

20 RESPONSE TO PART III—FAIR USE: TEACHING THREE KEY IP CONCEPTS

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My favorite part of Brian Ballentine's chapter is his calm remark about teaching a business and professional course that included a portion "that dealt with the intersections of writing, intellectual property, and ethics." It's that phrase, offered so matter-of-factly, as if every writing course contained such material.

That not every writing course does is why Part III of *Copy(Write)* is so important. Renee Hobbs and Katie Donnelly tell us that writing instructors are increasingly "incorporat[ing] media literacy concepts into their educational practices." But the movement has a long way to go. Produced by an undergraduate student, Nicole Nguyen's research underscores what professors Carol Haviland and Joan Mullin (2008) found in their cross-disciplinary, cross-institutional research: Instructors teach very little about intellectual property to their undergraduate students, and when they do, they focus on generic injunctions against plagiarism. That's a long way from the instruction that Jessica Reyman believes technical writers need, instruction that will help them understand their intellectual property rights in workplaces beyond academia.

I appreciate Nguyen's point that students may not identify the instruction they are receiving as belonging to the category of "intellectual property." Still, as I teach an advanced undergraduate course for writing majors, I hear them express their interest in intellectual property and their indignation that they have heretofore been taught nothing about their own rights. In my course, after reading Haviland and Mullin (2008), as well as Susan Blum (2009), the students deliberate on what sorts of follow-up research they want to do. Then they form collaborative research groups. Recently, one group decided to research issues of intellectual property on social-networking sites such as Facebook and

Twitter; another pursued the possibility of originality in music; a third analyzed the problems of intellectual property in the arts. These are the issues that they find fascinating, the issues they decide to research.

Academic injunctions against plagiarism are stern, admonitory. In Althusserian terms, they hail the student as feckless; through scare tactics, they demand obedience. Introduced to the range of IP issues that directly affect writers and given the choice of research topic, students in my class were not fascinated by academic plagiarism. Instead, they chose to research issues that cultural producers want to be informed about. In their research choices, they hail *themselves* as authors.

They make these choices even though, as Nguyen observes, it is in the frightening issues of plagiarism that students most often receive IP instruction. Leslie Johnson-Farris' finding is not surprising: Campus IP regulations aimed at students are obsessed with preventing those students from appropriating the work of others. These policies usually pursue that goal without addressing students' rights in copy, or the extent to which fair use guidelines allow them to use the work of others for educational purposes. In fact, as Hobbs and Donnelly note, many instructors assume that remixing is merely copying, not creating. Hence, students typically receive instruction designed to contain their potential malfeasances in the context of what many are pleased to call the "plagiarism epidemic." They are not customarily addressed as authors. They get the plagiarism half of intellectual property instruction, but not the copyright half—even when the plagiarism warnings are couched as warnings of copyright violation.

In my own teaching—including the faculty development workshops I conduct online and in person for colleagues around the country—I find that copyright and plagiarism are, in fact, rarely—if ever—differentiated. Faculty erroneously tell their students that plagiarism is a federal offense and that they could be prosecuted for it, or they say that using ideas derived from another infringes on that person's copyrights. Few people, even instructors, are clear about the fact that plagiarism is locally defined and adjudicated within a community; that it includes both words and ideas; and that it transgresses against the reader, making the reader believe that the plagiarist is the producer of the words or ideas gleaned from a source. In my experience, a fair number of instructors are also not clear about the fact that copyright violation is legally defined and adjudicated on the federal level; that copyright law typically covers only expression and not ideas; and that copyright infringement transgresses against the author, depriving that author of the cultural or monetary capital due him or her. It is a rare instructor who undertakes Johnson-Farris' task of informing herself about these issues.

It is significant, too, that Nguyen finds little instruction offered to students regarding the protection of their own rights in copy. In the field of composition studies, scholars have become accustomed to respecting and acknowledging students' intellectual property. As editor of *College Composition and Communication*, Joseph Harris (1994) took the lead in establishing this principle; as a contributor to *College English*, Amy Robillard (2006) provided a vanguard extension of it when she argued for scholars to cite student work. "To cite students," Robillard said, "is to forward the argument that writing as a mode of learning is a dialogic process; teachers teach students to write, but students, in their writing, teach teachers about more than the results of particular pedagogies" (p. 263). Robillard addressed instructor interpellation of students as error-makers, and directed our attention to the ways in which citing students moves scholars toward considering student work to be knowledge-making and not just ability-performing. Hobbs and Donnelly work from another perspective: that of the students. How do students come to think of themselves as authors and thus produce authentic texts? Certainly being published in a book like this or even being cited by their instructors are two ways, but most students will not have these experiences. Hobbs and Donnelly are right, then, to explore the effect of authentic audiences on students' authorial self-perception. Regardless of whether they are published or are being cited by others, they are being listened to and learned from. Their writing is *in circulation*. Who doesn't do their best writing in that circumstance?

Such thinking is, however, not necessarily the norm outside circles of composition scholarship. Not only are instructors willing to contribute students' intellectual property to profit-making corporations such as Turnitin.com (which Ballentine delightfully pillories), but faculty are willing to appropriate the intellectual work of graduate students (Howard, 2008). Even in its most innocuous iterations, the reluctance to accord authoriality to students can be breathtaking, as in Johnson-Farris' statement:

The idea of student fair use statement met with confusion. Reactions varied from those who saw no need for such a policy, to those who thought students would be covered under the faculty fair use statement, to those who didn't know what I was talking about.

The foundational assumption of students as practicers rather than producers, I believe, makes it difficult to move faculty to a place where they see their students as knowledge-makers possessing valuable intellectual property, or as knowledge-makers in conversation with other texts.

Changing that foundational assumption will not come from direct argument, such as Robillard's (2006) article offers. Robillard describes the goal, but not the means. Valuable as her article is, it advocates a revolutionary practice to which most scholars will respond with reluctance or rejection. A missing piece, one essential to the success of Robillard's article, is a widespread understanding of the relevant component IP concepts: plagiarism, copyright, and fair use. Understanding these concepts makes it possible for us to see the complexities and grace of intellectual property, in which we are all implicated. As we come to recognize that all three concepts are of importance to students and instructors alike, we become positioned to understand that our students, too, are authors. Knowledge-makers. Cultural producers with a stake in culture.

It is astonishing, really, to contemplate the enthusiasm with which the professoriate pursues plagiarism, and the confusion these same educators have about the foundational concepts of plagiarism, copyright, and fair use. In many years of working for better institutional plagiarism policies, I have been continuously frustrated by administrators' insistence on all-encompassing, simplistic definitions of the term *plagiarism*. The baby-step differentiation between "plagiarism" and "misuse of sources" advocated by the Council of Writing Program Administrators has, as far as I know, become policy in no college. Policy-makers in my own university's revision of its plagiarism code took the not-so-bold step of introducing "misuse of sources" as an *option* for instructor interpretation of students' imperfect acknowledgement of influence.

It is in binary pairs that the phenomenon of plagiarism becomes clearest, as Marilyn Randall (1991) demonstrated when she differentiated plagiarism from quotation, and when Susan Stewart (1991) did the same for plagiarism and forgery. The failure to recognize the differences between plagiarism and copyright infringement thus not only blurs those differences, but obfuscates each category. It is in careful, collaborative, authoritative reports such as "The Code of Best Practices in Fair Use for Media Literacy Education" (Center for Social Media, 2008), whose genesis Hobbs and Donnelly explain, that blurred boundaries between fair use and creative remix lose their power to terrorize instructors (such as the English Education professor they describe).

Informing ourselves about IP issues does, as Ballentine acknowledges, take us out of our comfort zones. It will also, Hobbs and Donnelly point out, require us to ease up on process pedagogy as the foundational model of writing instruction. But, as Ballentine demonstrates, the effort is well worth it: Our courses become more pertinent to students' real writerly lives as they become professionals in a wide range of fields. It is irresponsible for us to send students into the workplace with as little IP information as had the technical writers whom Reyman describes.

Part III of *Copy(Write)* will be required reading in many of my future classes, and it will also inform the faculty development workshops I conduct. These chapters provide insightful, data-supported examinations of the problems we encounter when we fail to regard students as authors; when we confuse plagiarism with copyright violation; when we fail to understand the role of fair use in student and instructor work with intellectual property; and when we fail to make all of this explicit to students. We can do better, and these chapters provide good models for how we might move forward.

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