (11). His views on copyright are clear when he claims that copyright is

meant to “protect the author’s rights as well as those who inherited them, which is my case with respect to James Joyce” (Galín 12). This is not to suggest that scholars and writers should willingly seek out lawsuits on fair use defense, but if educators and students do not continually exercise their fair use rights, then we all risk allowing the views of those like Stephen Joyce to dominate the market of intellectual property and thereby threaten the foundations of creativity and scholarship.

Chapter 6: The Original Purpose of Copyright

Another helpful way to engage students in a classroom discussion on copyright law is by examining the primary purpose of the law. To begin, the two parties considered in copyright law can be introduced: creators and users. Before diving into the heart of the law, the important concept of balance can be discussed.

Copyright law, at the heart, is about maintaining proper balance between creators and users. Since copyright law is a matter of who owns the rights to copy a particular work, balance is an important issue. On one extreme, if all the rights to copy, modify, and sell a work belong to the creator, then significant legal issues would arise in many normal situations, including fan fiction and even more subtle connections like literary allusions. In addition, if all the rights were reserved for the creator of a work, important doctrines like fair use would not be possible. Such exclusivity would also greatly impair the creation of a robust public domain, where works are no longer protected by copyright and are available for use and enjoyment by the general public.

(For a mini-lesson on the public domain, see Lesson 2 in Appendix A.)

On the other side, if all the rights to copy and modify belonged to the users of a particular work with no rights reserved for the creator, then many important features would be removed, including innovation, credit or recognition, and, most importantly, the opportunity to make a profit. Without the necessary protection of copyright law, creators would not have the power to profit from their creative efforts. This would, in effect, greatly reduce the production of creative works. Many negative effects would result, including fewer creative works for the public to enjoy and eventually use, to a greater extent, as the works enter the public domain.

Highlighting the issue of balance can help students learn two important lessons related

to copyright law. First, students will be introduced to the two key players in copyright issues: creators and users. This will help prepare them to consider the question of whom copyright is primarily for. Second, by discussing the system of balance between creators and users, students will learn some of the reasons why copyright is a good and necessary system. For any classroom discussion that mentions the increased growth and dominance of copyright law in recent years, it is important for students to understand the many ways that copyright is good.

Then, the question of whom—creators or users—copyright is for can be addressed. Through the discussion, the conclusion should be reached that copyright law, as originally conceived by the framers of U. S. Constitution, is for the public—the users—not creators. One particular subsequent interpretation on this subject is helpful. In 1988, a committee of the House of Representatives concluded:

Under the U.S. Constitution, the primary objective of copyright law is not to reward the author, but rather to secure for the public the benefits derived from the author's labors. By giving authors an incentive to create, the public benefits in two ways: when the original expression is created and...when the limited term...expires and the creation is added to the public domain. (Hyde 54)

Likewise, Kenneth Crews states that "The framers of the U.S. Constitution clearly intended that the law of copyright—including fair use—would be tailored to serve the advancement of knowledge" (3). This conclusion, however, is about more than simply providing students with a historical fact about the Constitution. It is about helping students understand the purpose of copyright law in order to halt the constant growth of copyright protection. One of the ways to prevent the continued expansion of copyright is to raise creators, thinkers, writers, and scholars

who understand why copyright exists and will ask the tough questions described by Tharon Howard in the introduction to this thesis.

To move in this direction, a reminder on the purpose of copyright law can help educators “unbalance the natural rights metaphor” in the minds of students (Howard 110). The natural rights metaphor is, simply, that authors and creators have a natural right to own the copyrights for their creations. Copyright ownership, however, is not a natural right. It is not among the “certain unalienable Rights” listed in the Declaration of Independence. It is a legal right.

“Writers,” Howard says, “need a much richer and more complete understanding of copyright laws than the ‘natural right’ metaphor provides (109). In addition to examining the U.S. Constitution and subsequent court decisions on the purpose of copyright law, the history of copyright law and the concept of intellectual property can also help remove the natural rights metaphor from students’ minds.

As Howard also explains,

To get any traction with modern U.S. copyright and intellectual property law and the problems with the natural rights metaphor, it’s best to begin with an examination of the origins of copyright law in the 16th century and the publishing revolution created by the introduction of the printing press. (110)

Since time is always a constraint in the classroom, such a review is not always possible. If possible, even a brief review can help students understand that copyright ownership is not a natural right, nor was that the original intention of copyright law as conceived in the U.S. Constitution. If students are to develop helpful ideologies on copyright law and ownership in

the twenty-first century, then a solid understanding of the history of copyright law and intellectual property can help them comprehend the extent to which copyright protection has increased. **(For a mini-lesson on the history of copyright law, see Lesson 3 in Appendix A.)**

By moving away from the concept of copyright as a natural right, instructors can help students develop a constitutional understanding of copyright law. It is important, however, to not stop the discussion there. Howard also notes that “once educators teach students that the U.S. Constitution doesn’t recognize the absolute, natural property rights of authors, they need to fill the vacuum this creates, or we run the risk of allowing future citizens to fallaciously conclude that, because the Constitution doesn’t recognize their natural rights, authors have no rights” (113). This is, of course, far from the truth.

A brief review of changes in copyright law could easily show students that, while authors might not have natural rights to copyright ownership, they certainly have a legal right, and this legal right has grown significantly. This could be another helpful time to highlight the ways that copyright law serves a good purpose and functions best when proper balance is maintained between creators and users.

Another helpful way to engage students on the issues of copyright, fair use, and intellectual property, it is important, as Lisa Dush points out in “Beyond the Wake-Up Call,” to determine what students already know about copyright. Even if their conceptions of copyright and fair use are false, such as considering any use of a copyrighted work as theft, they already have opinions and concepts that they bring into the composition classroom. In this study, Dush gathered student opinions during a “multimodal writing course, called Digital Storytelling” in the “English department of a large public university” (116).

The students' responses reveal the influence of the culture of fear and doubt that has developed in recent years around the use of copyrighted materials. Students today live in a post-Napster era, where they hear stories of outrageous lawsuits for peer-to-peer sharing and see the intimidating FBI warnings before every film that threaten years in prison and thousands of dollars in fines for any unauthorized use. As a result, many students today operate under the shadow of this threat, unaware of their rights to use copyrighted works, both inside and outside the classroom.

As students in Dush's study discussed their use of copyrighted works, their responses formed a "discourse of guilt," (124) even for uses that would likely hold up as fair in court. "Students," Dush notes, "doing multimodal composition often use others' texts in very smart ways, but they lack a positive discourse to account for this behavior" (124-125). Most students either feel guilt or nothing at all when they use copyrighted works in their multimodal compositions, neither of which are good positions. Few feel confident that their use is safely within the law.

Since copyright and fair use are not completely foreign concepts to students, their views on these issues are likely formed and influenced by forces such as the Motion Picture Association of America and the Recording Industry Association of America rather than educators seeking to defend fair use. These associations spend millions of dollars to create and distribute educational materials and commercials that only serve to deepen the culture of fear and doubt. Rife notes that "[fair use] is transparent, as for example in the composition classroom students are already thinking about fair use and factoring it into their composing choices before it has been mentioned or taught by the teacher" (12). Even if students are

considering fair use to some degree in their composing choices, chances are they are operating with a limited and insufficient understanding of the doctrine.

Dush also acknowledges what many instructors might consider an obstacle to discussing copyright issues in the classroom: it can be rather boring. “The word *copyright* has a whiff of dry legality about it—it’s difficult to imagine an exciting classroom conversation centered on copyright law” (116). Although instructors should certainly not avoid an important topic even if it does lack excitement, discussions on copyright and fair use can yield surprisingly passionate and thoughtful responses from students, according to Dush. Students are already thinking about copyright, even if it is simply an uninformed fear developed in a culture of fear and doubt. Many students, however, are already participating in activities outside the classroom that force them to consider issues of copyright and fair use, such as fan fiction, memes, peer-to-peer file sharing, and more. “Ultimately, the students’ comments suggest that copyright is not new to them, and that to discuss it is far from boring,” observes Dush. “Teachers need not presume that students have no experience with copyright law; in any given classroom students can be found with strong opinions and valuable expertise” (119). These opinions and expertise, however, need to be shared and shaped through classroom discussions and assignments.

One way to accomplish this is through simply asking students for their opinions and thoughts. This can lead to helpful classroom discussions that touch on a variety of important topics related to English Studies. It is not necessary to construct surveys and collect data to gauge student opinions on copyright. Discussing copyright, fair use, and intellectual property can begin with some simple questions, aimed at bringing these issues and questions into the

culture of the composition classroom. One of the best ways to bring these issues into the composition classroom remains the helpful and innovative example of Creative Commons.

Chapter 7: Creative Commons

Creative Commons is an organization seeking to realize the “full potential of the Internet” by changing the way that copyright owners handle copyright. The potential of the Internet is, according to Creative Commons, “universal access to research and education.” To achieve this, Creative Commons provides infrastructure that allows for copyright owners and authors to find a balance between the affordances of the Internet and the “reality of copyright laws.”

The best way to understand exactly how this functions is to consider the “all rights reserved” nature of traditional copyright law. It is an all or nothing approach. The infrastructure provided by Creative Commons allows for a “some rights reserved” approach. The reason for releasing some of the rights and maintaining others is to maximize the capabilities of the Internet and Web 2.0 by allowing the work to be shared for certain purposes. **(For an assignment on the Creative Commons, see Assignment 3 in Appendix B.)**

A classroom assignment or discussion on Creative Commons can accomplish numerous goals. First, it helps students recognize all the rights creators do have under copyright law, which can help fill the void created by the discussion on the myth of the natural rights metaphor for copyrights. Second, since Creative Commons provides multiple licensing options, students will consider “how much control they want to exert over the distribution and use of their creative work” (Dush 127). Students, as the assignment explains, are not required to select a Creative Commons license. They are free to select the traditional copyright for their work. Either way, they are asked to think through both traditional and innovative forms of copyright protection. If time does not allow for an additional assignment, simply exploring the site and

highlighting the growing number of important resources with a Creative Commons license can help students recognize the number of free or open resources they benefit from on a daily basis.

Part of the reason why it is important to help students recognize the extent to which they benefit from free and open information is to counter the influence of loss aversion. Loss aversion is a psychological concept that highlights the intrinsic human reaction to loss. In summary, loss aversion says that people place a higher value on what they lose than what they gain. In other words, individuals often strongly desire to protect their own creations, while neglecting to consider the numerous free resources and knowledge they benefit from. Students do not have to be told directly about the influence of loss aversion, although it could help, but reviewing both the resources and the ideologies of Creative Commons can help counter the common overreaction to loss by highlighting the ubiquitous nature of free and open resources.

Lastly, the ability to select a license through Creative Commons is a powerful choice. Although students might be tempted to see it as a boring legal afterthought, exploring their options can help them consider both the options offered to them through Creative Commons and the extent to which they want their work to influence and inspire others. Lisa Dush offers this helpful explanation: "In effect, the Creative Commons licensing system says, if you believe that none of us creates alone, than acknowledge your debt to others and help their creative processes by licensing your work into the commons" (127). When students pause to consider the impact of others on their own work, in addition to the desired effect of their work, they can develop a well-rounded approach and ideology to copyright law that will serve both themselves and others.

Conclusion

As composition instructors seek to prepare student writers to navigate the new digital media landscape, it is necessary to address the complex issues of copyright law, fair use, and intellectual property in the classroom. Composition instructors, Howard explains, “owe it to students to make them aware of the copyright infringement risks they will encounter when they produce works for class and for future employers. Writers of the future can’t afford to learn about copyright by trial and error in the corporate world” (126-127). The composition classroom is the appropriate place for students to explore and engage the issues of copyright law, fair use, and intellectual property.

The Internet and Web 2.0 have transformed the way creative works are produced and distributed. The protection of these creative works offered through copyright law is far more extensive than ever before. Through recent changes to the law, copyright owners now have more power than ever before, and student writers today are asked to compose in a culture of fear and doubt. As Howard also notes, “21st century composition students live in a far more dangerous world than they did in 1996” (26). This new digital world is more dangerous, primarily, due to increased litigation for intellectual property infringement. As opportunities to access, remix, and distribute digital creations increase through the Internet and Web 2.0, so does the possibility for infringement. Consequently, copyright owners consistently pursue litigation for possible infringement out of concern for declining value brought on by unprecedented access to digital products.

Students need to be prepared to maximize the affordances offered to them through the Internet and digital writing tools, and this is only accomplished through more knowledge of

copyright and fair use. Equally as important, today's students will lead the way for future copyright reform, either in one direction or the other. In order to prepare students for addressing the issue of copyright reform, now and in the future, it is not always necessary to provide concrete answers. Some of the questions raised from the conflict between the digital age and copyright law do not have concrete answers, yet instructors can still ask the tough questions and highlight the issues in the classroom for students. This can help students understand the conflict, reach some conclusions, and begin to consider these issues as they continue their academic and career work.

As a group of teachers, rhetoricians, and writers note in “a copyright manifesto for the digital world”, “we find ourselves negotiating the labyrinth of copyright law alongside students.” Even though composition instructors cannot provide the answers to all the questions of copyright, fair use, and intellectual property, they can still discuss these issues with students and offer what they do know to help students consider the issues. As the copyright manifesto also highlights, many of these issues cannot simply be ignored. They write, “We must recognize and understand the ways that our work will move online, and we have to take an active role in articulating our needs and wants regarding our work.” As writers and instructors seek to do this, it is necessary to help students—and work alongside them— to accomplish the difficult task of safely composing in a digital world while still pursuing creativity and innovation.

Additionally, one of the key ways that digital writers pursue creativity and innovation is through multimodal compositions. As the opening chapter reveals, the Internet is transforming all media before it as all previous forms migrate to the Internet. While this transformation takes place, and more creative works and ideas are digitized and uploaded to the Internet, creators

have more opportunities than ever before to take existing content, remix it, and make something new. In *The Shallows*, Nicholas Carr notes that every intellectual technology “embodies an intellectual ethic, a set of assumptions about how the human mind works or should work” (45). Many current digital technologies and writing tools embody the ethics of remix and multimodal composition to the point that many students, after growing accustomed to digital writing tools, perform these actions naturally, without full realization of their actions. Students today live in a copy-and-past culture, where moving information from one place to another is seamless and natural. In the same way, student writers intuitively create multimodal compositions in digital spaces. The technology itself encourages it, and since the technology embodies this set of ethics, the process of remix and multimodal compositions will only become more frequent and commonplace for digital writers. Consequently, the copyright and fair use issues that result from remixing content will not resolve themselves without action from individuals seeking to reconcile the digital world and copyright for the good of everybody.

If an alternative to the “long and strong” tradition of copyright protection is not realized, it might continue in the wrong direction. As students seek to navigate the complex world that results from the conflict between copyright law and the digital age, it is imperative for educators to bring the issues of copyright, fair use, and intellectual property into the culture of the classroom, in both pedagogy and curriculum. It is my hope that this thesis has provided knowledge, ideas, and resources to help educators make this important change in the composition classroom.

Introduction to Appendix A

The three mini-lessons contained in Appendix A offer supplemental material for instructing students on copyright issues. For the mini-lessons, I identified three areas that could serve both instructors and students in understanding the complexities of copyright law. The lessons are designed with flexibility in mind. They are brief enough to require little classroom time, yet they all contain opportunities for extended illustrations and conversations if time allows, such as other examples besides recipes in Mini-Lesson 1. While the lessons do seek to provide facts and answers to specific questions, they also leave some questions unanswered in order to facilitate classroom discussion and because no brief document can answer every question on a complex topic.

Furthermore, the lessons are structured in an accessible format to allow instructors to, if time is short, simply hand out the lessons to students. Of course, the material will better serve students if it is accompanied by discussions and questions, but the primary goal of these mini-lessons is to provide instructors with flexible options. Lastly, the lessons can be used at various times in the semester, depending on how the issues are discussed in the classroom. They do not have to be used in order, and they can also be used independently from each other, depending, again, on the nature and timeline of the particular course.

Appendix A: Three Mini-Lessons

1. Copyright Basics
2. The Public Domain
3. The History of Copyright Law

Mini-Lesson 1: Copyright Basics

What is a copyright?

By definition, a copyright is about who owns the rights to copy a particular work. The types of works that can be protected under copyright, however, have limitations. The United States Copyright Office offers this definition: “Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression.” The “tangible medium of expression” is an important aspect of copyright law since these laws do not protect ideas or facts but the creative or unique expression of ideas or facts.

A good example of this is a recipe. A basic recipe, or a simple list of ingredients, is not protectable under copyright laws. It is not possible to copyright "two tomatoes" or "four cups of flour," but if the recipe is presented with significant explanation that requires creative effort, then it is possible for the recipe to be protected under copyright law.

What does copyright include?

Copyright law protects original creative works, including “literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture” (U.S. Copyright Office). A novel, for example, requires significant creative effort and can be protected under copyright law. A phonebook, on the other hand, cannot be protected under copyright law. Although it does require effort to produce a phonebook, or something like it, it is a collection of facts—names, addresses—and facts cannot be copyrighted.

Other works or creations that can receive legal protection are included in different sections of the law. Inventions or discoveries, for example, require a patent. Slogans or design elements such as logos are protected under trademarks. The law, or concept, that serves as the umbrella for copyright, trademarks, and patents is called intellectual property.

How does copyright licensing work?

Under current copyright law, no official registration of a creative work is required to establish copyright protection. When a creative work is fixed in a “tangible medium of expression,” it is automatically protected under copyright law. This could even include a poem or a note scribbled on a napkin. Formally published works, of course, are usually registered with the U.S. Copyright Office. Official registration is also a good idea if the owner intends to pursue any legal action, usually involving some form of infringement.

Creative Commons provides a variety of different licensing options for copyrighted works. The best way to understand exactly how this functions is to consider the “all rights reserved” nature of traditional copyright law. It is an all or nothing approach. The infrastructure provided by Creative Commons allows for a “some rights reserved” approach.

Mini-Lesson 2: The Public Domain

What is the public domain?

In terms of copyright law, the public domain refers to the collection of creative works—novels, movies, songs, poems, software, architecture, etc.—that are no longer protected by copyright law. As a result, these works are free and available for the public to use. No permission is required, and, therefore, there is no worry of legal implications from infringement in the public domain. It is, as Lawrence Lessig calls it, a “lawyer-free zone” (24). Although there is no copyright protection or need for permission for works in the public domain, that does not mean that no credit should be given to the original creator or author in the form of an attribution or citation. The public domain simply removes the legal implications of using and remixing the work of others.

How do works get into the public domain?

The most common form of entry for copyrighted works into the public domain is the expiration of the copyright. Although the length of copyright protection is significantly longer now than when it was originally conceived, there is still a time limit for copyright. Even so, the United States Congress does allow for copyright protection extensions. Since copyright protection now extends to the lifetime of the creator plus seventy years, this is usually not an issue for individual owners. Corporations, however, with vested commercial interest in their intellectual property, such as Disney, continually renew their copyrights.

Additionally, a small number of works are in the public domain that were published without a copyright notice, which was a requirement in the U. S. before 1989 (“The Public Domain”). This is no longer the case (see Mini-Lesson 1 on Copyright Basics). Although copyright protection is now the default for most creative works, copyright law does include exceptions for certain works. For example, all federal government works are automatically in the public domain and cannot be copyrighted (Aufderheide 157). Furthermore, creators do have the option, through the Creative Commons, to waive copyright protection and enter the public domain immediately, although this is not common.

What is the purpose of the public domain?

In many ways, the public domain itself is one of the purposes of copyright law. Since copyright law is about maintaining proper balance between creators and users (see Chapter 7), copyrights must be limited to avoid placing too much power and control in the hands of creators and owners. Also, if copyright law, as originally conceived in the U. S. Constitution, is for the users and not the creators or owners, then building a large public domain is not a side effect of the law, but an important and intentional goal. In other words, the window of exclusivity—copyright protection—is granted so creators will continue to create more works for the public good. If the public good is truly one of the goals of copyright law, then it is most fully realized in the public domain.

Mini-Lesson 3: History of Copyright Law

The primary reason that copyright law first developed was for the benefit of book publishers. At first, the only printers who had the rights to copy any work were approved and regulated by the government. The first such group was the Stationers' Company, chartered by Queen Mary in 1556 and a direct result of the first letters patent in 1518 (Bielefield 3).

The company offered the British government the ability to censor and control the spreading of ideas, and the members of the company benefited from a complete monopoly of the publishing industry. "Fearful of the power of the press to encourage insurrection," Bielefield explains, "the Crown responded by granting to its trusted favorites the sole right to print a specific title" (5). The absence of competition also resulted in a rather leisurely approach to the printing industry at first. For the most part, stationers in the company printed copies for the government or wealthy patrons, who "engaged printers, as they had copyists, to add to their own personal libraries" (Bielefield 5).

Following the founding of the Stationer's Company, the Star Chambers was created and reinforced many of the imbalances first introduced by the Stationers' Company. The situation did not improve for independent book publishers and authors with the Licensing Act of 1643, which called itself an act for "redressing disorders in printing" and "basically renewed the Star Chamber's decree (Bielefield 8). This act did, however, introduce a new requirement that would prove to become invaluable. Under the act, a copy of each work was required to be deposited at the King's library and each university, thereby establishing the important precedent of both national archives and the foundation for a national library collection.

Because of the rather leisurely approach to the newly formed printing industry and the absence of competition, the world of publishing and copyright experienced little change for more than two hundred years. It was not until April 4, 1710, that the world's first national copyright law, the Statute of Queen Anne was passed by the British Parliament (Bielefield 3). This was, in fact, more than two and a half centuries after the invention of the printing press.

Despite the centuries separating the invention of the printing press and the first national copyright law, the two events are directly related (Bielefield 5). For one, even before the invention of movable type by Gutenberg, an information revolution was already underway. The printing press now allowed for the production and distribution of information like never before, but, like most technologies, time was required to fully develop and embrace the potential of the technology. Also, the previously mentioned regulations and monopoly of the printing industry prevented the process from developed quickly.

As is the case with any monopoly, many were suppressed and frustrated, including independent book publishers and authors. In fact, throughout the history of the stationers' copyright, the stationers strived "to obtain public law support for their private copyright by petitioning for laws regulating the press that made it a crime for anyone to print books in violation of the stationers' copyright" (Patterson 22). In addition to anyone who wished to print books outside

of the Stationer's Company, authors were also suppressed and frustrated with the system. Before the Statute of Queen Anne in 1710, authors had few rights to their own work. In fact, "an author's only recourse was to sell a manuscript outright to a member of the Stationers' Company" (Bielefield 9). This is exactly what the English poet John Milton was forced to do with his manuscript of *Paradise Lost*, which resulted in little financial gain for Milton.

Understandably, Milton protested the government control of publishing in 1644 with *Aeropagitica* (Bielefield 8). Although Milton's protest might have carried more impact than others, he was not alone in protesting the publishing industry. This unrest, in combination with steadily growing competition among printers as profits increased, formed the backdrop to the Statute of Anne in 1710, which "remains the foundation of copyright law in England and the United States today (Bielefield 9).

Although it did not take long for the statute to be protested and tested, it acknowledged, for the first time in history, the rights of authors to publish and provided twenty-one years of control for existing works for authors. In addition, the statute also outlined the conditions needed to claim infringement (Bielefield 10). The ability for citizens to generate and distribute nearly any idea, possibly in conflict with the policies and laws of the government, was understandably threatening to those in power. But not all ideas and words are anti-government, and even if they are, governments eventually realized that the spreading of ideas could not be contained and regulated as they desired.

Despite resistance by many, the ability to share ideas, makes copies, and build on the ideas of others came to be the driving force that brought the world out of the Middle Ages and produced the Enlightenment and the Scientific Revolution.

The ideologies and traditions that produced the first national copyright law in 1710 formed the necessary foundation for the inclusion of copyright law in the U.S. Constitution. It is here, however, that the shift from publisher's rights to author's rights is most noticeable. With an emphasis on democracy and the common good, the framers of the Constitution looked at copyright law, not as a law to build up one sector of the economy or a way to censor free speech, but as a necessary piece in the building up a free, educated republic.

The American shift from publisher's rights to author's comes with another notable and important difference. Although the Founding Fathers placed the focus on the author rather than the companies, the importance of the individual author was, ultimately, a means to an end. The end goal of copyright law, as seen by the framers of the Constitution, was not the profit of the author, but the common good.

The founders were not primarily concerned with increasing the wealth of authors and inventors. They were more focused on building a robust collection of knowledge and creative works for the benefit and use of everyone. They understood that in order to accomplish this, creators would need a period of exclusivity to build a profit and continue their work.

Introduction to Appendix B

The assignments contained in Appendix B aim to provide instructors with specific ways to help students understand and explore copyright issues in the classroom. The topics and details for each assignment are primarily drawn from ideas and concepts discussed within the thesis “Remix and Rebalance: Copyright and Fair Use Issues in the Digital Age and English Studies.” For example, the usefulness of Assignment 2 on the four factors of fair use is fully discussed in Chapter 5 of the thesis. All three assignments are short and are not meant to occupy the place of any major assignment for the course. However, they are—especially Assignments 2 and 3—designed to complement traditional assignments for a college composition course. As a result, the use of the assignments within a semester will depend on the larger assignment that they fit with best. For example, Assignment 3 on the Creative Commons likely works best with the final research project of the semester.

For the assignments to function properly, it will be necessary to address some copyright issues with students before they begin the work. The mini-lessons in Appendix A are designed for this purpose. In the same way, each assignment contains additional information under Resources to provide students with the needed background and context to successfully complete the assignment. Lastly, the assignments are designed to function independently of each other to provide instructors with options on incorporating them into the semester.

Appendix B: Three Small Assignments

1. Current Event
2. The Four Factors of Fair Use
3. Creative Commons

Assignment 1: Current Event

Assignment: A one-page review of a current event related to intellectual property.

Instructions:

1. Find an online news article on a current event (within the past two years) that is about an issue related to intellectual property. Remember, this could include anything related to copyright, fair use, patents, and trademarks.
2. Either print the article or provide the URL in your review.
3. Identify the two opposing forces in the article. For example, in this article (<http://www.cnn.com/2012/08/22/tech/mobile/apple-samsung-closing-statements/index.html>) the two opposing forces are Apple and Samsung. Also, identify the accuser and the defendant. In other words, who is attacking whom? In this case, Apple is accusing Samsung of copying designs.
4. After identifying the two opposing forces, label the intellectual property issue. In the previous example, software patents are the issue.
5. After reading the article, pick the side you determine should win. If the article does not cover a lawsuit, then pick the side you determine is correct in the conflict or disagreement.
6. Provide a one-paragraph explanation on your decision.

Details:

It is not necessary to do additional research beyond the selected article when determining which side is correct. Simply use the information the article provides and what you know about intellectual property. There are no wrong answers. If it is simply too difficult to determine right and wrong from the article, then you can say it is unknown. You must still, however, provide a one-paragraph rationale on why it is too close to call. This assignment should be no more than one page.

Resources:

For the online news article, you can begin with the following sites:

- www.cnn.com
- www.bbc.com
- www.msnbc.com
- www.time.com
- www.usatoday.com
- www.cbsnews.com
- www.abcnews.com
- www.ap.org

Assignment 2: The Four Factors of Fair Use

Assignment: A two-page paper on the fair use of two sources from your project.

Instructions:

1. Review the four factors that are used to determine fair use (see below).
2. Select two of your sources from your assignment. If your assignment is a traditional research paper, then you will select two of your research sources. If your assignment is a multimodal assignment (video, photo essay, etc.) then select two sources that you use or plan on using in your assignment. This can include a photo, quote, song, or video.
3. Determine how you are using or plan on using the two selected pieces.
4. In light of the four factors, determine if your use of each selected piece is fair.
5. Include a two-paragraph explanation for each piece. You must mention all four factors in your explanation.

Details:

Fair use is an important doctrine in copyright law that allows for copyrighted works to be used for specific purposes without permission from the copyright owner. Since copyrights for creations now last longer than ever before, most current or recent works have some form of copyright protection. Yet culture and creativity is often collaborative, and the ideas and works of others are important influences for new creations. In order to respectfully and legally use, incorporate, or remix the work of others, it is essential to understand fair use. To learn more about fair use application, visit the websites listed below under Resources. You are not required to fill out a fair use checklist that you will likely see on the sites below, yet completing the checklist will certainly help you apply the four factors for this assignment.

Resources:

The four factors:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work (Lee 34-35).

Copyright Clearance Center Copyright Basics: Fair Use

This resource provides more details on the four factors of fair use and includes helpful links to more information, quizzes, and specific examples of fair use.

http://www.copyright.com/Services/copyrightoncampus/basics/fairuse_rules.html

Colombia University Copyright Advisory Office: What is Fair Use?

This resource offers an additional overview of the four factors of fair use.

<http://copyright.columbia.edu/copyright/fair-use/what-is-fair-use/>

Stanford University Libraries Measuring Fair Use: The Four Factors

This resource provides another review of the four factors of fair use and focuses on the transformative factor, disclaimers, and the “fifth” factor.

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-b.html

Assignment 3: Creative Commons

Assignment: A one-page paper on a Creative Commons copyright license.

Instructions:

1. After completing the assigned project, you will explore the possible licensing options for your work provided by the Creative Commons.
2. To begin, read the About page on the Creative Commons website and watch the brief intro video: <http://creativecommons.org/about>. Also, see more info on the Creative Commons below.
3. Carefully read the About The Licenses page: <http://creativecommons.org/licenses/>
4. Fill out the License Chooser for more info: <http://creativecommons.org/licenses/>
5. After selecting the type of Creative Commons license you want to use for you work, write a one-page explanation of your choice. Compare your selection to at least one other option to illustrate why your choice is the best fit for your project.
6. Note: You do not have to complete the license registration on the Creative Commons as part of this assignment. The goal of this assignment is for you to think about the options. If you want to complete the process, then read this page ([http://wiki.creativecommons.org/Before Licensing](http://wiki.creativecommons.org/Before_Licensing)) and speak with your instructor.

Details:

Creative Commons is an organization seeking to realize the “full potential of the internet” by changing the way that copyright owners handle copyright. The potential of the Internet is, according to Creative Commons, “universal access to research and education.” To achieve this, Creative Commons provides infrastructure that allows for copyright owners and authors to find a balance between the affordances of the Internet and the “reality of copyright laws.”

The best way to understand exactly how this functions is to consider the “all rights reserved” nature of traditional copyright law. It is an all or nothing approach. The infrastructure provided by Creative Commons allows for a “some rights reserved” approach. The reason for releasing some of the rights and maintaining others is to maximize the capabilities of the Internet by allowing the work to be shared for certain purposes. Explore the websites listed below under Resources for examples of how other creators are using Creative Commons to license their work. Notice how many resources on the Internet have a Creative Commons license.

Resources:

Vimeo: Creative Commons:

This page provides a collection of videos on Vimeo with a Creative Commons license. The videos are divided into categories for each license.

<http://vimeo.com/creativecommons>

YouTube: Creative Commons:

This page offers an overview of licensing a YouTube video with a Creative Commons license.

<http://www.youtube.com/yt/copyright/creative-commons.html>

Flickr: Creative Commons:

This page, like the Creative Commons resource above, provides a collection of photos from Flickr that are divided into categories for each Creative Commons license.

<http://www.flickr.com/creativecommons/>

Works Cited for Appendices A and B

Aufderheide, Patricia and Peter Jaszi. *Reclaiming Fair Use: How to Put Balance Back in*

Copyright. Chicago: U of Chicago P, 2011. Print.

Bielefield, Arlene and Lawrence Cheeseman. *Technology and Copyright Law*. Second Edition.

New York: Schuman, 2007. Print.

Lee, Sohui. "Fair Use and the Vulnerability of Criticism on the Internet." *Composition and*

Copyright: Perspectives and Teaching, Text-Making, and Fair Use. Ed. Steve Westbrook.

New York: State U of New York Press, 2009. 31-49. Print.

Lessig, Lawrence. *Free Culture*. New York: Penguin Books, 2004. Print.

Patterson, Ray L. and Stanley W. Lindberg. *The Nature of Copyright: A Law of Users' Rights*.

Athens: U of Georgia P, 1991. Print.

"The Public Domain." *U. S. Copyright Office*. The Library of Congress, n.d. Web. 1 April 2013.

U. S. Copyright Office. The Library of Congress, n.d. Web. 1 April 2013.

Additional Resources

Good Copy Bad Copy:

This documentary film from Denmark explores the current state of copyright and culture.

<http://www.goodcopybadcopy.net/>

RiP! A Remix Manifesto:

This film provides an extended review of copyright and intellectual property in the digital age by focusing on mash-up musician Girl Talk and includes interviews with Lawrence Lessig.

http://www.nfb.ca/film/rip_a_remix_manifesto/

Stanford University Libraries Copyright Basics:

This resource provides a helpful overview of copyright basics, including what copyright protects and how long it lasts.

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter0/0-a.html

Center for Social Media Fair Use:

This helpful resource provides teaching materials, codes of best practices, and documents related to the application of fair use.

<http://www.centerforsocialmedia.org/fair-use>

Columbia University Copyright Advisory Office Fair Use Checklist:

This resource provides a checklist for applying the four factors of fair use and helpful instructions on how to use the checklist.

<http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>

University System of Georgia The Fair Use Exception:

This resource provides analysis of the four factors of fair use and a fair use checklist.

http://www.usg.edu/copyright/the_fair_use_exception

Copyright Crash Course:

This resource functions between a code of best practices and a checklist, offering both general ideas and some specific examples of fair use application of digital sources.

<http://copyright.lib.utexas.edu/copypol2.html>

Everything Is a Remix:

This four-part web video series provides history, current examples, and suggestions on addressing the current conflict between the digital age and copyright law.

<http://www.everythingsaremix.info/watch-the-series/>

Electronic Frontier Foundation Intellectual Property:

This site provides many helpful resources, including documents, cases, projects, and whitepapers, aimed at defending the rights of users in the digital world.

<https://www.eff.org/issues/intellectual-property>

Works Cited

- Aufderheide, Patricia and Peter Jaszi. *Reclaiming Fair Use: How to Put Balance Back in Copyright*. Chicago: U of Chicago P, 2011. Print.
- Ballentine, Brian D. "In Defense of Obfuscation." *Composition and Copyright: Perspectives and Teaching, Text-making, and Fair Use*. Ed. Steve Westbrook. New York: State U of New York Press, 2009. 68-89. Print.
- Bielefield, Arlene and Lawrence Cheeseman. *Technology and Copyright Law*. Second Edition. New York: Schuman, 2007. Print.
- boyd, danah m. and Nicole B. Ellison. "Social Network Sites: Definition, History, and Scholarship." *Journal of Computer-Mediated Communication* 13.1 (2007): 210-230. *Wiley Online Library*. Web. 1 May 2012.
- boyd, danah. "Social Network Sites as Networked Publics." *A Networked Self*. Ed. Zizi Papacharissi. New York: Routledge, 2011. 39-58. Print.
- Carr, Nicholas. *The Shallows: What the Internet Is Doing to Our Brains*. New York: Norton, 2011. Print.
- Crews, Kenneth D. *Copyright Law for Librarians and Educators*. Second Edition. Chicago: ALA, 2006. Print.
- Dush, Lisa. "Beyond the Wake-up Call." *Composition and Copyright: Perspectives and Teaching, Text-Making, and Fair Use*. Ed. Steve Westbrook. New York: State U of New York Press, 2009. 114-132. Print.
- Eliot, T. S. *Selected Prose of T. S. Eliot*. Ed. Frank Kermode. New York: Mariner Books, 1975. Print.

- Ferguson, Kirby. "Everything Is a Remix Part 4." *Everything Is a Remix*. 16 February 2012. Web Video. 18 April 2012.
- Galin, Jeffrey. "The Fair Use Battle for Scholarly Works." *Copy(write): Intellectual Property in the Writing Classroom*. Ed. Martine Courant Rife, Shaun Slattery, and Danielle Nicole DeVoss. Colorado: The WAC Clearinghouse, 2011. 2-28. Print.
- Gladwell, Malcom. "Something Borrowed." *What the Dog Saw: And Other Adventures*. New York: Little, 2009. 222-243. Print.
- Goldstein, Paul. *Copyright's Highway: From Gutenberg to the Celestial Jukebox*. Revised Edition. Stanford: Stanford UP, 2003. Print.
- Hicks, Troy. *The Digital Writing Workshop*. Portsmouth: Heinemann, 2009. Print.
- Hogan, Patrick Colm. *Joyce, Milton, and the Theory of Influence*. Gainesville: U Press of Florida, 1995. Print.
- Howard, Rebecca Moore. "Plagiarisms, Authorships, and the Academic Death Penalty." *College English* 57.7 (1995): 788-807. *Surface*. Web. 19 April 2013.
- Howard, Tharon W. "Intellectual Properties in Multimodal 21st Century Composition Classrooms." *Copy(write): Intellectual Property in the Writing Classroom*. Ed. Martine Courant Rife, Shaun Slattery, and Danielle Nicole DeVoss. Colorado: The WAC Clearinghouse, 2011. 107-130. Print.
- Hyde, Lewis. *Common as Air: Revolution, Art, and Ownership*. New York: Farrar, 2010. Print.
- Lee, Sohui. "Fair Use and the Vulnerability of Criticism on the Internet." *Composition and Copyright: Perspectives and Teaching, Text-Making, and Fair Use*. Ed. Steve Westbrook. New York: State U of New York Press, 2009. 31-49. Print.

Lethem, Jonathan. "The Ecstasy of Influence. A Plagiarism." *Harpers Feb.* 2007: 59-71. Print.

Lessig, Lawrence. *Free Culture*. New York: Penguin Books, 2004. Print.

"Manifesto: Technorhetoricians and/as Copyright Activists." *Old + Old + Old = New*. Digirhet, n.d. Web. 19 April 2013.

Martin, Brian. "Plagiarism: A Misplaced Emphasis." *Journal of Information Ethics* 3.2 (1994): 36-47. Web. 19 April 2013.

O'Brien, Damien and Brian Fitzgerald. "Mashups, Remixes and Copyright Law." *Internet Law Bulletin* 9.2 (2006): 17-19. *LexisNexis*. Web. 18 April 2012.

Patterson, Ray L. and Stanley W. Lindberg. *The Nature of Copyright: A Law of Users' Rights*. Athens: U of Georgia P, 1991. Print.

Rife, Martine Courant, and William Hart-Davidson. "Is There a Chilling of Digital Communication? Exploring How Knowledge and Understanding of the Fair Use Doctrine May Influence Web Composing." *Social Science Research Network* (2006): n. pag. Web. 25 April 2012.

Shirky, Clay. "How Social Media Can Make History." *TED*. June 2009. Web. 1 May 2012.

"The Law Of Copyrights." *ASHE Higher Education Report* 34.4 (2008): 13-30. *Academic Search Complete*. Web. 17 April 2012.

"The Public Domain." *U. S. Copyright Office*. The Library of Congress, n.d. Web. 1 April 2013.

U. S. Copyright Office. The Library of Congress, n.d. Web. 1 April 2013.

Walker, Janice R. "Copy-rights and Copy-wrong: Intellectual Property in the Classroom Revisited." *Copy(write): Intellectual Property in the Writing Classroom*. Ed. Martine

Courant Rife, Shaun Slattery, and Danielle Nicole DeVoss. Colorado: The WAC Clearinghouse, 2011. 205-222. Print.

Wiebe, Russel. "Plagiarism and Promiscuity, Authors and Plagiarisms." *Copy(write): Intellectual Property in the Writing Classroom*. Ed. Martine Courant Rife, Shaun Slattery, and Danielle Nicole DeVoss. Colorado: The WAC Clearinghouse, 2011. 29-48. Print.

"WPA Outcomes Statement for First-Year Composition." *Council of Writing Program Administrators*, July 2008. Web. 1 April 2013.

Education

- Master of Arts
2013
Kennesaw State University — Professional Writing
Graduate Student Honors
Concentration: Applied Writing
Secondary Concentration: Composition and Rhetoric
Thesis: “Remix and Rebalance: Copyright and Fair Use Issues in the Digital Age and English Studies”
- Bachelor of Arts
2009
Kennesaw State University — English
Magna Cum Laude
Honors Scholar
Thesis: “The Action of Grace in Territory Held by the Devil: Flannery O’Connor and Cormac McCarthy”

Writing/Editing

- June 2012-
December 2012
Communications Professional
College of the Arts, Kennesaw State University
- January 2010-
January 2012
Editorial Assistant
College of the Arts, Kennesaw State University
- Spring 2010
Editor
The Red Pill by politician Steve Davis

Academic Professionalism

- Spring 2013
Graduate Research Assistant
Department of English, Kennesaw State University
- Spring 2012
Graduate Research Assistant
Department of English, Kennesaw State University
- April 2010-
July 2012
Writing Tutor
Chattahoochee Technical College
- July 2009-
July 2011
Reader
Red Clay Review

Conference Presentations

- March 2013
“Remix: Social Media and Copyright”
Conference on College Composition and Communication. Las Vegas, Nevada.
- January 2013
“Where is the Line? The Conflict Between the Digital Age and Copyright Law”
Southern Humanities Council. Savannah, Georgia.

Publications

- Fall 2013 “Key Terms in Social Media”
Computers and Composition Online
- January 2013 “Around the Lake”
Flycatcher: A Journal of Native Imagination
- May 2012 “The Action of Grace in Territory Held by the Devil:
Flannery O’Connor and Cormac McCarthy”
The Kennesaw Journal of Undergraduate Research
- October 2011 “The Healing Arts: Promoting Recovery and Growth Through Art Therapy”
Flourish Magazine
- May 2011 “Finding God: The Ties Between the Arts and Faith”
Flourish Magazine
- May 2010 “Aging Artfully: A Grand New Day For Older Adults”
Flourish Magazine

**Affiliations/
Honors**

- Who’s Who Among College Students
- Phi Eta Sigma
- Golden Key International Honor Society
- National Society of College Scholars
- Sigma Tau Delta
- Phi Kappa Phi
- Delta Epsilon Iota
- President’s List

**Software
Knowledge**

- Adobe Contribute
- Adobe Bridge
- Microsoft Office Suite
- Illustrator
- WordPress
- Hootsuite