

4 SOUL REMEDY: TURNITIN AND THE VISUAL DESIGN OF END USER LICENSE AGREEMENTS

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I'd like to open by asking you to consider three questions:

1. Your students use an online peer revision tool provided by the publisher of your textbook. Can that publisher then take those student papers and make them available as sample work to other teachers at other schools?
2. You upload your assignments, handouts, and other class materials to your institution's course management system. Can your institution claim ownership of those materials? Can the company that produces the software?
3. Your students upload papers to a central Web site service, which checks them for originality. Can that service then increase its profits by adding those papers to its proprietary database?

The answer to each of these questions may seem instinctively obvious to us as educators, yet the actual answers reside not in our guts or in common sense, but in the legal document governing the software in each case: the EULA.

You may not be familiar with the term, but if you've ever installed a piece of computer software or used a service on the Web you've certainly encountered one. EULAs—short for End User License Agreements—are the legal contracts that specify the rights and responsibilities of both the company offering the service or software and you, the end user. However, few people (myself includ-

ed) ever stop to read the terms of these licenses (Gomulkiewicz, 2004), which are often written in long and dense legalese. Instead, we distractedly, hurriedly—perhaps even merrily—click “I Agree” where indicated in order to proceed, an act which explains the term “clickwrap” used to describe these contracts.¹ Usually, failure to read the EULA in a clickwrap license causes no harm, yet these contracts can often contain chilling elements such as agreements to be monitored while using the product or prohibitions against criticizing it while simultaneously limiting a user’s options for redress through forum-selection clauses and agreements to arbitrate (Davis, 2007; Newitz, 2005). Particularly troubling EULAs often make the news (Blass, 2006; Ricker, 2006), such as the one for Google’s Chrome Web browser, which included a clause granting Google “a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content which you submit, post or display on or through, the Services” (Frucci, 2008).

EULAs undoubtedly feel far removed from our primary concerns in the writing classroom, as legal documents often do. Yet, as my opening questions might suggest, EULAs have serious implications for the intellectual property rights of instructors and students. Each time we use a Web service, each time we write or have students write in an online environment, EULAs are at play. Every EULA to which we assent is a contractual obligation and failure to pay attention to the terms of those contracts is akin to making a deal with the devil. Should problems arise, your sole/soul remedy is already proscribed by the contract.

For students in the writing classroom, the most troubling EULA may perhaps be the one used by Turnitin, the online plagiarism-detection service offered by the company iParadigms and used by schools around the world (see Ballentine, this volume). Students upload their papers to the Turnitin Web site, which then checks those papers against Web sources as well as a proprietary database of other student papers previously uploaded to the Turnitin Web site; in the process, each student paper uploaded is added to the database, a move that seems to violate student intellectual property rights to their own writing. However, before they can use the service, students must create an account, in the process agreeing to Turnitin’s EULA, which states in part:

You hereby grant iParadigms a non-exclusive, royalty-free, perpetual, world-wide, irrevocable license to reproduce, transmit, display, disclose, archive and otherwise use in connection with its Services any paper You submit to the Site whether or not originally submitted in connection with a specific class.

This license shall survive the termination of the User Agreement. Any cessation of use of the Site shall not result in the termination of any license You grant herein to iParadigms. (iParadigms, 2008)

We would do well to keep in mind that, as instructors, we must also assent to a clickwrap to use the service, one granting similar rights to iParadigms for all communications we make to and through the site, such as our assignments. Turnitin's EULA thus represents a unique intersection of intellectual property rights for the writing classroom: student rights to their papers, iParadigms' rights in its service, and the rights of other authors who may have been plagiarized.

Although both Turnitin's EULA and EULAs in general define these rights without negotiation, they do not do so without challenge. Compositionists have frequently expressed their general unease with Turnitin; four high school students recently sued iParadigms for copyright infringement, claiming that the clickwrap agreement was void because the students were minors and agreed to the EULA under duress, specifically the threat of receiving a zero for an assignment if they did not use the service (Dames, 2008; Warnecke, 2008; Young, 2008). The court rejected the student claims of copyright infringement, claiming iParadigm's use of their work was highly transformative, and rejected as well the claims of infancy and duress (*A.V. v. iParadigms*, 2008).

I am not ultimately interested in the legality of clickwrap agreements like those used by Turnitin; courts have continually affirmed their validity (Casmiquela, 2002; Dames, 2008; Davis, 2007; Gomulkiewicz, 2004). Instead, I am interested in how we as literacy educators can sensitize students to the serious intellectual property issues contained in EULAs and how we can prompt them to pay attention to and perhaps read the next clickwrap before clicking "I Agree." Specifically, as a technorhetorician I am interested in the visual design of clickwrap agreements and the ways in which that design encourages or discourages users from reviewing the document. Though this analysis could be applied to any number of clickwraps, Turnitin's EULA provides an extremely relevant example for examination, one with three benefits for the writing classroom:

1. giving students practice in considering the relation between design and meaning;
2. encouraging students to read EULAs; and
3. exposing students to intellectual property issues through the intersection of their IP rights and the rights of iParadigms.

After reviewing the history of clickwrap agreements and the role of design in questions of their legality, I will turn to an examination of Turnitin's clickwrap EULA design. By unwrapping this design, I hope to suggest strategies we can use in the writing classroom to teach students an awareness of these issues and their implications.

SHRINKWRAP, CLICKWRAP, BROWSEWRAP

Initially, software makers controlled rights to their property by printing End User License Agreements on paper and enclosing them in shrinkwrap around the product; end users agreed to the terms of these contracts when they removed the shrinkwrap from the software. With the advent of the Web, shrinkwrap became clickwrap or browsewrap, the former indicating EULAs such as Turnitin's that require a user to click a button indicating assent before proceeding and the latter indicating those situations in which the EULA is located on another webpage, reached by clicking on a hyperlink (Casamiquela, 2002). The legality of clickwrap was first confirmed in the 1996 case of *ProCD, Inc. v. Zeidenberg* (Davis, 2007), in which ProCD's software presented the EULA onscreen, requiring the defendant to indicate assent with a click before installation. Two years later this decision was validated in online contexts in *Hotmail Corp. v. Van\$ Money Pie* (1998). The defendant in that case created several Hotmail email accounts to help with its spam-sending business; the court granted a preliminary injunction based on the fact that Hotmail would prevail on its breach of contract claims grounded in the clickwrap EULA for its service.

Since those cases, courts have continually upheld online clickwrap EULAs as long as two essential elements are present: the EULA is automatically presented to users, and assent (through clicking or checking a box, for example) is required before the user can proceed (Casamiquela, 2002). The fact that both elements are rarely present in browsewrap agreements, in which a link (often at the bottom of a page) directs users to the EULA, means that those license agreements have been successfully challenged, beginning in 2001 with the case of *Specht v. Netscape Communications Corp.* (Davis, 2007). In this case, the plaintiffs sued Netscape claiming that Netscape's Smart Download software violated federal law because it monitored users' Internet use. Netscape attempted to compel arbitration based on its software EULA. But the link to that EULA was located at the bottom of the page and was only visible if a user scrolled all the way down; a simple "Download" button provided access to the software without compelling the user to read the license agreement. In rejecting Netscape's claims, the court ruled in part that the "'Download' button, as

contrasted with a button labeled ‘I assent,’ did not put the user on notice or indicate that he was entering into a binding contact” (Davis, 2007, p. 586).

As the Specht case suggests, design is an important issue in determining the enforceability of these agreements, an issue that Robert Gomulkiewicz (2004) argued has been inherited in part from their shrinkwrap predecessors:

Unfortunately, many EULAs come on a small paper card, on product packaging, or in a user manual. The EULA is printed in black and white using 10-point type or less. There is very little white space in and around the EULA, making the text very dense. Many EULAs today are presented in electronic form. These EULAs tend to look a lot like the paper version (or worse). (p. 697)

Looking worse than a print EULA impacts the validity of both clickwrap and browsewrap. Indeed, in his review of clickwrap and browsewrap enforceability, Ryan Casamiquela (2002) suggested that design may be crucial when the dual elements of automatic presentation and clear assent are not both present: “Courts may consider whether the vendor has the link underlined or in a distinguishable color, or if conditional language occupies the text of the link. A prominent, colorful link next to an ‘I Accept’ icon may prove sufficient for a finding of consumer assent” (pp. 486-487). Thus in *Pollstar v. Gigmania* (2000), for example, the court found the browsewrap EULA unenforceable because the link to it was “in small gray print on a gray background. In addition, the court noted that some blue colored links failed to function, perhaps causing consumers to assume that all colored links would also fail” (Casamiquela, 2002, p. 485). Conversely, in *Lawrence Feldman v. Google, Inc.* (2007), the court found the clickwrap in question fully valid because of its design, specifically mentioning the use of bold font, the size of the font, and the visibility of the EULA above the “fold” of the screen/page.

Design also specifically played a role in the recent suit against iParadigms. As part of their counterclaims, iParadigms claimed indemnification based on students’ agreement to the site’s Usage Policy. However, that policy was not available in the clickwrap; it existed on a separate page on the site. At the time of this writing, the link to that page is located below the fold in gray text (RGB code #999999) on a white background, while most of the other links on the page are blue. In dismissing this counterclaim, the court cited *Register.com v. Verio, Inc.* (2004), in which language pointing to the license was repeatedly and prominently displayed to the user, something that did not occur on the Turnitin site (Warnecke, 2008). Instead, Turnitin’s presentation of its Usage

Policy is more similar to the case of *Specht v. Netscape Communications Corp* (2001). As with Turnitin, the EULA in that case was reached only by a link located below the fold of the site (Casamiquela, 2002). As Michael Warnecke (2008) noted on his blog, “Even though Turnitin.com lost on the browsewrap point, it’s easy to see how a little more effort on Turnitin.com’s part could have produced a favorable outcome.” And part of that effort would have been in terms of design.

Although courts have primarily evaluated clickwrap and browsewrap licenses through considerations of factors such as unconscionability, public policy violation, and the preeminence of federal copyright protection (Davis, 2007), design remains a factor in determining the validity of these contracts. Although Robert Gomulkiewicz (2004) found that the “unfriendly format of the EULA strongly suggests that the format was not chosen with readability in mind,” he also suggested that “software businesspeople and their legal counsel seldom cynically connive to create an impenetrable EULA. It just happens naturally” (p. 697, 694). Seldom or not, users often suspect conniving is involved; perhaps more so when it comes to Turnitin.

COMPOSITION, PLAGIARISM, AND VISUAL DESIGN

The business of Turnitin is, on some level, suspicion. And compositionists have continually critiqued Turnitin and other plagiarism-detection services specifically for the ways in which they base pedagogical relationships in suspicion. As Sean Zwagerman (2008) argued, “plagiarism detection treats writing as a product, grounds the student-teacher relationship in mistrust, and requires students to actively comply with a system that marks them as untrustworthy” (p. 692). Zwagerman examined the ideological load of plagiarism itself and the disciplining work of “integrity.” In his analysis, tools such as Turnitin are “the inevitable end point of the integrity scare: an efficient, perhaps even foolproof, technology of surveillance, a ‘panoptic schema’ (Foucault 206)” (p. 691). Zwagerman’s title, “The Scarlet P: Plagiarism, Panopticism, and the Rhetoric of Academic Integrity,” points to the socially disciplining function of Turnitin’s panoptic technology. In this context, it is salient to recall Turnitin’s logo, which features a red “it” between gray colored “turn” and “in.” The “it” being turned in, of course, is the student paper, already marked scarlet.

Bronwyn Williams (2007–2008) found many of the same issues in plagiarism and the Turnitin service. Focusing on the emotional reactions of teachers who discover plagiarism, Williams discovered that “the use of such a service for student writers begins from a presumption of guilt” (p. 352). Rather than rest

in this construction of the student, with its attendant emotional reaction when teachers discover that guilt, Williams instead suggested that instances of plagiarism offer possibilities for teaching. In this analysis, Turnitin obscures that pedagogical moment. Echoing Zwagerman, Williams suggested that using Turnitin “creates a prison culture of guards and the guarded—a cat-and-mouse game of detection and mistrust” (p. 352).

Jennifer Jenson and Suzanne De Castell (2004) registered many of the same concerns; however, they situated those concerns as reflected in the design of Turnitin’s Web site. Using a semiotic analysis, they find that what

stands out in Turnitin’s web site, both iconographically and textually, is a consistent nostalgic return to the past, to the fifties, for the most part, using old photographs whose source, incidentally, is unacknowledged—the crisp black and white characters are emblematic of the clarity with which intellectual integrity can be seen, can be scientifically and precisely “detected” (p. 318)

The visual design of the site, in other words, relies on retro images to suggest “better, simpler and presumably more *honest* times” (Jenson & De Castell, p. 317), reflecting plagiarism’s evolving function in a knowledge system in which autonomy and originality are called into question. Bill Marsh (2004) also analyzed Turnitin’s Web site, reading the sample originality reports on the Web site as referential symbols that construct plagiarists as “pathological, deceitful, diseased, and/or violent” while the site’s use of “photos of predominantly White, short-haired men and boys betray[s] an obvious appeal to a foregone age (mid-50s perhaps) of educational order and congeniality” (p. 430, 434). Although (perhaps consciously) the Turnitin site no longer uses such retro images in its design, one might still continue analyses such as these, focusing, for example, on the logo of Turnitin’s related Web site, Plagiarism.org, which features a magnifying glass over a fingerprint with digital ones and zeroes scrolling through, reinforcing the links between identity, authenticity, deviance, and panoptic detection suggested by these critics.

Such analyses reinforce the ways in which design produces meaning, an axiomatic tenet in technorhetoric. Yet, as Anne Wysocki (1998) observed, design *does more* than create meaning; it also produces order. Wysocki argued that the design of webpages, framed with metaphors inherited from print literacy and art, produces a certain kind of order in users, akin to the disciplining functions observed by critics of Turnitin. At the same time, these metaphors of design efface themselves in order to become invisible and hence beyond discussion; vi-

sual designs function as “expressions of and means for reproducing cultural and political structures,” simultaneously becoming invisible through their repeated and constant use. Wysocki’s analysis begs us to unravel designs in order to unpack the order they impose. Her argument also suggests one of the problems with EULAs in general: They have become so ubiquitous as to be automatically accepted and assented to.

Clickwraps themselves borrow from the kinds of print literacy forms Wysocki (1998) explored. More specifically, they remediate shrinkwrap EULAs. Jay David Bolter and Richard Grusin (1996) explained the process of remediation and the desire for transparency: “Since the electronic version justifies itself by granting ... access to the older media, it wants to be transparent. The digital medium wants to erase itself, so that the viewer stands in the same relationship to the content as she would if she were confronting the original medium” (p. 45). In remediating shrinkwrap, clickwrap tries “to absorb the older medium entirely, so that the discontinuities between the two are minimized. The very act of remediation, however, ensures that the older medium cannot be entirely effaced” (Bolter & Grusin, p. 46). That remediation is an imperfect process means that the design in clickwrap cannot be made fully invisible. Bearing traces of its shrinkwrap predecessor, clickwrap—no matter how ubiquitous—opens itself to an unwrapping analysis that can reveal the strategies used to promote or inhibit reading. In turning to such an analysis, I am guided by Wysocki’s (1998) pointed question: “What order is reinforced by a design, and what designs give us chances to re-order?”

2005, 2006, 2008

Basing any analysis on a Web site’s design is a risky venture. For one thing, designs change. More problematically, when it comes to the Web, design and appearance are not necessarily the same, given the vagaries of browsers, platforms, and screen resolutions. To mitigate these problems, I’d like to examine the clickwrap for the Turnitin EULA at three different moments in time, in three different browsers, at three different screen resolutions, and on two different platforms. Although the look of the clickwrap changes across all of these moments, certain design features remain consistent, features that discourage users from reviewing the terms of the EULA.

Figure 1 shows a screen shot of the Turnitin clickwrap from October 11, 2005, as viewed in Mozilla Firefox on a computer running the Windows XP operating system at a screen resolution of 1280 x 1024. At that time, the site still used the retro images noted by Jenson and DeCastell (2004) and Marsh

(2004). Two striking features of the clickwrap design—its size and color—reinforce the disciplining effects noted by those critics and suggested by Wysocki (1998). Those design aspects also actively discourage reading the EULA. Although the clickwrap has prominence on the page by being located above the fold—and, indeed, by being the only thing on the page—it is given relatively little space, both deemphasizing its importance and making the text it contains difficult to read. Judging from calculations made from the screen shot in image-editing software, this box takes up about 5% of the available space on the screen. Just over eight lines of the EULA are initially visible but when the text of the full EULA is copied out of the box and into word-processing software, it takes up just over *five pages* in Times New Roman 12 point font. Thus, the first way in which users are discouraged from reading the EULA is through a strict control of readable space. Note as well that the EULA is in white text on a gray background (the RGB code for the background is #B0B0B0), two colors with minimal contrast—which makes *any* reading difficult. Color thus becomes a second strategy to discourage readability. No common HTML elements are used to make the text more readable—no bold or italics or headings. Rather than make use of these visual cues, the text uses ALL CAPS for certain sec-

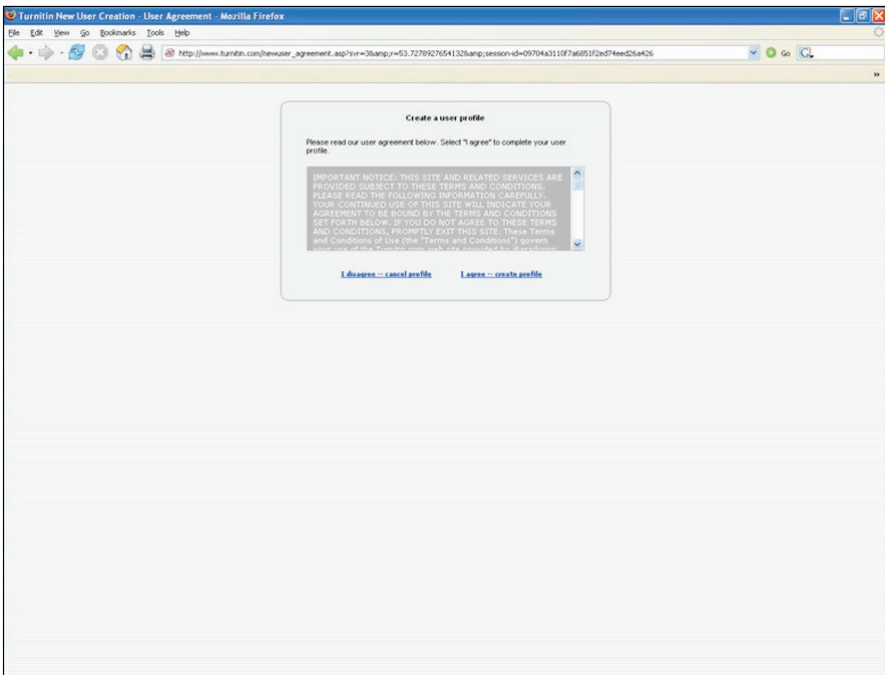


Figure 1: Turnitin EULA, October 11, 2005.

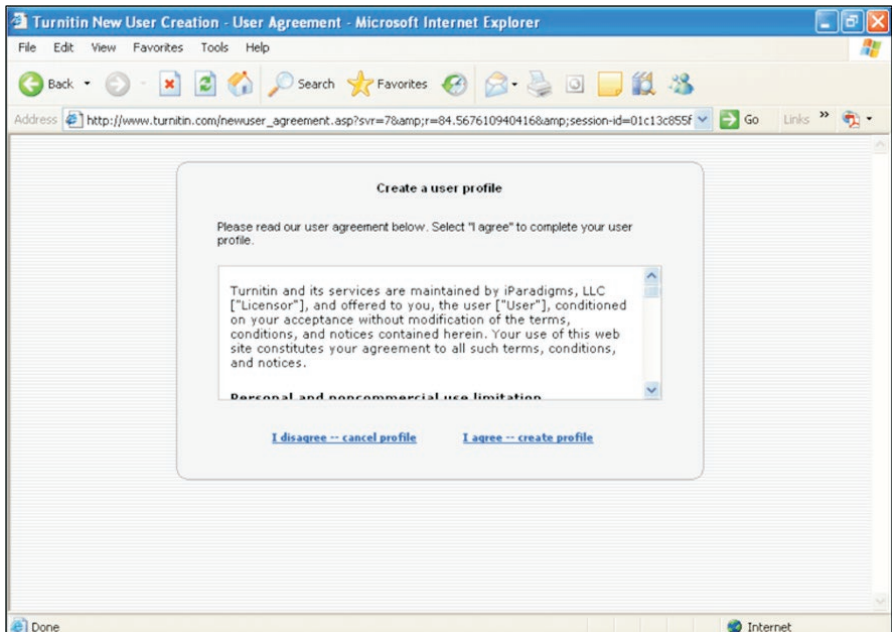


Figure 2: Turnitin EULA, March 20, 2006.

tions which, while perhaps common in some legal documents and thus pointing back to the remediation of shrinkwrap, is considered shouting in the online world; it is, too, more difficult to read.

I don't want to claim that iParadigms intentionally obscured this EULA from users in the clickwrap, though certainly that temptation is there. And perhaps Gomulkiewicz (2004) is right in claiming that the impenetrability of EULAs happens "naturally." But this particular EULA, the design of which is nearly impenetrable, contains particularly objectionable terms. The October 2005 version of the EULA includes not only license to all content uploaded to the site, both papers and any other communications, but also clauses to limit liability, indemnification, warranty, arbitration, and jurisdiction.

By March 20, 2006, the clickwrap for Turnitin had changed to one offering better readability. Figure 2 shows the site as viewed in Microsoft Internet Explorer in Windows XP on a monitor with 800 x 600 screen resolution. Even with this much smaller screen resolution (which consequently makes everything larger on the screen), the text box is allowed about 15% of available space on the page. While this does increase readability, users can still only read six to ten lines of text at a time, even though the revised EULA still takes up four pages in a word-processing file. The use of a white background with black text

would be different than pass123), must be 6-12 characters long, and contain at least one letter and one number (for added security).

enter your password

confirm your password

Next, please enter a secret question and answer combination. You will be asked for this combination if you ever forget your password and need to reset it.

secret question

Please select a secret question

question answer

user agreement

Please read our user agreement below. Select "I agree" to complete your user profile.

Turnitin.com (the "Site") and its services are maintained by iParadigms, LLC ("iParadigms"), and offered to you, the user ("You" or "User"), conditioned upon Your acceptance of the terms, conditions, and notices contained herein without modification (the "User Agreement"). By clicking the "I agree - create profile" button below You: (1) represent that You have read and understand, and have the capacity and authority to enter into, this User Agreement; and (2) agree to be bound by all of its terms and conditions. You should review this User Agreement carefully. If You breach the User Agreement, Your authorization to use the Site may be terminated at any time.

I agree -- create profile **I disagree -- cancel profile**

Figure 3: Turnitin EULA, October 23, 2008.

is, however, a significant improvement as is the use of bold headings to separate sections of the text.

This “liberalization” of the design is also reflected in a “liberalization” of the EULA itself. In agreeing to the 2005 EULA, users grant iParadigms “a non-exclusive, royalty-free, perpetual, world-wide, irrevocable license to reproduce, transmit, display, disclose, and otherwise use your Communications on the Site or elsewhere for [their] business purposes” (iParadigms, 2005). iParadigms is free, moreover, “to use any ideas, concepts, techniques, know-how in your Communications for any purpose, including, but not limited to, the development and use of products and services based on the Communications.” The EULA does, at least, exclude personally identifiable information from students and actual student papers from its definition of “Communications”; instructor assignments, however, are offered no such protection. The revised EULA (2006), the more readable one, has no such objectionable provision. As the EULA has become less predatory of IP rights, it has been presented in ways that make it easier to read, or, conversely, the more unpalatable EULA is the one users are most discouraged from reading.

The third screen shot, Figure 3, is from October 23, 2008, and shows the EULA as viewed in Safari on a Macintosh computer running the operating

system OS X with a 1680 x 1050 screen resolution. The EULA no longer exists on a separate page of the site, but is now incorporated into the user account creation screen. It is, however, located below the fold on that page, meaning that it is not immediately visible to users. And it continues to be allocated minimal space on screen—a mere 6% of the available screen space. Although the black text against the white background is more readable, the EULA occupies eight text-only pages of Times New Roman 12 point text. Bold headings are again used and, additionally, bold text is used within sections to highlight particular clauses. Visually, users are encouraged to agree to the clickwrap with a large button indicating that agreement (located next to a small link for disagreeing).

The longest EULA continues to receive precious little screen space, but its increased length is not in itself a sign of increased infringement of IP rights. In part, the increased length reflects legal developments in a post-9/11 world; there is now a specific clause prohibiting download or export of the service “to any person or entity on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Denial Orders or otherwise prohibited by United States export control laws” (iParadigms, 2008). The EULA has also grown in length to accommodate specific classes of users. The “sole remedy” of students and instructors dissatisfied with the service is to stop using it; the sole remedy for educational institutions is specified separately and is limited to what they have paid iParadigms. Most interestingly, though, the license granted to iParadigms by users now has a specific disclaimer, visually highlighted through the use of bold text: **“This license does not include any right to use ideas set forth in papers submitted to the site.** Please note that papers submitted to the Site are not read or reviewed by any individuals, but rather are only analyzed using the Licensed Programs” (iParadigms, 2008).

Turnitin’s EULA itself, then, has continued to evolve in response to both legal challenges and the general political climate. Despite these changes, though, the design of the clickwrap continues to discourage readers from reading the text of the license. In all three instances, the clickwrap is given minimal screen space. Each time, it is also presented through an inline frame, HTML tag <iframe>. Inline frames create windows within a page and, in doing so, activate a kind of hypermediacy in the process of remediating shrinkwrap. According to Bolter and Grusin (1996),

hypermediacy offers a heterogeneous space, in which representation is conceived of not as a window onto the world, but rather as ‘windowed’ itself—with windows that open onto other representations or other media. The logic of hyperme-

diacy calls for representations of the real that in fact multiply
 ... the signs of mediation. (p. 329)

In making a window within the window of the browser, inline frames both suggest transparent access to the text through that window while simultaneously calling attention to the window itself, in this instance through a scroll bar and a thin 1-pixel border. They produce order—a limiting order based on relative size—yet they cannot do so without also calling attention to that production. Because the order produced cannot be made invisible, we are especially welcome to imagine a re-ordering.

After all, though many clickwraps use inline frames, many also provide frames large enough to show significant amounts of text, thereby allowing (if not encouraging) users to read the license. Turnitin's EULA is not the only configuration possible, and is, indeed, one of the worst. Apart from these issues of design, Gomulkiewicz (2004) explored many options for creating more readable EULAs and clickwraps, including better training of law students and "plain language" legislation. He most strongly advocated, however, a Web-based EULA non-governmental organization, suggesting that "an NGO could be a powerful vehicle for making licensing more user-friendly" through education, forums, feedback, and best practices (p. 715). Although not mentioned by Gomulkiewicz, Creative Commons points in just such a direction. In creating a simplified licensing process that allows content creators to specify rights for users, Creative Commons has transformed what a EULA might be—and it has done so not just legally but visually as well. Figure 4 shows a sample Creative Commons license. The text is short and readable, and visual icons are used to emphasize the terms of the license; design and content both promote readability. Although it is difficult to imagine such a streamlined EULA being adopted by companies such as iParadigms, the existence of Creative Commons options nevertheless allow us to imagine a different order for clickwraps.

TEACHERS, STUDENTS, ADMINISTRATORS

EULAs in the Writing Classroom

In incorporating an analysis of the visual designs of EULAs in the classroom, we might consider three pedagogical goals. First, such an exercise might be consistent with local programmatic goals concerning critical thinking and close textual analysis; asking students to decode the EULA and its implications involves sustained attention to a complicated text while considering the

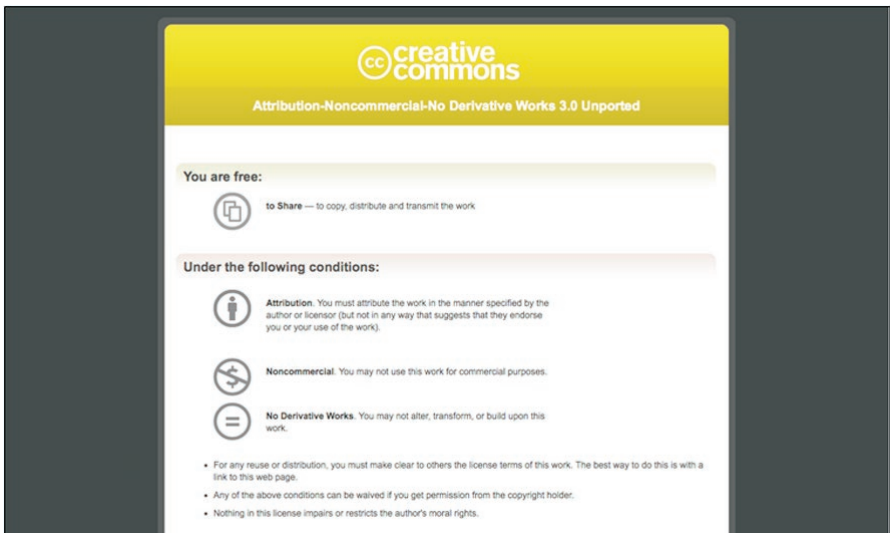


Figure 4: Creative Commons license.

visual design of clickwraps expands student experience with electronic rhetorical forms. Second, such a pedagogical practice is consistent with Cynthia Selfe's (1999) call for a critical technological literacy, which moves beyond instruction in merely how to use technology and towards an ability to "carefully analyze, to pay attention to, the technology–literacy link at both fundamental levels of conception and social practice" (p. 148). Rather than empowering students with a functional literacy in relation to electronic writing tools—the ability to use those tools—such a literacy asks students to consider the conditions and implications of these tools themselves, for themselves and for the social relationships in which they participate. Finally, working on EULAs in the classroom can also help meet the Council of Writing Program Administrators' (2009) recommended outcomes for first-year composition by understanding how genres (in this case clickwrap) shape meaning by promoting inquiry, and by exposing students to the relationships between language, knowledge, and power. In specifically using the clickwrap designs from Turnitin, these classroom activities are also consistent with the Council's recommendations regarding plagiarism.

To meet such goals, we can invite students themselves to imagine a different order for clickwrap agreements. Such an exercise might start by asking them to perform the kind of visual analysis offered here, locating clickwraps and considering their design in relation to the text of the agreement. Students who

spend any amount of time online will be able to find many different clickwraps and browsewraps at sites such as World of Warcraft, Facebook, or Flickr.

Interestingly, many of these sites use a hybrid of the clickwrap and browsewrap forms, requiring assent by clicking a button to create an account as in a clickwrap, but containing the terms of the license on a separate page as in a browsewrap. Twitter, a site that allows for a kind of condensed, text-message-like blogging, serves as a particularly interesting example, since its EULA is clearly presented in simple terms. Its section on copyright, for example, labeled “Copyright (What’s Yours is Yours),” not only maintains user IP rights but also encourages “users to contribute their creations to the public domain or consider progressive licensing terms” (Twitter, 2008). In analyzing the design of these pages, students can note the visual and rhetorical placement of the clickwrap/browsewrap, its size, the choice of colors and fonts, as well as the use of HTML elements that promote readability, such as bold text to delineate sections.

Asking students to locate and unwrap EULAs also gives them practice in decoding the linkages between design and meaning. Such exercises also prompt students to read the terms of these licenses. As part of this exercise, students might use the License Analyzer provided by SpywareGuide (<http://www.spywareguide.com/analyze/index.php>). After pasting in the text of any EULA, students can obtain information not only on questionable clauses in the license (flagged by the analyzer) but also the overall readability of the text, noted by the number of words and sentences, the average words per sentence, and ratings on several different readability scales. Students can also use readability analysis tools, one of which claims that the Turnitin EULA requires a post-graduate education for comprehension; Twitter’s EULA, in contrast, requires at most a 10th grade education.

Beyond these activities, teachers can invite students individually or in groups to design better clickwraps. Working within the same spatial constraints for webpages as corporate Web designers, students can consider the tradeoffs required to encourage readability while economizing design and screen space. In making these models, students can locate and compare a spectrum of EULA designs, such as the ones provided by Creative Commons. In Web design classes, students can consider whether or not to use inline frames as well as other HTML elements that can enhance readability. Even outside of classes explicitly covering webpage construction, students can design static mockups of more successful clickwrap designs.

Congruent with these practices, we as teachers should pay more attention to EULAs, an act consistent with Selfe’s (1999) goal to “pay attention” to questions of technology and its linkages to literacy. After all, students are not the

only ones whose IP rights are at stake in clickwrap agreements; most, such as Turnitin's, do not distinguish between classes of users. Although there are separate links for students, instructors, and teaching assistants to create accounts on the Turnitin site, the EULA is the same for all three. In creating an account, instructors agree that

any communications or material of any kind that You e-mail, post, or transmit through the Site (excluding personally identifiable Registration Data of Students, any papers submitted to the Site, and grades and assessment related information), including, questions, comments, suggestions, and other data and information (Your 'Communications') will be treated as non-confidential and non-proprietary

and thus any class materials you post become the property of iParadigms, which claims a

non-exclusive, royalty-free, perpetual, world-wide, irrevocable license to reproduce, transmit, display, disclose, archive and otherwise use Your Communications on the Site or elsewhere for our business purposes. (iParadigms, 2008)

What's more, the EULA for Turnitin places the responsibility for determining plagiarism squarely on the instructor's shoulders:

You further agree to exercise Your independent professional judgment in, and to assume sole and exclusive responsibility for, determining the actual existence of plagiarism in a submitted paper with the acknowledgement and understanding that the Originality Reports are only tools for detecting textual similarities between compared works and do not determine conclusively the existence of plagiarism, which determination is a matter of professional judgment of the Instructor and Institution. (iParadigms, 2008)

These terms should certainly give us pause, but of course Turnitin is not the only EULA we will encounter. Many publishers now offer a variety of electronic resources in connection with their textbooks; we should consider the EULAs for those services carefully as well, along with the EULAs of online and local software.

EULAs and Writing Program Administrators

For me, the greatest challenge with the Turnitin clickwrap in particular comes from my role as the writing program administrator (WPA) at my institution. As the WPA, I see all suspected cases of “academic irregularity” (as plagiarism is termed at my school) and am forced to negotiate between my concerns about IP rights and my responsibility to uphold my institution’s Honor Code which, as a state university policy, is also state law. From this institutional position, I am able to witness all of the concerns voiced by composition scholars about the general enterprise of plagiarism. In particular, I regularly encounter the kinds of emotional responses from instructors with cases of plagiarism that Williams (2007–2008) described. Teachers with such concerns in their classrooms often react, I find, like those who have found their lovers cheating on them. There are similar feelings of betrayal, anger, and vindictiveness. As a first response to any possible academic irregularity, then, I ask all teachers in my program to consult with me or another experienced instructor before even speaking to the student. Often having a second opinion can provide a rational perspective that can diffuse the emotional content of the situation.

More generally, however, though I can guide our program’s policy, I do not control those who teach within it; indeed, to do so would be to invert the disciplining systems surrounding plagiarism onto instructors themselves. As a program, we advocate against using Turnitin precisely because of the IP concerns related to the service. In that way, we try to limit its use. Those teachers who wish to pursue charges of academic irregularity against a student using Turnitin are invited to send me the student’s paper. I use my account on Turnitin and upload only parts of the student paper to generate an originality report, limiting the risk to the IP rights of both the instructor and the student, and offering my own soul to the EULA. In conjunction with this limited use, we as a program work hard to provide students an understanding of plagiarism and its subtleties. Our program Web site, for example, contains an extensive set of Frequently Asked Questions about plagiarism, which is also presented in the supplemental text that we use with our writing courses.

However, WPAs might be uniquely empowered to create greater change in response to this situation. Although licenses for Turnitin are usually negotiated by institutions, and while we as faculty may participate in systems of institutional governance that can influence those negotiations, the truth is that there is little we can do once an institution has subscribed to a service like Turnitin. However, there may be action we can take based on the economic power of writing programs and by the sheer number of students who move through the core writing courses offered by such program. While serving as a WPA at

my previous institution, just such a possibility emerged. At the time, we were considering a new handbook that included Turnitin in its support technology. After reading the terms of the EULA and the objectionable language concerning the IP of both teachers and students, I immediately emailed our local sales representative to indicate we had no interest in this handbook. However, with a possible 11,000 handbooks at stake, a reply quickly followed. My concern was transmitted up through the corporate structure and soon the publisher was working with iParadigms to revise the language of the EULA. Because we did not end up adopting that handbook (for reasons unconnected to its inclusion of Turnitin), I am unable to say whether or not the license ultimately would have been revised. However, that experience offers a glimpse of the possibilities enabled by the economic leverage of writing programs.

CONCLUSION

All of these strategies are, at best, partial. As long as courts broadly support EULAs and as long as users rely upon software and digital services, the issues explored here will continue to be at play. Thus EULAs in general, and clickwraps specifically, should continue to be a point of advocacy for anyone interested in protecting IP rights in the digital age. In pursuing this agenda, we should keep in mind Wysocki's (1998) observations about the ways in which the repetition of design makes the order it imposes invisible. For Wysocki, that which is not seen is not questioned. Given the designs of clickwrap agreements, we might extend her point: That which is not read is not questioned, either. By unwrapping the designs of EULAs, we can pay attention to their terms and through that attention we can question those terms.

Without such attention, our sole remedies to infringement of IP rights in the electronic spaces of the writing classroom will continue to be specified by clickwrap or browsewrap EULAs. In taking the time to read EULAs and to consider their effects on our teaching and our students, we may instead be able to forge a soul remedy of our own in these deals with potential devils.

NOTE

1. Online licenses are termed either "clickwrap" or "browsewrap," both of which are named after "shrinkwrap," which was used to describe licenses printed on paper and shrink wrapped in plastic with the physical media for installing software. Removal of the plastic wrap indicated assent to the terms

of that license. For clickwrap, clicking a button such as “I Agree” indicates that assent; for “browsewrap,” the user is pointed to the license (usually on another webpage), but is not required to indicate acceptance of the license before proceeding.

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