

AUTHOR-GOD HELP US!: SOME RIGHTS RESERVED COPYRIGHT IN THEORY AND
IN PRACTICE

by

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(Under the Direction of Michelle Ballif)

ABSTRACT

Author-God Help Us!: Some Rights Reserved Copyright in Theory and in Practice argues that some rights reserved copyright, through which individual creators may choose flexible copyright terms, is uniquely situated in our time and provides an avenue to widen discussions about the role of the author and the protection of intellectual property by neutralizing the all rights reserved/no rights reserved binary currently at war in the copyright system. Copyright licenses have become stricter as entities have striven to hold tightly to their intellectual property, often to the detriment of creative progress and for the purpose of maintaining profit control. In fact, as language theories have argued for the inherent separation of text and author, copyright laws have inversely argued for tighter control between text and author. On the other hand, a movement to reduce or to abolish copyright law altogether has arisen that seeks to sever all connections between creator and creation in favor of a free-for-all that keeps authors from legal right to work that is their intellectual property.

These differing ideologies set up a false binary in which either a creator of the text must keep control over the uses of his work in order to keep it free from outside pillaging or a creator must open herself up to a world where authors are not given credit for their work. As we have

seen in the cases of many other binary oppositions, neither of these extremes accurately express the wide array of possibilities that could exist between “all rights reserved” copyright and “no rights reserved” copyright. Particularly, rhetoric and composition theorists should insert themselves into this conversation because its ramifications may very well affect how we are *allowed* to conduct our classrooms and to publish our research in the future. This movement represents a marked enough shift in language studies to warrant deep and broad intellectual inquiry. My discussion contributes to the growing interest in the borderlands ideological space of some rights reserved and spurs others to include it as part of their intellectual agenda.

INDEX WORDS: authorship, copyright, intellectual property, plagiarism, composition

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DEDICATION

I dedicate this dissertation to my Pap-paw, Hubert Parrott. He really wanted to see me become Dr. Parrott because, as he joked, “we need a doctor in the family.” But, we are all fighting a losing battle with time. No one could have provided more love and more ill-deserved confidence to me than he did, and no one will be prouder of this accomplishment than he would have been. May I always remember that no matter what I do in this life, nothing is more important than to “be good,” as his words and life always taught me to be.

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CHAPTER 1

INTRODUCTION

This dissertation will argue that some rights reserved copyright, through which individual creators may choose flexible copyright terms, is uniquely situated in our time and provides an avenue to widen discussions about the role of the author and the protection of intellectual property by neutralizing the all rights reserved/no rights reserved binary currently at war in the copyright system. Over the last century or so, copyright licensure has become more and more strict as individuals and publishing companies have striven to hold ever-so-tightly to their intellectual property, often to the detriment of creative progress and for the purpose of maintaining profit control (this is called copyright maximalism). In fact, as language theories have argued for the inherent separation of text and author, copyright laws have inversely argued for tighter control between text and author (or author's designee). As is often the case, theory and practice are at odds. On the other hand, a movement to reduce or to abolish copyright law altogether (copyright minimalism) has arisen that seeks to sever all connections between creator and creation in favor of a free-for-all that keeps authors from any legal right to work that is their intellectual property.

These differing ideologies set up a false binary in which either a creator of the text must keep excessive, extreme control over the uses of his work in order to keep it free from outside pillaging or a creator must open herself up to a world where authors are not given adequate credit for their work or, if given credit, have no control over potential re-manifestations of the work. As we have seen in the cases of many other binary oppositions, neither of these extremes

accurately express the wide array of possibilities that could exist between “all rights reserved” copyright and “no rights reserved” copyright. This either/or fallacy is problematic because it creates an environment for authorship that unnecessarily causes tension between the author and everyone else. Court cases such as *Matthew Bender v. West Publishing*, *Basic Books, Inc. v. Kinko's Graphics*, and *Princeton University Press v. Michigan Document Services* tend toward viewing intellectual property like chattel (the legal word defined in layman's terms as physical property that can be moved or manipulated). This fallacious notion results in ideas in both arts and sciences being over-protected through monetary or legal ramifications for actions considered breaches. While some protection is beneficial for giving credit where credit is due and providing some incentive for creation, over-protection via stringent copyright law inhibits the natural sharing of ideas and potential innovation, not to mention can be prohibitory in educational environments. In the default all rights reserved system the United States currently uses, any individual who is not the author is seen as a potential threat to the author's inviolate work. In a no rights reserved system, an author may feel violated by the lack of protection and be unmotivated to share her work with others and lose control over her intellectual property. Neither of these options is entirely productive. A some rights reserved system, where authors have the option to choose the type and level of copyright protection for their works, is preferable because its utilization would strengthen the authorship awareness of users through its volition-based implementation and would provide the amount of protection and / or collaboration appropriate for the (con)text.

In 2001, as a reaction to this copyright tension, a group of concerned individuals created Creative Commons copyright licensing, which provides a some rights reserved copyright option. In countries all over the world, Creative Commons has become popular by allowing the audience

of artists' and scientists' intellectual property to use, manipulate, change, and build upon the original work with creator permission. Creative Commons is “a Massachusetts-chartered 501(c)(3) tax-exempt charitable corporation” (“About”). The Creative Commons website (creativecommons.org) states: “Creative Commons defines the spectrum of possibilities between full copyright — all rights reserved — and the public domain — no rights reserved. Our licenses help you keep your copyright while inviting certain uses of your work — a 'some rights reserved' copyright” (“About”). This theory of “some rights reserved” puts into practice the post-structural challenge to subjectivity and authorship by legally allowing and even encouraging the co-mingling of what has previously been considered individual intellectual property. I argue that these current conflicts in copyright law over who has the right to use what, when, and for how much reflect a trajectory toward a redefinition of authorship. Most earlier studies of copyright law and its effect on authorship have neglected to discuss the potential for a copyright continuum (from all to no rights reserved) to transform both the theoretical understanding of authorship and its practical application in professional and academic composition. Therefore, “Author-God Help Us!” offers new insight into copyright law's connection with professional writing and writing instruction, engaging with rhetoric and composition theories as it offers an adjusted paradigm through which to view copyright in theory and in practice.

The foundational theories that are prerequisite to understanding the possibility of some rights reserved revolve around the signification of language, specifically Ferdinand de Saussure, Jacques Derrida, Roland Barthes, Michel Foucault, and Walter Ong. Therefore, what follows is a brief review of their ideas to get us started with the basic ideological assumptions upon which my argument lies. I will then turn to more contemporary thinkers whose recent work has rolled out the carpet for a more technologically compatible copyright system. To understand how and

why all rights reserved copyright law has become incongruent with well-respected language theories, one needs to follow the line of these language theories through the last century to now. The disconnect between author and text is seeded in Saussure and Derrida, whose work with the structure of language and destabilized signification foregrounded the post-structuralist discussion. Numerous theorists (Jacques Derrida, Michel Foucault, Julia Kristeva) have built upon, countered, and deconstructed the relationship between the signifier and the signified, insisting on its destabilized meaning.

Like Derrida, Roland Barthes challenges the notion of a structured web of meaning. The author-god, according to Barthes's definition in the 1967 essay "The Death of the Author," is that Romantic notion of the artist to whom brilliant epiphanies come to be written down. It often neglects the community and contextual role in composition. He explains, "the image of literature to be found in ordinary culture is tyrannically centered on the author, his person, his life, his tastes, his passions" (126). In "Authors and Writers" from 1960, Barthes claims that the audience "consumes the author" (188). He argues convincingly that as a result of this obsession "to give a text an Author is to impose a limit on that text, to furnish it with a final signified" (129). To refer to Derrida's idea of the transcendental signified, Barthes shows us that the author himself *cannot be* the transcendental signified of his own text because the author cannot exist both inside and outside of the text. The author-god in concept, however, can. The author-god is more than author for his person necessarily invades his text, which is (or is supposed to be) impenetrable to outside forces.

Just as Barthes asks readers to grieve the death of the author, Michel Foucault asks readers to ponder what an author is to begin with. In Foucault's 1969 essay "What Is an Author?," he poses the title's "slightly odd question" (113). He asserts that often an author serves

only as a means of classification for works: “a name can group together a number of texts and thus differentiate them from others” much in the same way Saussure claims that we get meaning from words because of their diacritical nature (123). He calls this classification the “author-function.” He indicates that the author-function creates authors that are not only responsible for the texts that are attributed to them but also to the “significant ramifications” their texts may result in. For example, Ann Radcliffe might represent not only the texts she created but also other Gothic Romances in the Eighteenth Century. As he explains, “After all, Galileo is indirectly responsible for the texts of those who mechanically applied the laws he formulated,” but he warns against relying too heavily on initiation and derivation (133). He also speaks to copyright law and its effects on our understanding of what an author is:

[Writing] was a gesture charged with risks long before it became a possession caught in a circuit of property values. But it was at the moment when a system of ownership and strict copyright rules were established (toward the end of the eighteenth and beginning of the nineteenth century) that the transgressive properties always intrinsic to the act of writing became the forceful imperative of literature. (124-5)

This reflection on the “forceful imperative” of literature leads him to conclude that “the author—or what I have called the 'author-function'—is undoubtedly only one of the possible specifications of the subject,” and he suggests we reject textual questions such as “who is the real author?” in favor of “Where does it come from; how is it circulated; who controls it?” (125). His deconstruction of the author-function is useful to clarify the symbiotic relationship between author and copyright as he insists that the singular subject author has not always existed as it does now, and, therefore, it does not necessarily always have to be viewed this way.

Walter Ong's "The Writer's Audience is Always a Fiction" further discusses this tenuous relationship between the writer and her audience. In this 1975 work, Ong differentiates between reader, readership, and audience—dispelling any notions that an author can predict how her text will be perceived by those who read it. He explains that audience is a collective noun, reader is singular, readers plural, and readership an "abstraction" (58). Writing, he insists, is not like speaking. Speaking inherently has a specific context while writing has only a fictionalized context in the relationship between text and author. A lack of comprehension about the inherent differences between speaking and writing is, according to Ong, a reason why we have often seen the reader as unproblematic. He says,

So long as verbal communication is reduced to a simplistic mechanistic model which supposedly moves corpuscular units of something labeled "information" back and forth along tracks between two termini, there is of course no special problem with those who assimilate the written or printed word. For the speaker, the audience is in front of him. For the writer, the audience is simply further away, in time or space or both. (57)

He further explains that even when writing to a specific person, the author can never positively know how the text will be interpreted. Creative Commons is a logical result of his theories because with Creative Commons, authors can openly acknowledge and invite a variety of interpretations that they do not control.

In "The Death of the Author," Roland Barthes explains that "it is language which speaks, not the author; to write is, through a prerequisite impersonality . . . to reach that point where only language acts, 'performs', and not 'me'" (126). The reader's relationship, therefore, is with the text itself, not the author or the narrator, and the text cannot be irreversibly tied to the author

because it is built upon the slippage of signification. Signs themselves are not, have never been, and are incapable of “sticking” in any way. In his essay “Psyche: Invention of the Other” from *Writing and Difference*, Derrida argues that “All the legal texts, often at the price of considerable difficulty and confusion, stress this point: invention can display its originality only in the values of form & composition. As for 'ideas,' they belong to everyone; universal in their essence, they could not ground a property right” (3). Therefore, the obsession of copyright maximalists between author and text or, more often, publisher and text is erroneously strict.

Following others, I contend that this cultural insistence on holding on to the author-text relationship is directly correlative to the subject/object relationship, much described, criticized, and deconstructed. Many, including Foucault, Lacan, and Butler, have developed a connection between semiotics as Saussure discusses and Hegel's psychological subject/object paradigm. The subject—unlike Descartes' “I” which was focused on the conscious and was relatively unproblematic—“foregrounds the relationship between ethnology, psychoanalysis, and semiotics. It helps us to conceive of human reality as a construction, as the product of signifying activities which are both culturally specific and generally unconscious” (Silverman 130). The object, or referent which is external to the sign, “is present within signification only as a concept which may or may not be representative of it” (Silverman 17). The object, then, is constantly deferred just as meaning is constantly deferred in the system and is the means of constant negotiation and struggle for the subject who longs for the object to enter into the systems of signs to which the object is external.

The author-function has been complicated by technological shifts of the last several decades, most notably the personal computer, word processors, the internet, and all its present manifestations, which facilitate the conflation of author, reader, and editor. Although copyright

and ruminations on it have been around for centuries, the changes in intellectual property necessitated by these technological shifts have increased in magnitude and speed over the last two decades. More than twenty years ago in *Electric Language*, Michael Heim discussed how the rhetorical canon is affected by our new understanding of the relationship between language and knowledge resulting from personal computers. Because computer-based composition is quicker than pen to paper and because the internet allows us to share what we have written so quickly, our composition happens quickly, often as a reaction to what someone else has written in a similar environment. Simply put, word processors allow us to cut and paste within documents as well as between documents with relative ease. Heim also reminds his readers that one of the effects of word processing and web publishing is that authors are not just authors; they are also editors and publishers, broadening the individual's daily interaction with language.

In the late 1980's text *Writing Space*, Jay David Bolter theorizes about how our use of language will change as the computer becomes more widespread (and now ubiquitous). He discusses how the written word has been almost idolized in print form. It belongs to an author. He predicts that e-writing will allow us to challenge that. He also discusses how the nature of e-writing is different from traditional literate writing because it is quicker to react, more immediate, and less likely to be extensively revised. He suggests that we should not fear these changes as “the end of literacy” but prepare ourselves for a new kind of literacy—what Ong would call secondary orality. Further, as Foucault and Barthes attack our death-clutch on the author, Jay David Bolter also challenges the book as sacred meaning-making artifact. He explains in *Writing Space*: “The physical book has fostered the idea that writing can and should be rounded into finite units of expression: that a writer or reader can close his or her text off from all others” (85).

Given the work of Ong, Barthes, etc., we cannot logically continue to close texts off with an insulating copyright legal structure that treats ideas similarly to jewelry, cars, or livestock. Creative Commons is a legal reaction to these changes in the speed and availability of information exchange juxtaposed with our post-structural understanding of language. Creative Commons copyright, not in existence when Bolter's text was published, is a natural result of these attributes of web publishing because they build a foundation around web publishing that reconstructs authorship to meet the needs of web publishing, which is fast-paced, multi-faceted and built upon the constantly changing context of the work of others. Web documents provide visible evidence that texts and authors are not closed off from others; sources can be viewed, used, and changed with ease. As Bolter further explains:

The computer in turn changes the technology of writing by adding new flexibility to the rapidity and efficiency of printing: the computer allows a writer or reader to change a text as easily as he or she can duplicate it. The capacity to adjust the text to each user's needs is unmechanical, uncharacteristic of the classic industrial machine, and this capacity derives from the unmechanical materials of electronic technology [. . .] The digital computer has helped to give us a new definition of the machine, as a complex interrelation of logical parts—an abstraction that unlike the steam engine and the dynamo, produces information rather than power. If the printing press is the classic writing machine, the computer provides us with a technology of writing beyond mechanization. (34)

The malleability of Internet documents speeds up the exchange and creation of text, further changing the role of the author. Just as copyright law was originally created, at least in part, to protect authors and artists from exploitation, some rights reserved has the potential to protect

them from the exploitation of current copyright laws that would bind artists from making the best of the speed with which technology can implement intelligent exchange. Copyright laws should reflect the current intellectual movement, and some rights reserved copyright allows that.

In more recent years, rhetorical theorists have continued to follow and discuss rapidly-changing technology's relationship with intellectual property and the laws that govern it. In fact, the 2007 work *Digital Copyright and the Consumer Revolution* by Australian law professor Matthew Rimmer explores the ways digital life in the face of the new technology of the last few decades has forced copyright law to recognize differences. For example, Rimmer cites the *Sony Beatamax* case of 1984 when the United States Supreme Court ruled that home VCRs did not break copyright laws. This decision set a precedent whereby technology itself is not held liable for the copyright infractions that might result from its use. His chapter "Remix Culture" lays out the the legal steps taken to create Creative Commons and also presents criticisms of the "some rights reserved" movement. As a moderate choice, Creative Commons has received criticism from both sides: strict copyright maximalists as well as copyright minimalists. My argument will attempt to dispel (or quell) these criticisms and show how a moderate middle stance based on choice might actually provide the solutions both sides desire.

In particular, electronically published journals have concerned themselves with discussing issues of intellectual property in a changed world. *Kairos: A Journal of Rhetoric, Technology, and Pedagogy* has dedicated entire issues to intellectual property from early in these most recent conversations. In the Spring 1998 issue, Rebecca Moore Howard discusses Thomas Mallon's *Stolen Words*, claiming that his work over-simplifies and over-narrates plagiarism issues and calls contemporary rhetoricians to seek out contemporary, complicated plagiarism ideologies and policies. Johndan Johnson-Eilola answers intellectual-property-related questions;

he claims intellectual property is “ a social and economic construct designed to maximize profit for capitalists. (Its precise nature changes shifts in technologies, economies, etc.)” (par. 1). He, like Howard, situates intellectual property and copyright law as an issue of importance in rhetoric and composition studies because of its clear implications for instructional interactions with students. He also foresees that “The ability to filter, abstract, and reconnect information in useful ways will also become more important than the ability to create information (a sort of meta-production/meta-information skill)” (par. 10). *Kairos* continues to provide an apt forum for these discussions, with the 10 year anniversary edition including Martine Courant Rife's “Why Kairos Matters to Writing: A Reflection on its Intellectual Property Conversations and Developing Law During the Last Ten Years” and the Spring 2008 “Old + Old + Old = New: A Copyright Manifesto for the Digital World” by collective author Digirhet. Digirhet (made up of Casey, Adam, Grace, Amy, Jason, Matt, and Andrea, whose last names are intentional not given) argues for a lessening of strict copyright rules because remixing is practically impossible in the current copyright structure. Although their work is licensed under a Creative Commons copyright, they argue for a more radical view than the one Creative Commons espouses: “Certainly, not all intellectual property laws are unjust. Many are, however, and these unjust laws must be broken to be changed” (Digirhet, “Our Tenets and Values,” par. 10). While I readily accept much of what Digirhet's article claims—that copyright laws often restrict creative endeavors, that current copyright structure was built in a different historical situation, and that we must re-evaluate the ways we credit and consider authorship in this contemporary situation—I disagree that unjust laws must be broken to be changed. While breaking laws a la Thoreau's “Civil Disobedience” seems an awfully romantic notion and may be necessary in certain cases, I contend that challenging the binary with some rights reserved copyrights offers the opportunity

for a “grass roots” movement that works within the current system while also necessarily changing it in more productive ways that will not foster equally aggressive reaction.

Like Digirhet, many techno-rhetoricians have found collective or distributed authorship to be fruitful in the new media world. The technological abilities made available by the internet have led to a surge in collective activities and studies of their ramifications. The phrase collective intelligence describes the ways that contemporary knowledge is shaped by the distributed collective actions and interactions of its users. Renowned expert on collective intelligence Pierre Lévy defines collective intelligence as “a form of *universally distributed intelligence*, constantly enhanced, coordinated in real time, and resulting in the effective mobilization of skills” (13). In simpler terms, James Surowiecki's book *The Wisdom of Crowds* “argues that your average bunch of people can guess the weight of a cow or predict an Oscar winner better than an expert can” (Levy & Stone par. 7). To understand collective intelligence on the web, one must understand the huge way that our view and use of the internet has changed since its inception. Early web users saw it as a place to go to find or post information, but social interactions were novel. Now, we see the web as “things to do, ways to express yourself, means to connect with others and extend your own horizons. Cyberspace was somewhere else. The Web is where we live” (Levy & Stone par. 24). In the article “The New Wisdom of the Web,” Steven Levy and Brad Stone say, “What makes the Web alive is, quite simply, us. Our presence, most often conducted at the speed of broadband, is constant and mandatory” (par. 5). Interactive web communities such as Flickr, MySpace, Facebook, Twitter, and others have become some of the most used websites on the internet. Professional, educational, platonic, and romantic relationships are begun, enhanced, supplemented, and ended on the internet (to the joy and chagrin of many).

In *Wikinomics*, Dan Tapscott and Anthony Williams explain how the ideological changes seeping into how we view and use capitalism effectively in our society are influenced by collaboration and collectivity. They call this collaborative economic theory “wikinomics. This is more than open source, social networking, so-called crowdsourcing, smart mobs, crowd wisdom, or other ideas that touch upon the subject. Rather, we are talking about deep changes in the structure and modus operandi of the corporation and our economy, based on new competitive principles such as openness, peering, sharing, and acting globally” (3). They emphasize that this new collaboration ideology is a sort of natural progression in economics—and, I add, copyright law—because “Most people were confined to relatively limited economic roles [. . .] even their elected representatives barely concealed their contempt for bottom-up participation in decision making. In all, too many people were bypassed in the circulation of knowledge, power, and capital, and thus participated at the economy's margins” (10). A frustration as a result of this disconnection between power and knowledge led people to create, desire, and seek out ways to give themselves more agency in the invention and delivery of knowledge and goods. Now, “billions of connected individuals can [. . .] participate in innovation, wealth creation, and social development in ways we once only dreamed of” (3). The public now has the power to create together something potentially better than the previously named experts could create on their own by using “weapons of mass collaboration,” of which Creative Commons is one (11). Ironically, in the struggle to maintain power as author-god power is lost. When we release the idea of author-god in exchange for “mass collaboration,” power is gained. Traditional copyright law, however, has not kept up with the changes in power dynamics; in fact, it reflects an opposite ideology that clings to author-god ownership or rejects any kind of ownership at all.

Contemporary social theorists such as Lévy, Surowiecki, Tapscott, and Williams are necessarily important in this conversation. Constant access to word processing, interaction, and feedback via the internet exponentially increases our capability to be collectively intelligent. Users are more than interacting, however; they are creating knowledge. As Lévy humorously points out: “No one knows everything, everyone knows something, all knowledge resides in humanity. There is no store of knowledge and knowledge is simply what we know” (13-14). The type of interaction that internet collective wisdom embodies is expedited with web documents because of the speed with which information can be exchanged and the collaborative environment it allows. Slippage theories would tell us as well that multiple authors can create no less or more meaning than single authors. By exploring the various ways that thinkers, creators, readers, and users have shown a desire not just to view (consume) the internet but to create (compose) it together, we can see how Creative Commons has become popular in our contemporary historical context. As Bolter explains, “The physical book has fostered the idea that writing can and should be rounded into finite units of expression: that a writer or reader can close his or her text off from all others” (85). Web documents, however, are not closed off from others; sources can be viewed, used, and changed with ease and speed. The malleability of internet documents speeds up the exchange and creation of knowledge, instigating an unmatched urgency for interaction.

Wikis, the ultimate collective tool, support distributed authorship because they allow a text to be revised by members of the wiki community as a collective author, requiring participators to release the idea of themselves as “author-god.” Web authoring breaks down the one-to-one ratio between author and text that we have so long held onto and opens us up for distributed authorship wherein a text has several or many people working on it asynchronously

or a text changes as it passes from hand(s) to hand(s). By illuminating the ideological connection between my chosen literary authors and collective web authors, my research will show how desirable collective authorship can be because of the creative avenues it opens.

Lawrence Lessig's *Code 2.0* is an integral text for studying Creative Commons licensing. Lessig is one of the original proponents of Creative Commons; he is a lawyer, and he argues in this text that as a result of Web 2.0, we must re-evaluate the way we see the world. The old paradigm (of physical property like books, livestock, or cars) under which copyright law was created is not equivocal to the new paradigm that our technological advances has created. Unlike some theorists from the early internet era who panicked about what legal rights artists would lose in the face of all this sharing (see Mary E. Carter's *Electronic Highway Robbery: An Artist's Guide to Copyrights in the Digital Era* from 1996 for example), Lessig argues that as we progress, “the problem will center not on copy-right but on copy-duty—the duty of owners of protected property to make that property accessible” in an equitable exchange of information (175). With this aim, Lessig also provides an example that Creative Commons copyright can work in a practical world. His text is available in .pdf mode on-line and is licensed under CC. Therefore, it is adaptable under the hands of anybody else who so desires.

In *Technology and Literacy in the Twenty-First Century*, Cynthia Selfe suggests that in order for rhetorical theorists to remain relevant, we must develop theories about these current media manifestations. She says that to deny the changing course of rhetoric is to uphold “willful ignorance” (10). My focus on these issues resulting from, at least in part, technological advances are a reaction to this call and rely very much on Selfe's impetus. In this collection, Johndan Johnson-Eilola says, “In our postmodernist or social constructionist cultures, though, we in rhet/comp understand ideas as forming in contexts, in social situations. It's difficult or even

impossible to find completely original ideas. So, the argument goes, what right should any single person have over an idea?" (203). He also confirms the logic behind a copyright shift: "As intellectual work begins to replace industrial work in our economy, labor theorist Reich identifies a new job classification, one in which people manipulate information, sorting, filtering, synthesizing, and rearranging chunks of data in response to particular assignments or problems" (201). As our leisure and economic ideologies change to reflect a desire for these "weapons of mass collaboration," our legal system must change also, reflecting a necessarily changed understanding of the term "author." A conflict exists in that intellectual property issues and copyright are stringent now; however, we *can* go into an ideological place that is more open to distributed authorship and, hopefully, more open to flexibility in copyright law. Studies in some rights reserved copyright are, therefore, extremely relevant to rhetoric and composition studies, and they may help student-scholars practically invent themselves as authors with legal rights and may reject the author-god concept. For more information on the relationship between technology and rhetorical theory see Frances Yates's *The Art of Memory*, Kathleen Welch's *Electric Rhetoric: Classical Rhetoric, Oralism, and a New Literacy*, or Gail Hawisher and Cynthia Selfe's *Passions, Pedagogies, and 21st Century Technologies*.

While people have become more comfortable with sharing in collaborative environments, others have resisted this and called for strict copyright protection. Although copyright infringement and plagiarism are not the same thing, many people treat them as if they are. Composition theorists, however, have recently been fighting for a clear distinction between the two in order to help students better understand the role of attribution in their work. In *Standing in the Shadow of Giants: Plagiarists, Authors, Collaborators* from 1999, Rebecca Moore Howard argues for a pedagogical imperative relating intellectual property to the

classroom. Her argument relies on what she calls “patchwriting”: “copying from a source text and then deleting some words, altering grammatical structures, or plugging in one synonym for another” (xvii). She aptly argues in this text that while composition textbooks and university policies almost universally condemn this practice as plagiarism that, in reality, all academics “patchwrite” in one way or another. In fact, she says that for students patchwriting is often the way they learn to communicate in their chosen academic discourse communities. Like David Bartholomae's 1985 essay “Inventing the University,” which challenges writing teachers to sympathize with the ways that students attempt to find their place in the university by affecting a writing voice that they consider to be academic, often one of false authority, Howard invites us to see some of the instances we consider plagiarism to be “patchwriting” instead—a way for students to develop their academic writing. Creative Commons copyright licensing allows for “patchwriting” as Howard has described it in a “legitimized” way; it allows students to manipulate previously existing texts and make them their own without fear of retribution. As she says, Mikhail “Bakhtin's (1981) theory of dialogism denies the possibility of anyone's owning language” (7). Other authors have also deconstructed current strict views on plagiarism as an affront to post-structural theory. For example, the 1999 collection *Perspectives on Plagiarism and Intellectual Property in a Postmodern World* edited by Lise Buranen and Alice M. Roy questions our understanding of plagiarism from several varying viewpoints including the academy, instruction, research, the marketplace, history, and law.

Howard also pays tribute to Lisa Ede and Andrea Lunsford's 1990 *Singular Texts/Plural Authors: Perspectives on Collaborative Writing*. Ede and Lunsford provide a brief history of the concept of authorship and ways it has changed throughout history. Further, they provide a whole chapter on “The Pedagogy of Collaboration.” In this chapter, they suggest that although

collaborative writing has been popular for quite some time now, it often “still holds an implicit view of solitary, originary authorship” (108). They rightly point out that the very composition theorists who are often associated with early self-expressivist collaborations—e.g. James Moffett, Donald Murray, Peter Elbow, and Ken Macrorie—also ironically “hold implicitly to traditional concepts of autonomous individualism, authorship, and authority for texts” (113). Most notably, Elbow's *Writing Without Teachers* from 1976, although it encourages group work and has had tremendous effects on composition theory, also insists that writing originates from some sort of journey of self-discovery, leaving the author-text relationship fairly unproblematic. The difference between that type of collaboration and the collaboration that Creative Commons fosters is the potential release of individual authorship. Collaborative composition, for so long a copyright enigma—who's the main author? whose name goes first? who gets credit for their academic tenure?—has the potential to become more widely useful with some rights reserved copyright. This could be further delineated in the difference between cooperation and collaboration.

In the 2006 small pedagogical book *Collaboration in Composition Studies*, Sheryl I. Fontaine and Susan M. Hunter lay out clear definitions for both cooperation and collaboration. They insist that via the definitions they present, these are two separate concepts and that understanding the difference between the two is important to successful collaboration. Cooperation, they say, is when two people work near each other on the same project; the participants work for the same goal, yet have different tasks. This concept is best understood thinking about student work groups: with three students in a group, one student might do research, another may write a rough draft, while the third may edit and proofread. This is cooperation. Collaboration, on the other hand, is when group mates work in tandem toward the

same goal at the same time on the same tasks. Cooperation, then, still allies itself with the personal subjectivity of its participants, while collaborators distribute their subjectivities in the interaction. Earlier work concerning collaborative learning from the brink of the personal computer boom includes Kenneth Bruffee's *A Short Course in Writing* and various essays such as "Teaching Writing Through Collaboration" and "Collaborative Learning: Some Practical Models," Clark Boutan and Russel Y. Garth's edited collection *Learning in Groups*, and Cynthia Selfe and Billie Wahlstram's "An Emerging Rhetoric of Collaboration: Computers and the Composing Process."

Knowing the ways distributed authorship, technology, theory, and law have converged in a very particular way in this particular time, this dissertation argues for a practical implementation of these theories in publications and classrooms through a focus on some rights reserved copyright. As Rosemary Coombe suggests, contemporary "intellectual property laws stifle dialogic practices—preventing us from using the most powerful, prevalent, and accessible cultural forms to express identity, community, and difference" (1855). However, as technology has progressed and publication has become more personal, more flexible, and more reflexive through our ability to write, to publish, to revise, and to edit incredibly quickly in word processors and via internet outlets, the "most powerful, prevalent, and accessible cultural forms to express identity, community, and difference" have become ubiquitous and handheld. More than ever, we need a working and sustainable copyright system that will protect the interests of creators and re-creators alike. And, more than ever, composition students need instructors who value the shifts in authorship necessitated by these changes. Their everyday realities are at odds with the traditional copyright binary and we risk becoming increasingly irrelevant in their lives if

we do not embrace these changes—not to kowtow to the demands of a petulant clientele but to intellectually engage with authorship in a contemporary manner.

Because “private property and the public domain are paired together in a perpetual dance,” “Author-God Help Us!” will present a clear vision for the usefulness of some rights reserved copyright as a productive alternative in their relationship (Chander and Sunder 1). I argue that the the trajectories of technology, copyright law, and authorship ideologies meet and find reconciliation in the some rights reserved movement. Understanding copyright law as a historically and socially situated phenomenon that shifts with its context is integral to seeing some rights reserved copyright as essential to this particular historical situation: it could not have come about without the events and ideologies preceding it, and, conversely, its implementation will also irrevocably change the landscape of copyright law for the future. Supporting this “replacement of positivism and empiricism with interpretive or hermeneutic models of social life . . . [will have] profound implications for legal theory, specifically for the way it conceptualizes the world in which law has meaning, effect, and consequence” (Coombe 1857). Denouncing the subject/object binary does have extensive implications for the law, but these can be positive improvements that can be enveloped by the current publishing establishment. In this case, the binary need not be blown to smithereens when a viable, working, practical alternative exists to break it up.

Because the subject/object binary is so historically and socially situated, we must explore the social implications of the all rights reserved copyright system. By looking at several individual situations wherein particular social or cultural communities are restricted by the maximalist implementation of all rights reserved copyright, I show that some rights reserved copyright is not only necessary to manifest post-structuralism in authorship studies but beneficial

to those non-hegemonic authors who might find more freedom in publications and narrative structure when not bound by strict copyright law. In addition, relaxed copyright laws are beneficial to many different kinds of creators, allowing us all to be “constituted by and constitute ourselves with shared cultural symbols. . . . [Therefore], it is important that legal theorists consider the nature of the cultural symbols 'we' 'share' in consumer societies and the recognition the law affords them” (Coombe 1864). Copyright can be a good thing because of the protections it can provide to creators, yet a more flexible copyright system is even better situated to meet the needs of today's distributed authorship.

Knowing this brief background of the theories and histories surrounding the issue of authorship and copyright law, this dissertation argues that the conversation must be extended into practical application in publishing and in the classroom. Where many others have continued to see authorship as a binary issue, I believe in and show the overwhelming positive benefits to embracing a third (fourth, fifth, sixth . . .) option in copyright law that will nullify strict all rights reserved theories and the opposing no rights reserved through its advantageous application in appropriate realms. This argument involves ideological aspects from the past and the present and is complicated by socio-cultural dynamics. The following chapters begin with the history of copyright law and end with our responsibility to keep composition pedagogy relevant in a changed intellectual property climate.

Chapter 2

Chapter 2 provides a brief history of copyright law from its inception in 18th Century Britain in the Statute of Anne to its current manifestation in Creative Commons. I particularly emphasize social movements that have affected change in copyright such as the Enlightenment,

whose major thinkers pressed individual authorship for the sake of its ideologies. In this chapter, I highlight the practical applications of authorship theories as they sway and are swayed by the social context around them. To do this, this chapter revolves around the framework of questions: does an author have a right to his intellectual property? If so, does that right pre-exist copyright law? Or, does copyright law create an author's right to his work? Using these questions, the reader will be able to see that no final legitimate answer to these questions exists: each historical situation interprets the answers to these questions differently, often with a grey mixture of yeses and nos. For example, in France during and after the Enlightenment, many ideologically believed that the *droit d'auteur*—or the rights of the author—should control intellectual property rights and that the more freedom an author is given the more he will be able to create and interact with others in an exchange of ideas. They found, however, that some legal protection was needed to give credit to authors for their work and to provide motivation for those creations in the form of intellectual property security.

In America, however, we had a slightly different set of circumstances influencing the implementation of copyright laws. Our first copyrights were negotiated because the colonists-cum-newly independent citizens wanted to set up a national literature separated from the literature of England. Legally protecting our own authors from piracy was seen as a way to motivate them to create literature for the new world, American Literature. In this, American copyright has always claimed to espouse a “public good” motto, in that copyrights were to provide protection for the exchange of ideas in an environment that gives enough credit to authors for their work to be profitable, but only in that the work will help the American public.

Therefore, this chapter will claim that some rights reserved copyright is likewise a representation of the particular historical context in which we currently exist and work. Our

technological information age has left us at a crossroads in which we must either re-negotiate the implementation of copyright in our culture or continue to resist within the all rights reserved / no rights reserved binary. This binary, as other binaries in the Twentieth Century, must stretch to include further possibilities for copyright law or risk becoming more and more outdated, stifling potential creativities and punishing creators for their naturally-occurring remixes facilitated in the world of cut and paste, “tweet,” and “like.” Seeing copyright historically situated and changing as the contextual need arises undergirds a view that the law now needs to change.

Chapter 3

Collaboration, collectivity, and the author-function are not new concepts. However, the repercussions for composition studies that Creative Commons licensing pose have yet to be explored in depth. My dissertation fills that gap by looking at the histories of copyright and authorship that have led to this point in history and then noting the potential changes for all writers that Creative Commons holds. As a way to exemplify these thoughts, the chapter is broken up into six authorial contingencies: the Man of God, the Scientist, the Genius, the Critic, the Blogger, and the Commons. Setting the chapter up this way allows the reader to see the ways conceptions of authorship have less to do with language theories than the amalgamation of history, education, law, science, religion, and many other “contingencies” that influence conceptions of authorship. In particular, this chapter tracks technological changes and their powerful effect on the author-function.

The connection between authors and the texts they create can be best explained, as Seán Burke does, through the lens of a historical question: does a time period view authorship as a result of inspiration or a result of imitation? In fact, this framework echoes the subject/object

binary discussed previously as authorship seen a result of inspiration leans heavily on the subjective as those authors would be presenting their own individual works brought on only by their individual genius or the inspiration of God, nature, etc. An example of such an author includes Romantic poet William Wordsworth, who wrote of his inspiration coming from his transcendent experiences with nature in works such as *The Prelude*. Imitative authors would include those who participate in genres like Gothic writing such as Matthew Lewis, who wrote *The Monk* and typified the mores of the Gothic tradition. This chapter will explore how our contemporary historical situation opens us up to options beyond the inspirational / imitative model in the new collaborative environment and argues that the embracing of this model represents a creative and fruitful option to replace the previous combative one.

I frame this argument around the notion of a shared cultural experience in moving from one paradigm to another. The Man of God is most affected by a lack of technology to widely reproduce texts. When that capability became available, people began to question the *auctoritas* of the Man of God. The Scientist focuses on the clear use of language to explain the discoveries opened up to him by Mother Nature in his observations. The Romantic Genius relied on a rejection of the scientific method in favor of personal intuition and pseudo-science. As the Industrial Revolution came and social movements changed the socio-cultural economy, the Critic attempted to find textual meaning by focusing critically on the background of the author and then reflexively reacting with an obsessive focus on the text alone. The personal computer then made room for the Blogger, and has now quickly shifted into the distributed authorship shared in the Commons because of the changing intellectual economy.

Chapter 4

I will spend the next chapter discussing the successes, challenges, and failures of working authors that actively use Creative Commons licensing for their work, making an even more in-depth discussion of the Commons author. Example authors are Cory Doctorow and David Shields. Groups such as RemixMyLit, which uses Creative Commons licensing in its endeavors, provide further outlets for artists to meet and build off of one another's work without fear of legal retribution. I do not provide any extensive literary analysis of these works but rather focus on the impact the authors—as some rights reserved supporters in the first generation since its inception—may have on future copyright law and future understanding of the author-text relationship. These authors, editors, and publishers are on the forefront of what could be a potentially society-changing movement where artists gain power over their work by relinquishing it to others.

This chapter represents a look to the future of Creative Commons and effects it may have years down the road and relies heavily on the idea of rhetorical velocity put forward by Danielle Nicole DeVoss and Jim Ridolfo. Rhetorical velocity as a concept encapsulates the speed with which text can move forward in the new media economy. The authors and projects discussed in this chapter use tactics such as linking, blog commenting, reposting, and remixing that increase the rhetorical velocity of their texts. In a writing economy where speed and sharing capability are capital, some rights reserved has the ability to facilitate those variables in ways that traditional copyright cannot by increasing their rhetorical velocity.

Chapter 4 argues that these authors represent the clearly viable possibility of a copyright system and an understanding of authorship that rejects the all rights reserved/subject-no rights reserved/object binary. Instead, these authors embrace collaboration and remixing as a way to

synchronously and asynchronously embody the post-structural in their compositions. These acts need not be radical to be revolutionary; in fact, as we have seen with the latest technology booms such as social networking, sometimes a revolution can sneak in through an open window. Some examples, such as David Shields's *Reality Hunger*, use traditional copyright tactics to publish texts that actively remix previously published texts. In Shields's case, he blurs the line between himself and others by only begrudgingly citing his sources, and even then suggesting that his readers physically rip out the citation section. He, in particular, uses traditional routes to instigate authorship conversations in his readers.

In the end, this chapter shows some rights reserved as a truly viable option that breaks the all rights reserved-no rights reserved binary. Authors are successfully using some rights reserved licenses and some rights reserved tactics to challenge the author-god from the inside out. Rather than destroying the market for their works, as some critics would suggest, these authors are receiving more attention for the some rights reserved work they do. Their rhetorical velocity has, in fact, increased. They represent a movement that is gaining momentum even while being criticized by both maximalists and minimalists.

Chapter 5

In Chapter 5, I discuss how some multicultural authors have found ways to challenge current binary copyright law system. Cultural studies and some rights reserved copyright parallel one another toward common goals in that each rejects binary logic, values and protects our right to use critique as a tool of resistance, and espouses narrative alternatives to the author-god. For example, Sandra Cisneros's narrative in *Caramelo* uses some rights reserved

techniques through the inter-lacing of pre-existing texts in a non-traditional way. Although Cisneros has not so far used Creative Common licensing (*Caramelo* was published before CC licensing existed), she provides a link between all rights reserved copyright and some rights reserved copyright by including previously copyrighted material in her fiction text in the form of faux-academic footnotes. Her work is considered a creative work and her intellectual property, yet she embeds her text with other texts. This tactic is more than mere typical allusion; it aggressively challenges her authorial identity as a singular creator by inviting the interaction with these previously published texts for her own, new use. The relationship between her as author, her narrator, and the interrupting footnotes moreover provides evidence of a potential relationship between multicultural theories like bell hooks's “talking back” or Tim Powell's collection on thinking beyond the binary and some rights reserved copyright. *Caramelo* is a text that builds on others in a way that could be interpreted as “talking back” to those texts through some rights reserved.

Moreover, work by authors like bell hooks and Henry Louis Gates, Jr. provides evidence for a tradition in African American communities for artists building on the work of others. hooks's term “talking back” refers to ways artists use their texts to transgressively speak to, illuminate, or challenge work that has come before, often work that would seek in some way to keep an(Other) population in deference/difference. Similarly, Gates's work on Signifyin(g) provides evidence of a long cultural tradition for African Americans that involves not only exaggeration and playing with the signification of words but also the practice of taking a previously existing text and manipulating it to make it new and appropriate for a different context—a very some rights reserved type of activity.

This chapter will also explore the legal case involving Alice Randall's *The Wind Done Gone* wherein the property rights holders of Margaret Mitchell's *Gone With the Wind* attempted to legally negate Randall's right to use some characters and plot points of Mitchell's text in her re-envisioning of the famous story. In the end, the court system found in Randall's favor saying that her use of *Gone With the Wind's* elements amounted to criticism, a use protected under Fair Use guidelines. Therefore, this chapter will also discuss fair use guidelines as the court sees them and as they are often interpreted. As copyright maximalists fight to decrease fair use, cultural critiques using appropriations should be protected and valued as a tool of resistance, and some rights reserved strongly holds to a rejection of the all rights reserved system that could easily turn against fair use for the sake of critique.

Exploring social movements such as collective wisdom easily leads to the exploration of the ramifications for different demographics of the population. Therefore, I cannot neglect to explore how Creative Commons can positively and negatively affect multicultural studies and how the proliferation of ideas supported by theorists who study traditionally underrepresented populations may have provided part of the foundation for Creative Commons by insisting on a culture that reject binary thinking. Tim Powell's *Beyond the Binary* and Walter Benn Michaels's *Our America* provide a cultural structure from which to draw insight about the Creative Commons movement. In these two texts, we can see parallels between the subject/object and all rights reserved/no rights reserved binaries. We also see in works such Gloria Anzaldúa's *Borderlands / La Frontera* from 1987 the possibility of a mestiza existence, one not bound to the binary system that instead embraces both sides as well as disparate alternatives while stretching the boundaries of what is accepted in the mainstream. My dissertation brings these cultural-

linguistic discussions in conversation with legal copyright theories and applies them to the very practical realms of publication and pedagogy.

Chapter 6

In the last chapter, I will argue that some rights reserved copyright can build awareness of authorial concepts and will propose a commons pedagogy that moves past recent collaboration theories and beyond reactionary plagiarism discussions and policies and into a vision of the contemporary composition classroom informed by post-structuralism that embraces some rights reserved authorship. Traditional copyright laws, created for the analog world, were fairly automatic. Creative Commons allows authors to make their texts available under their own terms (legally distributing their authorship). The invention of the computer and its subsequent incarnation as the personal computer available for use in the home, office, or school is, I argue, the single most important technological advancement since Guttenberg's printing press five centuries previous. And, beginning in about the mid-1980's rhetorical theorists began reacting to the drastic epistemic changes resulting from personal computer use. As Heim's *Electric Language* and Bolter's *Writing Space* explain, the speed with which computers allow us to compose, revise, and publish necessarily changes the author-text relationship. Creative Commons, then, allows authors a way to practically react to that acceleration. Teaching student writers the concept of some rights reserved copyright provides an avenue for discussing the role of the author in composition classes, which may be beneficial in their recognition of themselves as authors beyond the structured classroom environment.

Many authors of the current generation define themselves as authors who embrace outside influence and reject the concept of themselves as author-god. To these individuals,

distributed authorship is the norm and Creative Commons is often an avenue to reach it. Students will benefit from being introduced to the concept as it allows them to see vulnerability and flexibility in writing. They need not see themselves as failures if they cannot write the perfect paper on their own—knowledge, as Foucault demands, is created over time through the interaction and understanding of many texts. In this chapter, I not only evaluate composition theories in relation to Creative Commons but also offer practical suggestions for some rights reserved in the classroom in the form of recommended assignments. A relationship between Creative Commons and composition classrooms theoretically and pedagogically is not only important but inevitable.

This last chapter will then focus on student compositions. I will argue that one way to challenge student ideas about the author-god the way the previously discussed literary examples have shown can occur is to encourage collaboration and teach them about the various ins and outs of copyright law. I will not argue that all university composition assignments should be collaborative in order to achieve some sort of composition utopia but rather that an introduction to the concept of authorship via Creative Commons will be fruitful in the classroom as students increase awareness of themselves as composers. A shifting, non-traditional definition of authorship in the classroom allows for flexibility that draws students away from the author-god concept. Focusing on collective wisdom of different kinds and the technology that enables it shows a willingness for people to accept new forms of authorship and provides a bridge to discuss copyright law. Commons pedagogy involves a proactive pedagogical stance that embraces discussions of authorship as integral to any discussion of writing and, in this time, that must include copyright and collectivity.

Peoples' changing opinions of what constitutes “author” and “authority” as a result of web authoring constitutes second orality as Ong describes. This will happen with or without the approval or reaction of rhetorical theory and composition studies. Personally, I vote for with our approval and reaction. By teaching students concepts like intellectual property, plagiarism, copyright law, public domain, and collective commons copyright, we can help to make student authors look “at” and not “through” their web compositions (Richard Lanham). In *Writing New Media*, the authors further suggest that we not only make composition students aware of these issues and the changing nature of our ideological understanding of writing resulting from technological advances, but that we have them create texts with this awareness. Creative Commons can advance this goal, and, hopefully, “Author-God Help Us!” will contribute to that endeavor. The importance of my work at this point is to draw attention to the fact that Creative Commons licensing is not a theoretical pipe dream. It is, in fact, a functioning, reputable, and productive means of distributing one's creative and academic compositions. The rhetoric and composition community has already begun to embrace the concept (see the online journal *The Writing Instructor* or the CCCC committee publication “Walled Gardens” by Clancy Ratliff), but further work needs to be done *now* to explore ramifications in order to remain relevant with real world composition trends. A decade from now will be too late to participate with any urgency in this change in the practice of authorship and be actors in the movement rather than merely commentators. These previous theorists and thinkers have yet to present “the possibility of a normative postmodern vision” that works in the law and in the classroom (Coombe 1855).

Further, most of these people have failed to see how a moderate stance (using moderate in terms of an alternative between two extremes rather than as a term denoting lack of passion or effectiveness) can actually open the discussion of authorship to potentials or opportunities

previously unavailable such as greater acceptance of distributed authorship, legitimate remixing, and a clearer definition of plagiarism. In some cases, as with collaboration, the movement may have already begun and contributed to the growth of the some rights reserved movement.

Rebecca Moore Howard is highly regarded as the person in composition studies most connected with the exploration of the causes of and “cures” for plagiarism. However, as of yet, no one has extensively applied the some rights reserved movement to the effects it may have in the composition classroom as a positive pedagogy to challenge the plagiarism discussion (rather than just discourage the act). This discussion is intended to be positive—constructive criticism of the Creative Commons system meant to build upon and enrich the some rights reserved moment already in motion.

CHAPTER 2

WHERE ARE YOU GOING, WHERE HAVE YOU BEEN?:

A BRIEF HISTORY OF COPYRIGHT LAW

In order to understand what further directions copyright law may go with a some rights reserved option, we must first understand the legal, social, ideological, and economic reasons behind its inception as well as each reincarnation of it in different historical situations. Indeed, the historical trajectory of copyright is complicated and involves the economic and political interests of more than a few individuals and groups. This chapter will argue that, just as in the past, social and political ideologies and struggles for power garner pressure for copyright legislation, Creative Commons is also a result of social and political pressure resulting from post-structural and postmodern thought colliding with the technological impetus of the read-write web.

The early systems of copyright were generated shortly following the invention of the printing press, the Protestant Reformation, and Enlightenment philosophy (surely no coincidence). In fact, as David Saunders points out in 1992's *Authorship and Copyright* of the actual mechanics of the printing press and its relation to philosophical movements: “print guaranteed neither literacy nor profit. People actually need a reason – such as was provided, for instance, by Protestantism – to learn to read and write in the first place” (39). The technology might not have flourished without a purpose; the religious movement might not have spread without the means provided in the printing technology. In other words, no singular historical moment catalyzed copyright legislation. Rather, the serendipitous bringing together of several

particular movements led to the outcry for protection of written works where there had never been a need or the *understanding of need* before. In addition to the theological requirement for access to the Holy Book by the masses and individual rights in the Enlightenment, entrepreneurial advocates lobbied for copyrights on their own behalves. As a reaction to much of the new widespread ability for individuals to have their thoughts publicized given the support of a publisher or patron, many of the early copyrights were given not as rights to authors but as a way for the law to punish people who wrote or published what was considered unacceptable. Many of the early licensing acts were focused on holding people responsible for seditious, libelous, or obscene publications, although that discussion is not my focus here. More important than its use as a moral club is the struggle for power between individuals, companies, and governments in the history of copyright law. Mike Rose explains that the “historical emergence [of copyright] is related to printing technology Printers needed assurance that they would be able to recoup their investment, and so some system of trade regulation was necessary if printing was to flourish” (*Authors and Owners* 9). Proponents of the Reformation and Enlightenment needed printing to flourish as a means of spreading their ideological treatises. With these several entities pushing and pulling against and in coordination with one another and negotiating with various governments, copyright laws became representative of the ideological changes occurring and which ideologies had what power in any historical period. Like with this example, one can easily follow the philosophical path of the influential thinkers of the day by looking closely at copyright law and seeing the role of authors reflected there. This forces us to be aware of our contemporary situation as a background for the necessity of some rights reserved, including international communications and the nature of the read-write web.

Literature Review

Most histories of copyright focus on the relationship between the author and his text. For example, Mark Rose's 1993 text *Authors and Owners* explains how, when copyright laws first came into existence, owners of texts did not only include writers but also printers, publishers, and sellers, who were all included under the umbrella of creating books. Therefore, "authorship" was not so much a consideration of creation but of production. In fact, many saw the production of books as not dissimilar to the production of any other kind of product. Saunders also explains that this view changed little in the patronage system, where patrons showed their support for authors often in a way similar to (but not exactly the same as) a dressmaker or cobbler. Anna Nimus says that during and before this time, "there were no authors—in the sense of original creators and final authorities—but only masters of various crafts (sculpture, painting, poetry, philosophy) whose task was to appropriate existing knowledge, re-organize it, make it specific to their age, and transmit it further" (par. 3). But, because of the content-based nature of texts, patrons were forced to be somewhat wary of what authors produced for fear of being criticized by the public to whom the patron was as connected to the text as the author was. Dustin Griffin's *Literary Patronage in England, 1650-1800* from 1996 shows the role patronage played in the development of copyright law. In fact, as his text explains, the rise of copyright coincided with the fall of patronage as the increase of individual rights lessened the need for a patronage decreased. These texts and others similar to them such as Lior Zemer's 2007 *The Idea of Authorship in Copyright* point to a history that shows inconsistent ideas of authorship as time progresses. As their extensive studies show, each place in history has a particular set of social, cultural, and political circumstances that determine the ideological view of copyright's role in society and support a subjective, fluctuating, view of copyright law.

In Alain Strowell's 1994 essay "*Droit d'auteur* and Copyright: Between History and Nature," he explores the negotiations over the last few centuries of what rights an author has naturally, what rights the government has, and what rights the public has when it comes to intellectual property. The *droit d'auteur* represents the marked difference between the British, French, and German systems of copyright with the French leaning most heavily toward "natural" or "moral" rights of the author, England leaning more toward the public good, and Germany seeing the author's relationship with his text as an extension of his own personality. As Bruce Bugbee explains in his 1996 book *Genesis of American Patent and Copyright Law*, the American system of copyright law began, of course, in context with the British and then similarly split along with American independence. America's copyright system was partially enacted as a way to create a distinct American literature separate from the mother country. For this reason, he explains, American copyrights have historically been most focused on providing a balance between enough protection to encourage creators to create but only inasmuch as that protection furthers the public good.

However, as Mary E. Carter's 1996 book *Electronic Highway Robbery: An Artist's Guide to Copyrights in the Digital Era* shows, new media have frightened many into an almost hysterical protection of individual intellectual property. It seems as the more open and flexible technology has become, allowing authors to quickly interact with one another, the more violent the knee-jerk reaction has been. Carter's text represents that knee-jerk reaction as she warns artists to vehemently protect themselves against potential electronic robbers who are out to steal their intellectual property, attempting to enact a fearful reaction in her readers. Similarly, Christopher Ricks's discussion of plagiarism in his essay entitled "Plagiarism" claims a general "demoralization" of intellectual property infringements exists and insists that in both the public

and academic realms that we have become far too lax in upholding the basic moral rights of intellectual property holders. He says, “Fervent denunciations of plagiarists are popular? Not in the higher intellectual world, they aren't; there, every conceivable excuse and many inconceivable ones will be made for them. True, plagiarists are not criminals (or very seldom are)—they are dishonest, dishonourable, and sometimes sick, people” (37). His accusations show the recent vehemence for protectionism.

Despite these strict holders to the rights of individual authors, other thinkers argue for the continued flexibility of laws to adjust for changing environments. Matthew Rimmer's 2007 *Digital Copyright and the Consumer Revolution* argues for a changed economy where the old rules protecting and/or enforcing intellectual property are no longer appropriate. He, like Lawrence Lessig, believes that instead of resisting the new dimensions for authorship technology has afforded us we should embrace the changes and negotiate new manifestations of copyright in order to participate in a new media economy efficiently and well. Lessig says in 2008's *Remix* that “A better way means redefining the system of law we call copyright so that ordinary normal behavior is not called criminal” (xix). His discussion claims that the current copyright system holds that people consume culture but do not create it, a position with which he disagrees but is germane to the idea of the subject/object separation. Like Rimmer and Lessig, I reject Carter's and Ricks's fear-based arguments and claim that, like in previous transitions of our understanding of intellectual property, we must understand how current political and cultural circumstances necessarily change our interpretations of the author-text relationship and its need for or rejection of the need for protection via copyright. This conversation is shaped by the basic question behind copyright law: Does the law create the author's right to her intellectual property (as an object), or does the law protect a pre-existing right (of the subject)?

Venice

Copyright historians generally regard 16th century Venice as the first place where any kind of authorship protection was manifested into law. Afterward, the idea of legal protection for texts spread throughout Europe. The precursors to copyright-type legal grants were called “privileges,” which are first recorded in 15th century Wurzburg and Venice (Saunders 80). These privileges gave rights for textual reproductions to printers, translators, editors, authors, etc. These entities could reproduce that which was theirs under privilege and those who reproduced that to which they were not privileged were fined. Privileges were granted by the king, but only “5.25 percent of the 7,719 titles printed in the period are known to have carried the protection of privilege” (Saunders 80). Therefore, a privilege was not necessary to print a piece but was available to those special few who both wanted exclusive rights to print a work and could get the exclusive privilege from the throne. Later, legislation of 1526 required that every book receive permission and a 1543 act required punishment for those printing without permission. A guild was created, as much as an instrument of government surveillance and censorship as anything else, for they could use their power to persuade or force individuals unwilling to abide by the rules of morality and “good taste.” This guild setup served as an example for much of the rest of Europe, and the setup served the context of the day. The new printing press had created a different kind of product that—to the sensibilities of the time—required censorship to keep the inappropriate, vulgar, or blasphemous material at bay.

As Rose points out, equivocating these categories (printers, translators, authors, booksellers) suggests a “conflation of writing and the reproduction of writing under the general conception of ‘making books’” (*Authors and Owners* 10). At this point, there was little legal, economic, or conceptual difference between the individual creating a piece and the individual or

company printing and distributing the piece. We can see in this conflation that the origins of copyright lie less with ideological notions of individual authorship and more with the marketplace under royal privilege wishing to control new publication technologies. The printing press created a market that had not existed before and the government created an answer that suited its current bureaucratic infrastructure. The monarch created the authors' or booksellers' rights. These privileges also facilitated a discussion of which rights an intellectual property holder has. Printers began the practice of making a few surface-level changes or abridgments to texts to which they were not given privilege and then submitting the barely-changed texts for new privileges, leading them to the questions “Where does one draw the line between texts? When is a text new?” (Rose, *Authors and Owners* 11). The reprinting publishers often argued that because they had made changes (however slight), the text was new, and they should be free to publish it as “theirs.” The original publishers, of course, disagreed. In the end, the Venetian government allied with the original publishers: “In 1537 the Senate felt compelled to reaffirm the literal sense of the law of 1517: a new work was one that had not been previously published. A 'new work,' in other words, was 'new work'” (Rose, *Authors and Owners* 11). Venice, therefore, set a very important precedent for keeping the work of an author sacred, whole, and impenetrable by outside forces. One must note that this early case was market-driven rather than artistically driven. The Venetian power structure did not necessarily see that authors had a natural right to the work but saw the object of the text as valuable and strove to protect the product to retain market value for those powerful members of the guild.

England

The Venetian tradition involving privileges and the guild was influenced by and influenced other European states, including England where individual publishers organized themselves into powerful publishing guilds that held great sway over the ways grants were given. The Stationers' Company, or “Worshipful Company of Stationers and Newspaper Makers and Masters and Keepers or Wardens, and Commonalty, of the mystery or art of Stationers of the City of London” instituted in 1403 and holding power until the Statute of Anne in 1710, yielded power as it “administered a guild system in which the right to print a book was established through entry in the company's register” found at Stationers' Hall (Nichols, Rose 12). As Rose explains, “Claims of infringement and other contentions about copyright were handled not in law courts but by the Company's Court of Assistants” (12). In fact, this registered “right” was called “copy” in the Stationers' Company books—surely the genesis of our term “copyright.” The concept of copyright, then, had more to do with the literal *right to copy* the work than any claim to the artistic originality of the work held therein: “copyright did not protect a work itself but rather a stationer's right to publish a work” (Rose 14). Under this system, authors did not hold the rights to the republication of the work they created; rather, printers and booksellers were given the rights to reproduction because they were members of the guild. The transaction was based on the physical handing over of the text—the object. As Rose describes,

Authors may not have owned their texts, but they did of course own their manuscripts, the physical objects they had made with their own hands or caused to be made, and for these objects both the booksellers and the theatrical companies provided a market. The author's claim, however, ceased with the transfer of the manuscript. . . . Once purchased, a script, like a cloak, might be

shortened or lengthened or refurbished entirely according to the needs of the company and without consulting the author. (Rose, *Authors and Owners* 17-18)

If an author wanted to be published, he sold his physical copy of the original work to the publisher, often relinquishing any further claim he might have to the profits of the work he created. The subject and the object, therefore, become disconnected through this process.

Lest it sound like the Stationers' Guild was some evil coalition of publishers out to steal an author's intellectual property, let me clarify the context. These “Tudor and Stuart booksellers . . . participated, as guildsmen of various kinds had done for hundreds of years, in a community defined in terms of reciprocal rights and responsibilities” (Rose, *Authors and Owners* 14). The writers of these works were compensated in the transaction between themselves and the publishers. In return, their work was distributed and they might have received some renown for their talent. If the publisher made enough profit on a previous publication by an author, the author might be more likely to receive a greater compensation when his next text was presented. We cannot and should not place any contemporary idea about individual intellectual property rights onto a historical time period that had no such illusions. They did not believe at the time that their work needed protection from potential outsiders who might change or harm the integrity of their text. The idea of an author's individual rights to his work did not develop until generations later. As Rose explains, not until “the seventeenth century [did] a gap . . . develop between the institution of stationers' copyright, which was based upon a traditional conception of society as a community bound by ties of fidelity and service, and the emergent ideology of possessive individualism” (*Authors and Owners* 15). In other words, at its inception, and for several centuries after, the Stationer's Guild was a system that worked relatively well both

economically and ideologically for those involved in it—author, publisher, bookseller, and royal court.

During this same time period, literary patronage was another important economic, social, and political action centered around the publication of texts. The fall of patronage and the rise of copyright after the Statute of Anne in 1710 are incoincidentally proportional. As the printing press gave more individuals access to literacy, Protestantism encouraged literacy, and the Enlightenment encouraged a sense of individualism, many aristocratic individuals desperately clung to the familiar strict categories that upheld them as paragons of social taste: “The patronage system, as inherited from the Renaissance and strengthened during the first part of the eighteenth century, operated in such a way as to sustain the cultural authority of the traditional patron class” (Griffin 10). The patronage system was economically beneficial to both parties, and it was very political.

In his work *Literary Patronage in England, 1650-1800*, Dustin Griffin gives this concise description of the various kinds of benefits existing for both patron and beneficiary:

Money from their own pockets—a one-time gift in response to a dedication, an annual pension, a letter of credit to cover expenses, a direct subsidy to a bookseller—is only one of the resources that patrons provided their clients, and it has received a disproportionate amount of attention in studies of patronage. Hospitality of one form or other—an invitation to dinner, a weekend houseparty, a summer in the country, quarters in a patron's town house . . . has likewise received adequate attention. “Hospitality,” however, should not be thought of narrowly as food and lodging. Equally important is something less tangible, what Johnson and others called “familiarity,” whereby persons of talent are permitted

to cross a line, under controlled conditions, that normally separates the ranks of a hierarchical society. To be admitted to a lord's conversation does not simply bring the opportunity to hear well-bred remarks (and to store them up for later imitation). It implies a rise in status, which in turn carried economic value at a time when income and access to economic resources were closely correlated with rank. (18-19)

One must note how this passage emphasizes that patronage was not merely an economic institution but a social and political one as well, and one from which both parties benefitted. In fact, Griffin goes on to describe that there were often physical benefits also; a powerful person's patronage might keep an author from literally being beaten up in the streets by angry or offended readers. In return, the patrons received not only the knowledge that they were supporting the arts but often a bit of notoriety themselves as poems, etc. were dedicated to their great names and their most positive attributes were recorded for posterity. Often, though, the author's work was seen as actually being the patron's property. Just as authors also physically (not figuratively) gave their "copy" of a text to booksellers, who were then given the right to publish it, authors also handed over their work to a patron in the same way a sword-maker or cobbler would give his work over to a patron of his work. A patron's poem might be admired like a work of art on his wall. There was little distinction between the creation of a poem and creation of a sword: "Our post-Romantic sense of the writer as the creative or 'original' genius partially blinds us to the older distinction between labor of the head and labor of the hand, and to the implication of the even older idea that the artist is only a craftsman: the true author and only begetter of a work is a patron" (Griffin 30). The idea of individual intellectual property as a possession of the creative subject to which we often cling now did not occur until later.

Griffin further shows readers that authors began calling on their patrons to protect them from more than street mobs or poverty. In fact, authors used their relationships with their patrons as leverage against booksellers when authors began seeing their needs as separate from that of the booksellers. He says, “By 1748 Thomson looked to patrons for a new kind of 'protection': 'Is there no patron to protect the Muse,/ And fence for her Parnassus' barren soil?' (*The Castle of Indolence*, Canto II, stanza ii, lines 1-2 qtd. in Griffin 21). Thomson's editor suggests that he is probably asking for help in securing the property rights of authors against the claims of booksellers (Griffin 21). Ironically, patrons and patronage become the faction who end up being superseded for economic reasons. The feasibility of patrons being able to keep up with booksellers in terms of advertisements and distribution was very limited. Further, “it was precisely those categories of publication which were most in demand and thus most profitable—almanacs, practical manuals, collections of stories and other such works directed at a popular market – that a distinguished patron would be least likely and willing to lend his or her name to” (Saunders 45-6). Therefore, the patronage system slipped away in favor of more individual authors' rights and booksellers' marketing capabilities as the economic situation required.

The booksellers were members of the very popular Stationer's Guild that could and did flex its political muscles when necessary. In some ways, the Guild acted as a means of censorship. John Milton, John Locke, and Daniel Defoe all wrote treatises against the licensing of works, which allowed potentially corrupt officials discretion over which works were published. Instead, they “maintained that it was sufficient to prosecute offending authors after publication . . . [and] favored a law against anonymous publication so that the authors of offending books might be known and punished” (Rose, *Authors and Owners* 34). The author's name was then kept attached to his work while allowing the government to punish those that

crossed the lines of socially-acceptable topic or the offense of the politicians in charge. This concession allowed such authors to defend their rights to their works while simultaneously appeasing the guild and the crown. Defoe's 1704 "Essay on the Regulation of the Press" even suggests a law to protect authors' rights over their works in the face of powerful censorship. In light of these issues of "propriety" over "property," as Rose puts it, the House of Commons required that publishers get authors' permissions before printing their work. Similarly, "In sixteenth-century Venice, for example, the Council of Ten decreed that printers must not publish works without the author's written consent" (Rose, "Author in Court" 214). There were also other factors in play concerning what was published and who could publish it as "Literary counter-attack and social reputation are also regulatory factors" (Saunders 82). This regulation and call for responsibility in publication resulting from religious and social norms of the day led to a focus on the author and his public persona and paved the road for formal copyright laws. In fact, social reputation or literary personality—and the protection of it—became the central notion around which German copyrights developed and is the major difference between German copyright and the English and French versions. Out of these social and political movements—focused not on changing authorship roles but on the immediate, physical realities around them—came the first true copyright laws.

The Licensing Act of 1662 "made it illegal to publish anything without first securing a license from the appropriate authority" (Rose, "The Author as Proprietor" 31). After the 1662 Printing Act lapsed in 1694, years of attempts at copyright legislation finally came to fruition in The 1710 Statute of Anne. The Statute is officially entitled "An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times Therein Mentioned" and allowed that all "copies" were to still be registered at

the Stationer's Hall, as had been the previous custom, and a pricing system was put in place that allowed for complaints to be logged against those booksellers who might be charging too much per copy. This statute “assured [Queen Anne's] control over which books were published or banned” (Nimus par. 7). The most important issue at hand with The Statute of Anne, however, is that previous to it there was no set system for deciding what to do about copyright infringements. Custom, the guild, and royal whim had been the main deciding factors in who was allowed to copy and receive profit as such. The Statute of Anne is widely considered the first legislation that “imposed across the whole print-publishing field,” although previous legislation had addressed various acute publishing issues (Saunders 54).

In “From Rights in Copies to Copyright,” John Feather argues that the Statute of Anne had less to do with some philosophical understanding of who the author was than with the 1707 union with Scotland; the British Stationers feared that the Irish and Scottish would pirate their copyrighted works and edge in on the printing market, so the British wanted legal status to keep them from doing so. Warren McDougall points out in “Smugglers, Reprinters, and Hot Pursuers: The Irish-Scottish Book Trade, and Copyright Prosecutions in the Late Eighteenth Century” that “Much of the Scottish trade was in reprinting. The London literary proprietors saw the reprinters, not as people producing cheap books to the benefit of their country, but as pests taking the bread out of their mouths” (155). The Statute of Anne also provided that “while reprinting was legal in Ireland, the editions became illegal when entering Britain” (156). These Irish and Scottish publishers quickly learned that in order to legally publish, they must first register in the Stationers' Register. However, several also found a market for smuggled-in illegal copies; if and/or when they were found, the Statute provides for the punishment of booksellers of a penny per page for the infringement. These restrictions were intrinsically market based. However, the

ideological ramifications of the Statute were much farther reaching, however, than the guild and other proponents ever intended or expected when attempting to control the market.

One of the main parts of the Statute included time limits on copyrights which had not before existed. Under the 1710 Statute, existing copyrights were held with their current holders for 21 years after April 10, 1710, when the law came into effect. For those works not already holding a copyright, rights were granted for a period of fourteen years with the understood possibility that the right might be renewed for another fourteen years following if the original copyright holder still lived (Saunders 54). This faction of the Statute necessarily changed the legal perception of what type of property written works were. Under the previous system, because copyrights were given indefinitely to a company, the right worked more the way physical property might (i.e., once you own a pair of shoes, they are yours until you give them away, you die, or they are stolen). The printers supported this idea of *perpetual property*—the idea that an author held a natural, perpetual right over his or her own unpublished manuscripts—because if the author then gave the printer legal right to copy the work, that perpetual property became the printer's. The subject/object connection was physically based. When handed over to another, the right to copy it or receive monetary benefit from it was gone forever in the same way a dress sold to another became the other's property. By placing time limits on the copyright, however, the 1710 Statute of Anne made the right to copy a different kind of property. This time limit acknowledges the difference between a pair of shoes, a dress, or a cow and literature by distinguishing intellectual property from physical property. It also signifies an ideological shift in copyright manifestations to stricter government control and less community of creators' control.

One famous case concerning copyright involved Alexander Pope and Edmund Curll (*Pope v. Curll*). In 1741, Pope filed a complaint against bookseller Curll, who had published a volume of letters between Pope and Jonathan Swift, among others. He insisted that he had the right to his own letters and those written back to him. The court decided in favor of Pope and ordered Curll to stop any further dispensation of the text, giving Pope the right to the letters he wrote but not those written to him. Although my focus in this study is certainly not personal correspondence, it is interesting to note the court's affirmation of the author's personal rights as an individual. Mark Rose says the case is “one of the first cases in which a major English author went to court in his own name to defend his literary interests” (“Author in Court” 211). However, Rose further illuminates that Pope was a bit obsessive about his own self-image and that, at some point, he had arranged with Curll to publish his letters, then protested against it so that an authorized and official version might be published without him seeming to have done something unseemly in the publication of his own works, referencing an understanding of copyright as a means of moral control. The court's decision, however, made a clear distinction between the physical letter and the intellectual content of the letter. Rose says:

Hardwicke's decision in *Pope v. Curll* has gone down in legal history as establishing that letters are subject to copyright and that an author has the right to withhold his texts from publication if he chooses. But perhaps even more fundamental than the ruling about letters coming under the statute was the distinction that Hardwicke drew between the receiver's property in the paper and the writer's property in the words, for in this moment the concept of literary property as a wholly immaterial property in a text might be said to have been born. (“The Author in Court” 229)

In this case, we see one of the first legal clarifications that an author's right to control his own intellectual property comes separate from/prior to any law. The law merely supports an already naturally existing right of the subject to his object, which is intellectual property and not physical property.

Tonson v. Collins in 1760 was the first case directly confronting the issue of perpetual common law after the copyrights ran out under the Statute of Anne. However, this case was thrown out because the court found out that the two parties were conspiring together to manipulate the courts to the benefit of booksellers who wanted perpetual property rights. The 1769 case of *Millar v. Taylor* was settled by the court to the conclusion that common law right and perpetual copyright were upheld. In this case, the publisher Andrew Millar had the copyright to the poem “The Seasons” by James Thomson. When the copyright ran out under The Statute of Anne, Taylor began publishing his own version of “The Seasons,” and Millar sued. The court found in favor of Millar under the premise that the Statute of Anne did not override common law copyright, basically denying any existence of public domain and rejecting the 1710 statute. Therefore, as Rose points out, *Donaldson v. Becket* in 1774 was an appeal of 1769's *Millar v. Taylor* “and the Lords' decision against the perpetuity constituted a dramatic reversal of the earlier judgment” (“Author as Proprietor” 26). Many thought and many wrote about how the London booksellers would be ruined considering they had a great deal of capital invested in the copyrights they had bought, which were now considered public domain. Authors such as Shakespeare and Milton were now free to be published by anyone and booksellers were worried about how the market would change, probably to their detriment.

Concerning how long the right to intellectual property lasts, the 1774 ruling in the case of *Donaldson v. Becket* was integral in upholding the use of time limits in copyright. Lior Zemer

succinctly says that *Donaldson v. Becket* “held that there is no place for natural law in copyright jurisprudence” (6). The court found that copyright was a legal creation that was protected only by the law itself and rejected the notion of perpetual common law copyright, thereby completely negating the copyright system that had been in force before the Statute of Anne. In the more than six decades between The Statute of Anne and *Donaldson v. Becket*, there was still much discussion about common law and statutory copyright. When the twenty-one year time limit ran out on the copyrights already held by many booksellers, many “sought parliamentary extensions for the terms, but their attempts were unsuccessful, and in any case what they really wanted was confirmation of the customary perpetual copyright of the Stationers' Company” (Rose, “Author as Proprietor” 25). They wanted the courts to establish through their decisions a system wherein the common law copyright would be upheld in perpetuity, regardless of the Statute of Anne, favoring the physical object created.

As the patronage system declined during this time period, authors were becoming more capable of supporting themselves independently through the publication of their works. A few individuals “brought up in the aristocratic tradition of polite letters” believed that “the conception of the author as a professional who wrote for money was profoundly distasteful” (Rose, “Author as Proprietor” 27). However, others were profoundly encouraged in the leverage the decision gave individual authors to shed patronage, fend for themselves, and reap the positive and negative rewards of the market. The first formal recognition of authors as individual subjects with legal rights to their works occurs in the edicts of 1777 and 1778. These laws clarify how booksellers might renew the rights to their works but also makes special considerations where a work was kept with the author or his/her heirs. Jane Ginsburg explains, “Under the edicts of 1777-8, the Crown afforded printing privileges to both authors and printers.

The author's privilege was perpetual, but once ceded to the publisher, or if initially acquired by the publisher, it lasted only during the life of the author” (136). Modern copyright legislation still acts similarly, and these would be the laws that were echoed in America. Under this structure, legislation recognized an author's moral right to his intellectual property but required the law for it to be recognized, towing a somewhat awkward line between subject and object. In France, however, the statutory system worked with the understanding that a law was not required for that right to be recognized.

France

To understand the difference between the English and French systems of copyright is to begin to understand the context out of which many new evolutions of copyright come and why a contextual understanding of copyright history illuminates our current dynamics. It is neither correct nor fair to say that the French tradition is directly opposite of the Anglo-American tradition; different, but not opposite. Saunders clarifies that “Parallels with English publishing history are evident, not least in the emerging competition between metropolitan monopolists and provincial entrepreneurs. But the geopolitical circumstances were different” (Saunders 83). Copyright legislation is indicative of the ideological changes brought about by the differing manifestations of similar revolutions in these countries.

The contemporary French copyright tradition is a reaction to the *ancien regime*. The *ancien regime* is a term used (often pejoratively) to describe a feudal social system that upheld the power of the aristocracy. Under the *ancien regime*, an author or publisher applied for the right to publish with the crown. In some ways, like in the English and Venetian systems, this system allowed the crown to censor what was published. Further, this system required

“formalities,” wherein the author or publisher had to place copies of the work in a registry in order to retain the privilege to copy it. Any infraction against the privilege faced “injunctions and damages, as well as seizure, confiscation, and destruction of infringing copies” (Ginsberg 136). Formalities, as they are termed, are an important aspect of the ideological notions behind copyright because their use requires the instigation of that major copyright question: does the law provide the right or uphold it?

In France, the *ancien regime* was superseded by the *droit moral*, the basic concept of which is that an author has a moral right to his work—he cannot be separate from it as it is an extension of his very being. While this is an oversimplified definition, it is a fairly sturdy foundation to understanding French copyright history. What Saunders argues in *Authorship and Copyright* is that:

If the activity of aesthetic creation came to be juridified in a way that distinguished it from those other human activities where the product of labour is construed as an inalienable part of the maker's personality, this is a contingent outcome of particular circumstances, not a matter of historical inevitability . . . For all its air of fundamental principle, as a historical phenomenon *the droit moral* was formed piecemeal, from the decisions of French courts and from the work of academic theorists. (79-80)

The law provides very little in the French system but details and mores come together over the centuries. Therefore, we should not oversimplify the French tradition by saying that France is completely occupied with authors' rights and not the market while England is the opposite. More accurately, the two systems lie on separated points of a continuum between market and

individual rights with England being closer to market and France closer to the individual, but neither reaching the very end.

The *droit moral*, as Saunders points out, was valued more in the French court system than in its legislation. However, he also points out that the legal system must have necessarily been prepped for such ideology with some recognition of individual rights for a system in which individual rights are not upheld could not support a copyright system in which an author is morally entitled to the right to his own work. The French privilege system (*privilege en librairie*, or bookseller's privilege)

was marked by a persisting oscillation between two conceptions of the privilege: first, as an exercise of the royal grace to create an exclusive right for a specified period of time such that expiry of the privilege was expiry of the right: and second, as royal recognition of a pre-existing right whose source was the agreement between the writer and the printer-bookseller that the latter should print and publish the manuscript sold for that purpose. In short, was the royal privilege constitutive or declaratory of the property right? (Saunders 85)

We see in this quote that the French system itself was not definitively settled on the overarching question copyright laws address about whether copyright is focused on the subject or the object. The 1744 Council of State laid out specific rules for the privileges (*privileges*) and permissions (*permissions*): the *Code du libraire*. The code covered “press censorship procedures, the rights of authors and the definition of who could engage in the trade” (Saunders 86). What it did not do was define privilege or make clear how, when, where, or why they were to be renewed.

As time passed, many became frustrated with the system. In 1776, French Enlightenment philosopher Marquis de Condorcet wrote a pamphlet opposing censorship and

copyright. He challenged the “chattel” aspect of copyright law by emphasizing “what is today called the 'public goods' nature of copyright: a field belongs to only one person; by contrast, a literary work can belong to, and be enjoyed by, many simultaneously . . . publishers' privileges, as they had developed by 1776 . . . concentrated power over books, and thus power over ideas, in a few hands” (Ginsburg 150). The Marquis de Condorcet found that when looking at this concentrated power “exclusive rights in literary works diminished, rather than enhanced, public debate” (150). He found copyright to be constrictive rather than constructive, believing that the free exchange of ideas was more productive than a system of formalities and registrations and the Enlightenment ideas can flow freely. However, the Marquis tempered his beliefs when time revealed that (after the guild dispersed) ideas did not flow as freely and interchangeably as he had imagined:

while abolition of the guild promoted the publication of pamphlets, broadsides, and works of similarly short length and timeliness, it also severely undermined the book trade. This phenomenon led Revolutionary thinkers and legislators to perceive a crisis in ideas and letters. Unless some system of incentive and economic security were restored, book production, and hence the dissemination of the Enlightenment itself, might cease. Authors' exclusive rights became necessary to the perpetuation and further flowering of Revolutionary ideals . . . One may conclude that, like Le Chapelier, Condorcet perceived the public domain as the principle and copyright as an unhappy exception that practice had proved necessary and useful. (Ginsburg 150-151)

He found a moderate stance to be the most productive in providing, motivating, creative protection. In this way, despite coming from different spaces on the philosophical plane

(England leaning more toward the market and France individual rights) the two countries ended up in very similar places *practically*. Both have protected the author's right to his/her work individually, have required formal registration of copies, and have seen these acts as necessary to encourage the free interchange of ideas. Germany, however, took a disparate path.

Germany

As previously mentioned, the German copyright system depended on the idea not of an author's right to his work per the *droit moral* but in the author's personality (a point the British *Pope v. Curl* touches on). Further, the German system developed differently than the other systems because of the very geo-political nature of Germany. In *Authorship and Copyright*, Saunders explains this political status as it relates to publishing,

the modern German state [was] created only with the unification of the territorial states in 1870. Yet the fact of a common language and literary culture made [piracy] profitable. And because there was no practical legal policing of the book market on a national scale, German publishers and writers were confronted by a particularly difficult problem in controlling levels of book piracy which, in the German territories, were less a matter of legal theory's lack of recognition of authors' property rights than the practical consequence of geopolitical circumstance. (106)

The unification of these separate German states was a first large hurdle jumped to bring about some legal recognition of authors' rights, but also important was the influence of several German philosophers.

Theorists Kohler and von Gierke argue for authors' rights not only because authors have some moral or economic right to the work but because it actually represents them. The work *is* the author. While similar, there are differences between Kohler and von Gierke's philosophies: “Kohler's approach was to pair the personality and property interests of authors, thus constituting what has become known as the *dualist* theory. By contrast, the *unitary* theory propounded by von Gierke found that the essence of the right lies in the personality alone, of which the property interest remains a subordinate and derivative expression” (Saunders 116). Both the unitary and dualist theories espoused by these men focused on the personality of the author—the idea that in writing, the author puts a part of herself out there, and looking at the collection of her works together represents her.

In some ways, these theories take copyright law one step further than those based on Lockean ideas in that they move beyond property discussion (*it is mine*) to personality (*it is me*). These theories claimed that copyright based on personality was a “more fundamental notion” because it is based on “the wholeness and integrity of the human person” rather than solely on the product the person creates (Saunders 115). This difference comes from the basic philosophical question of whether or not the object or the subject is more valuable; it is a question for whether the law is “directed to the protection of a particular object—the literary work—and not a particular subject—the authorial personality” (Saunders 119). Kohler believed the French *droit moral* was an inadequate representation of what the Germans had been saying for years; *droit moral* would be “inadequate” in Kohler's view because, although it focuses on the author, it is a focus on the author's rights to his works because he created them and not his right to the works because they *are* him. German law, therefore, would fall even further toward

“individual rights” than France and would devise its system as a way to purely protect (not create) an author's right to her intellectual property.

America

The *droit d'auteur* upholds the right of the author to his own work. In theory, it is a morally, naturally principled right, whereas copyright is actually an economic and legal right. As mentioned, the major discussion concerning tension of copyright in a legal sense often focuses around a question: Does a legal copyright create the author's right to his own work or has the author's right to his own work necessitated copyright laws? Nimus argues that in the case of new countries, like America was at the time, this question is intrinsically related to that status: “Intellectual property laws have shifted with the winds of history to justify specific interests. Countries that exported intellectual property favored the notion of authors' natural rights, while developing nations, which were mainly importers, insisted on a more utilitarian interpretation that limited copyright by public interest” (par. 9). In the 1834 case *Wheaton v. Peters*, the American Supreme Court decided that Americans have a right to copyright because the law gives that right, not because it occurs naturally or morally. *Wheaton v. Peters* is considered the “American counterpart of *Donaldson v. Becket*” because it set a precedent for the rejection of common law claims pertaining to copyright (Saunders 151). To briefly summarize:

In the third volume of the *Condensed Reports* Richard Peters, the Supreme Court reporter, included certain cases previously reported and published by Henry Wheaton, his predecessor in office. Wheaton and his publisher injunctioned Peters, claiming infringement of copyright under both statute and common-law provisions. In response the defendant argued that Wheaton had not

complied with the prerequisites for statutory protection, that there was no common-law copyright and that the material in question was not eligible for copyright protection. (Saunders 151)

The court decided that the US government had no common law copyright and rejected Wheaton's claims. Wheaton took it to the Supreme Court, which also found against him. Justice Thompson wrote the dissenting view that: “the great principle on which the author's right rests, is, that it is the fruit or production of his own labour, and which may, by the labour of the faculties of the mind, establish a right of property, as well as by the faculties of the body; and it is difficult to perceive any well-founded objection to such a claim of right. It is founded upon the soundest principles of justice, equity and public policy” (*Wheaton v. Peters* 669-70). Despite this dissenting view upholding a natural *droit d'auteur*, American copyright law originated with object-favored policies. The author's right is less important than the public good. We clearly see that (up until the early 20th century) America's copyright laws favored the object as it related to the needs of the public and protected individual authors only so much as to incentivize production.

The United States Constitution completed in September of 1787 states in Article I, Section 8, Clause 8 that “The Congress shall have power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” As Ginsburg points out in “A Tale of Two Copyrights,” the phrasing here seems to indicate that the public good (“to promote progress”) outweighs the author. Bruce Bugbee says in 1967's *The Genesis of American Patent and Copyright Law* that there is “no recorded debate” and that the “provision was thus unanimously accepted” (1). He continues, “Clearly the legal safeguarding of an originator's rights in his

inventions, writings or other discoveries was a fundamental principle upon which the delegates were in complete agreement” (2). In 1909, Congress also said that copyright is given “not primarily for the benefit of the author, but primarily for the benefit of the public” (qtd. in Ginsburg 138). This exhibits the distinct difference at the time between the French, British, and American systems and how each interpreted copyright law's rule in disseminating Enlightenment ideas:

a leading French copyright scholar labels one of the 'fundamental ideas' of the French Revolutionary copyright laws of 1791 and 1793 the principle that 'an exclusive right is conferred on authors because their property is the most justified since it flows from their intellectual creation.' By contrast the 1787 US Constitution's copyright clause, echoing the 1710 English Statute of Anne, makes the public's interest equal, if not superior, to the author's. This clause authorizes the establishment of exclusive rights of authors as a means to maximize production of, and access to, intellectual creations. Perhaps as a result, Anglo-American exponents of copyright law and policy have often viewed the author's right grudgingly. (Ginsburg 131-132)

Much of American legal thought on copyright depends on a discussion of the role of the “the public good” in its dissemination, mostly because at the birth of this nation the colonists desperately wanted to create a national identity distinct from Britain, and copyright law was one way to do that.

In the *Federalist Papers*, James Madison speaks to how “The public good fully coincides in both cases [of patents and copyrights] with the claims of individuals” (Ginsburg 138). The Supreme Court wrote concerning *Wheaton v. Peters*, “in the opinion of the majority, the

rationale of copyright rested on the usefulness of the book to the general interests of American society, not on perpetual protection of the author's property” (Saunders 152). In fact, the first push for copyright statutes in the American legal system centered around the need for educational texts rather than author's rights: “The statute's title, 'An Act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned', echoes the English Statute of Anne, and suggests Congress's intent to employ copyright as a means of furthering public education” (Ginsburg 140). Under this educational umbrella, Noah Webster, who we all are familiar with as the seminal American dictionary creator, was adamant about the necessity for states to pass copyright laws. Webster wrote a textbook, *A Grammatical Institute of the English Language* “which consisted of a spelling-book, grammar, and reader; first published in Hartford in 1783-85, it eventually sold in the millions of copies (by 1900, some 70,000,000) and provided Webster with an income so that he could devote his time to compiling his famous dictionary” (Bugbee 106). In 1782, he hoped to get New York and Pennsylvania to pass copyright legislation. Neither legislature was in session, so his work was in vain at the time, but he continued his campaign. When legislation was passed, Webster claimed more credit for himself than was actually deserved: he may have been more interested in his own personal copyrights than those of the public at large. Regardless of his personal motivation, Webster did play a part in getting the U.S. to pass copyright legislation under the impetus of the public good, building a national identity and empowering citizens to innovate.

Before pushes by Webster and other notable educators, thinkers, and politicians, the colonies put very little energy into intellectual property issues because they held little economic weight; the colonies relied on Britain for control (Bugbee 11). However, as we transitioned into

an independent and self-reliant government, ensuring an American copyright system was another way of separating ourselves from European rule. Many authors desired to have a type of canon of literature written by Americans about America and American life both for intellectual purposes and to build a market for a certain type of product: American Literature. During this time period, “Literary work published before 1790 in the United States went automatically into the public domain, and if it had commercial value it was immediately pirated and sold by other domestic printer-publishers” (West 114). Before a Federal copyright statute was enacted, however, a state by state move to copyright protection began. In January 1783, Connecticut passed “An Act for the Encouragement of Literature and Genius” (Bugbee 108). In the following months of that year, six more states followed suit, and “In the three years which followed, six more states joined the movement for safeguarding literary property” (Bugbee 117). Activists, educators, and authors personally lobbied for copyright legislation at the state level.

Because each state enacted its own version of copyright, issues of reciprocation arose (and the state copyright systems were never completely successful), but they did set a precedent for the later federal system by identifying the constituent desire for such a system and providing needed experience for later discussion: “From the long view, the chief contributions made by the colonial and state patent and copyright institutions were, first, to prepare the intellectual ground for the Federal power which rendered them obsolete, and, second, to provide a fund of experience and legal precedent upon which Constitution-makers and Federal legislators could draw selectively” (Bugbee 158). In America, the important philosophical discussion surrounding the implementation of such laws centered on the protection of individual work to the benefit of all (*e pluribus unum* manifests itself in many ways). North Carolina's 1785 copyright “An Act for Securing Literary Property” stated that “Nothing is more strictly a Man's own than the Fruit

of his Study,” but concerns were also raised about the potential for publishers and booksellers to gain any kind of monopoly concerning works because of the colonies' hatred of monopolies. However, there seemed to be a general agreement that protection of an author's (or inventor's) intellectual property from exploitation benefitted the general public in its encouragement of intellectual endeavors indicating that, at least initially, the individual subject was devalued in favor of collective good. In fact, the Federal patents statute of 1790 “impressed [Thomas] Jefferson”:

An act of Congress authorising the issuing patents for new discoveries has given a spring to invention beyond my conception. Being an instrument in granting the patents, I am acquainted with their discoveries. Many of them indeed are trifling, but there are some of great consequence which have been proved by practice, and others which if they stand the same proof will produce great effect. (Jefferson qtd. in Bugbee 148)

This national movement to encourage the creation and protection of a national literature and educational system for America led to the law. Therefore, citizens and legislators saw it as a means of instigating public good through the law.

William Charvat says that “No great art can flourish unless it has an audience and unless artists can live on it: in other words, to be born and to survive, it must have patronage” (Charvat 168). Charvat argues throughout his works that in America we moved from the royal, aristocratic patronage system to a democratic patronage of the public through commercial sales and, further, that copyright protection provided by the law allowed for that. In other words, American legislation patronage came in the form of copyright as it provided protection—and

some would say motivation—for creation. Lobbyists and legislators would argue the protection paved the way for authors to be adequately reimbursed for their efforts.

International Copyright Agreements

Under this system before 1835, American book publishing was local in that towns in most Atlantic states had publisher / booksellers who printed mostly locally. If interest spread beyond the local town, the publisher made copies of the sheets and sold it to other localities to bind and sell for themselves. Sometimes a large bookseller would distribute the books for many smaller publishers. If American printers wanted to print and make a profit from copies of British works, they had often “had to hire agents in Britain to secure early copies, arrange for the fastest possible transportation on the uncertain sailing vessels of that day, meet the vessel at an American port, set a dozen compositors to working day and night, hire coaches to carry editions to nearby towns, and get the work, fresher than the dull morning newspapers of that time, into the bookstores” (Charvat 31). Under these stressful conditions, American authors and publishers became familiar with British copyright in order to market the works favorably there and to set up a more beneficial, reciprocal system. British law stated that in order to receive British publication the work had to be published in Britain first (Saunders 150). Authors often found themselves “Setting up a few days' residence in Canada at the time a new book was published in London . . . but careful preliminary arrangements with a reliable foreign house frequently sufficed to turn the trick” and often involved an arrangement involving the writing of a short preface by a resident of the other country (312-313).

To the relief of many, the 1891 Anglo-American copyright agreement (also called the Chace Act) suspended the practice of authors visiting Britain, Canada, or the West Indies on the

day their work was published in order to receive British copyright. The Chace Act required that copies be deposited in the Library of Congress and appropriate filing on the other side of the ocean following a very strict timetable. Authors were able to avoid, however, their brief expat tours. The Chace Act was no doubt precipitated by an increasingly stable and lucrative book publishing market in the United States, which no longer felt it so necessary to separate itself from a hostile colonial power. In an increasingly international environment, the differences in views on authorship became less important than the market and the ideological context temporarily shifted back from more subject to more object focused.

Without an international copyright, American law considered everything “foreign” public domain. The 1891 Chace Act / International Copyright Act required authors to register their work in Washington D. C. in order to receive copyright protection in America but had to be published by American publishers. The Berne Convention for the Protection of Literary and Artistic Works is an international agreement first accepted in Berne, Switzerland in 1886. This guide provides that any creator of a creative work has copyright over it as soon as it is fixed in some medium and retains that copyright until it expires or unless the author gives it up to another. This applies to any work in any of the countries who have signed the convention. By 1887, “ten nations [had] ratified the Berne Convention, thus instituting the principle of a universal regime of authors' rights” (Saunders 169). This ratification “was the outcome of unforeseeable interactions between a variety of geopolitical interests, legal traditions, cultural politics, commercial calculations, literary and artistic professional pressures and governmental concerns with trade economics, foreign-policy priorities and national cultural distinction” (Saunders 181). The 1928 revisions made way for the *droit moral* (still under construction when it first came together in the 1880s) stating in article 6bis(1) “Independently of the author's

economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation” (182). We can also see the shadow of German personality theory in the wording of this change, but mostly the wording separates the *droit moral* from any economic agreements that might divide an author's work from himself. Even if a person releases his economic rights, he still has the right to attach his name to it as an extension of personality.

The Berne Convention represents an ideology that is a 180 degree turn from pre-Statute of Anne culture when all an author (supposedly) had to do to separate himself from his work was to sell it to a member of the guild. At first, the United States rejected the Berne Convention, wanting to control its own representation of copyright law, but “Having delayed for 102 years, the United States finally signed the Berne Convention in 1989,” practically accepting the notion that an author's right to his work is innate rather than given by law, protecting the individual rather than the public good (Saunders 166). In 1996, the WIPO updated the Berne convention to address digital technology. The Berne Convention also upholds an author's right to determine the destiny of her intellectual work and sets the stage for future, more flexible, copyright manifestations. However, in its practical application the author is intrinsically attached to her object and strictly protects it through legal and monetary enforcement.

Copyright Alternatives

Yet, as the Industrial Age gave way the Information Age, this protection became incongruous with the surrounding cultural context and economy of information exchange, and so-called “copy-left” and anti-copyright movements emerged as a reaction to copyright

ideologies that did not change with the new age but continued treating information the same as industrial products in the previous economic structure. Many artists have organized activities with other artists who celebrate distributed authorship:

Steward Home, a well-known proponent of plagiarism and organizer of several Festivals of Plagiarism from 1988-1989, has also advocated the use of multiple names as a tactic for challenging the myth of the creative genius. The significant difference is that whereas plagiarism can be easily recuperated as an art form, with star plagiarists like Kathy Acker or Sherrie Levin, the use of multiple names requires a self-effacement that draws attention away from the name of the author. (Nimus par. 19)

These movements of the latter half of the 20th century were influenced by earlier Twentieth Century movements such as Dadaism as Dada challenged the idea of individual genius and encouraged collaborative activities in “revolt against the capitalist foundations that created them” (Nimus par. 16). These movements, however, have made only minor dents in the over-arching cultural understanding of copyright, authorship, and intellectual property, as most people are more familiar with the Napster situation than Dada or copyleft. What has fundamentally changed our worldview is the read-write web.

Bolter, Lessig, and Heim explain in their works ways the computer and its lifeblood the internet have foundationally changed the way we create on a day-to-day basis. The ubiquity of composition tools from e-mail to text messaging to twittering has made every individual who is plugged in on-line an author, a critic, an editor, and a remixer. Even something as seemingly innocuous as sending a friend a link is a type of remixing. Within minutes, a piece of information can be created, posted, linked to, copied, sent, forwarded, replied to, blind carbon

copied, cut, pasted, reposted, “liked,” and tweeted about. In many cases, if copyright is infringed in this rapid movement, it is such a small infraction that the copyright holder does not bring suit against anyone. In many other cases, content is created with the express purpose that it will be shared. The YouTube phenomenon of the last few years exemplifies this trend. In this environment, internet users have just become accustomed to being able to remix and manipulate text to meet their needs; in most cases, these individuals do not intend to be plagiarists—they are merely moved by *kairos*. Artist Wu Ming claims that “there are no 'lawful owners,' there is only exchange, re-use and improvement of ideas. . . . this notion, which once appeared natural but has been marginalized for the past two centuries, is now becoming dominant again because of the digital revolution and the success of free software and the General Public License” (par. 19). In other words, we are particularly poised at this specific moment for a successful support of copyright alternatives because our contemporary culture already embraces concepts that challenge individual, genius, author-God, subjective authorship.

When personal computers first became popular, the GNU General Public License became available as a copyleft alternative (Version 1 in February 1989, Version 2 in June 1991 and Version 3 in June 2007). According to the most recent GNU General Public License Preamble, “the licenses for most software and other practical works are designed to take away your freedom to share and change the works. By contrast, the GNU General Public License is intended to guarantee your freedom to share and change all versions of a program—to make sure it remains free software for all its users” (GNU par. 2). Like the more recent Creative Commons, GNU requires its users to “share alike.” Anyone using a GNU General Public License is asked to “pass on to the recipients the same freedoms that you received. You must make sure that they, too, receive or can get the source. And you must show them these terms so they know their

rights” (par. 5). This attribution morality seems to hold true for most copyright alternatives. Even the website anticopyright.com claims “This is not a license to rip off. Let integrity prevail, and give credit where credit is due” (par. 8). The vast majority of anti-copyright or copyright alternative supporters do not support anarchy but rather a change in copyright law that reflects the means and mores of today, although there are certain disagreements about the goals and the exact means of achieving those goals.

In 2001, twelve years after America's acceptance of the Berne, a group of intellectual property thinkers supported by the Center for the Public Domain formed Creative Commons as a non-profit organization which would provide the opportunity for intellectual property owners to share, reuse, and remix their works through a some rights reserved system alternative to the prevalent all rights reserved. The founders that made up the initial Board of Directors include “cyberlaw and intellectual property experts Michael Carroll, Molly Shaffer Van Houweling, and Lawrence Lessig, MIT computer science professor Hal Abelson, lawyer-turned-documentary filmmaker-turned-cyberlaw expert Eric Saltzman, renowned documentary filmmaker Davis Guggenheim, noted Japanese entrepreneur Joi Ito, and educator and journalist Esther Wojcicki” (“About” par. 1). According to the Creative Commons website (www.creativecommons.org), the first Creative Commons licenses were released in December 2002 and Creative Commons licenses have now been issued in more than 50 international jurisdictions. In 2005, Science Commons was founded. It “designs strategies and tools for faster, more efficient web-enabled scientific research, identifying and lowering unnecessary barriers to research, craft policy guidelines and legal agreements, and developing technology to make research, data and materials easier to find and use” (par. 4). Then, in 2007, the division ccLearn, which is “dedicated to realizing the full potential of the internet to support open learning and open educational

resources. With a mission to minimize legal, technical, and social barriers to sharing and reuse of educational materials, ccLearn is developing brand new tools to integrate Creative Commons into open education,” came about (par. 5). By 2008, Creative Commons estimates that there were more than 130 million Creative Commons licenses, and even mainstream recording artists Nine Inch Nails released their most recent album under Creative Commons.

Even though copyleft alternatives pre-existed Creative Commons, Creative Commons seems to be the system that has caught on most quickly and fervently. Here's how Creative Commons describes how a Creative Commons copyright works:

A Creative Commons license is based on copyright. So they apply to all works that are protected by copyright law. The kinds of works that are protected by copyright law are books, websites, blogs, photographs, films, videos, songs and other audio & visual recordings, for example. . .

Creative Commons licenses give you the ability to dictate how others may exercise your copyright rights—such as the right of others to copy your work, make derivative works or adaptations of your work, to distribute your work and/or make money from your work. They do not give you the ability to restrict anything that is otherwise permitted by exceptions or limitations to copyright—including, importantly, fair use or fair dealing—nor do they give you the ability to control anything that is not protected by copyright law, such as facts and ideas.

Creative Commons licenses attach to the work and authorize everyone who comes in contact with the work to use it consistent with the license. This means that if Bob has a copy of your Creative Commons-licensed work, Bob can give a copy to Carol and Carol will be authorized to use the work consistent with the Creative

Commons license. You then have a license agreement separately with both Bob and Carol.

You should be aware that Creative Commons licenses only affect your rights under copyright. You are not licensing your trademark or patent rights, if any, when you apply a CC license to your work.

One final thing you should understand about Creative Commons licenses is that they are all non-exclusive. This means that you can permit the general public to use your work under a Creative Commons license and then enter into a separate and different non-exclusive license with someone else, for example, in exchange for money.

The last piece of this section develops an important distinction. Creative Commons licensing does not replace traditional copyright licensing. Rather, it is a different kind of licensing that is layered on top of the traditional license. When individuals make the decision to use Creative Commons, they retain the copyright to their work but also agree for it to be held to different standards.

Just like an all rights reserved copyright, the Creative Commons license cannot be revoked. Once it is in place, you cannot expect to regain complete rights to your work. But, you can make alternative arrangements for *your* version of the work (before it is remixed by another individual) to be published in a profitable way. In fact, Emily Clark of the Aduki Independent Press says of a recent publication using Creative Commons, “I don’t believe that licensing the book under CC has negatively impacted on sales of the book. On the contrary, I think that having the entire text online for readers to preview has actually helped to sell more books” (“Case Studies: RemixMyLit” 141). This new manifestation of copyright, then, makes some of the

same claims that the original United States copyright legislators did: it provides motivation for creative thinking, it protects authors' rights, it increases market competition (or at least doesn't hinder it), and provides some common good for the public. The difference now is simply that the technological, geopolitical, and economic environment requires a different evolution of the law, one that recognizes and works with the types of text-producing technologies that currently persuade our understanding of authorship and compositions in our contemporary historical situation.

In the past several decades, as electronic communication has moved past novelty into normalcy, lobbyists have influenced many lawmakers to support an enclosure movement, providing greater protection for companies and attempting to herd in what Carol Rose describes as the “wilderness” of the public domain potential in the internet. Early in the history of the internet, Peter Jaszi saw the formation of the conversation between these two opposing sides of the intellectual property debate. He says in 1994's “On the Author Effect: Contemporary copyright and Collective Creativity”,

A battle is shaping over the future of the Internet. On the one side are those who see its potential as a threat to traditional notions of individual proprietorship in information, and who perceive the vigorous extension of traditional copyright principles as the solution. On the other side are those who argue that the network environment may become a new cultural “commons” which excessive or premature legal control may stifle. (56)

What Jaszi saw in 1994 still holds true: the open access nature of the internet makes some individuals and companies terribly nervous while it exhilarates others. In many cases, nervousness and fear have over-ridden the exhilaration in terms of lobbying and cultural power

to enact laws because the entities with the most power and sway to lobby lawmakers are often the ones with the most capital at stake in cases of copyright infringement.

Indeed, just a few years after Jaszi's manuscript was published, the Digital Millennium Copyright Act of 1998 (DMCA) attempted to clarify and control some of the intellectual property issues posed by public Internet access. One of the important things the DMCA does is provide some leeway for particular educational Fair Use aspects including for online learning courses and the archiving of audio material by libraries. On the other hand, it also provides that no one may circumvent technological coding put in place to protect copyrighted material. However, it limits the liability of on-line service providers in cases of copyright infringement (surely following the precedent set by the *Sony v. Beatamax* case wherein the court found that the maker of recording equipment was not liable for any copyright infringement owners of individual recorders conducted) providing only three exceptions for programming:

- they are primarily designed or produced to circumvent;
- they have only limited commercially significant purpose or use other than to circumvent;
- or
- they are marketed for use in circumventing. (4)

As recently as July 2010, further exemptions have been added to the DMCA that allow for more reasonable circumvention of restrictions. Mainly, these additions clarify exemptions that make sense under the overall logic of the Act but which were heretofore not explicit. For example, a person may now circumvent the Content Scrambling System on DVDs in order to use portions of the text under fair use guidelines including criticism, educational purposes, documentary filmmaking, and (new in 2010) non-commercial videos. Also new for 2010 is an exemption that

allows people to adjust their cellular phone systems in order for the phone to be operable for several different carriers (rather than just AT&T or just Verizon, as examples).

As these recent updates show, the conversation continues between what copyright holders “own” and what individuals may use under the umbrella of fair use. While fair use is not the focus of my study here, the legal negotiation in the court system surrounding the constitution of fair use guidelines is pertinent because it shows the way these issues so often end up playing themselves out in the court system rather than in Congress (a system prevalent in France, also) has developed over the years. The laws are written, and then court precedent sets up the actual use of the laws.

For example, in the famous case *Lenz v. Universal Music Group*, Universal forced YouTube to remove a 2007 home video of Stephanie Lenz's baby dancing to the song “Let's Go Crazy” by Prince. Lenz requested that YouTube reinstate her video because it falls under fair use, and, when YouTube did not reinstate the video in the reasonable amount of time set forward by the law, Lenz sued Universal for her legal fees claiming they acted in bad faith. The court found in Lenz's favor, arguing that copyright holders cannot demand something be removed until they determine whether it is fair use. The law was already in place, but the court's findings control its practical applications.

Given the ways other copyright related issues have been discussed and, often, solidified in the court system, a conversation is now ongoing about whether or not Creative Commons could benefit from court cases discussing it and, potentially, validating its usefulness and legality. So far, only two major cases have come up naming Creative Commons in their content or as a defendant. In both cases, Creative Commons has come forward saying that the lawsuits, of course, are unpleasant but also provide the opportunity to find potential weaknesses in the

Creative Commons system and improve them. For example, the lawsuit filed against Virgin Mobile and Creative Commons in 2007 alleged that a photographer was not adequately informed about what his use of a Creative Commons license entailed as far as commercial use of his work was concerned. The suit was dropped against Creative Commons because, as in most cases with the law, ignorance is no excuse. However, Creative Commons argues that the experience provides the opportunity to make copyright law clearer rather than more obfuscatory (Linksvayer).

Likewise, Anders Guadamuz of the University of Edinburgh argues that *GateHouse Media, Inc. v. That's Great News* gives the opportunity to clarify the ways Creative Commons can and cannot be used. In this case, newspaper publishers GateHouse Media have brought suit against That's Great News because That's Great News takes the publisher's newspaper articles and republishes them on plaques as keepsakes for the people in the news article. This case becomes pertinent to Creative Commons because GateHouse publishes some of their content under a Creative Commons license that would prevent any commercial uses of the content, and they have also included as part of their suit that *That's Great News* has breached the Creative Commons license. Guadamuz argues that GateHouse have actually used Creative Commons “precisely to stop companies like *That's Great News* from doing precisely what they are doing, namely to make commercial derivatives of the original work” (par. 4). He frames this discussion around the open source intentions of many some rights reserved proponents saying, “When a company believes that the best way to close down content is to use a CC licence, then there must be something wrong happening” (par. 4). In this light, these court cases give Creative Commons insight into how individuals and entities are using its licenses and provide the opportunity for improving the licenses or explanations of the licenses. Guadamuz argues that court cases are not

essential to validate the licenses: “One could say that a license is valid until proven otherwise” (par. 6). However, while such cases may not be necessary to prove any sort of validation, they do provide beneficial clarification about the terms of Creative Commons copyright and broker further discussion that broadens our legal understanding of copyright apart from the all rights reserved and no rights reserved binary.

Conclusions

However, criticisms of Creative Commons exist, saying that Creative Commons only perpetuates the idea of individual authorship by applying shades of grey to the conversation rather than revolutionizing the definitions. Anna Nimus says, “The public domain, anticopyright, and copyleft are all attempts to create a commons, a shared space of non-ownership that is free for everyone to use. The conditions of use may differ, according to various interpretations of rights and responsibilities, but these rights are common rights and the resources are shared alike by the whole community” (par. 26). Creative Commons, she claims, is not an actual commons because it still upholds that the individual author-creator has the power to choose which rights she keeps and which rights she relinquishes to others. While Creative Commons can “shed light” in the copyfight, it may not be the revolution many believe (par. 30). Indeed, Creative Commons is a pretty moderate alternative: those seeking a fireworks and anthems revolution need not apply here. Yet, the history of copyright reveals that Creative Commons may be the most viable alternative because it works within the current system while calmly and under the legal rights of our government structures stretching its boundaries outward and laying foundations for further explorations of authorship ideologies and subverting the subject/object binary. While all rights reserved copyright upholds the subject, a no rights

reserved, completely authorless system would merely deify the object without questioning the system that sets them up against one another.

Many point out that these varying points of view from England to America to France actually come from the same place: the theories of John Locke. His *Theory of the Origins of Property* tells us that a man's work is an extension of his self. When a man works toward something or works making something, the product is *his* much unlike the literary patronage system. The French revolution used this theory against the feudal system to argue for independence. Locke proposed, to oversimplify, that the principal function of social order was to protect individual property rights. In both England and France, intellectual property almost had to be seen as property because, theoretically, both had come from Locke's theories about a person's right to his own property. The Statute of Anne allows that right / property to be purchased or passed just like anything else from the originator (Locke) whereas before that passing belonged to the court or royal decision. Despite their belief in the *droit moral* and natural law of a person's right to his property, French copyright legislation required that the right to the property dispelled outside French borders. In fact, as Ginsbeg lays out, the “imposition of formalities [like registration] results from the premise that creating the work does not alone justify protection: it is the author's burden to assert her rights; should she fail to do so, the innocent public should not be liable for unauthorized publication. In effect, the law favours free copying; that initial position should not vary unless the author undertakes to warn the world of her claims” (133). She continues later that “Not until the middle of the nineteenth century did France extend copyright to foreign authors based on their authorship status, rather than on the basis of first local publication” (158). Later, the Berne Convention affirmed that rights begin with the creative act. Ginsburg, therefore, upholds that the British, American and French

systems—although potentially different in theory—are not actually all that different in practice. Further, most early copyright laws leaned toward the goal of promoting nationalism / patriotism or the national economy in their respective countries. By protecting the rights of *their* authors, the countries could also encourage the idea of a national literature and, particularly with the United States, build a market for the literature and help the (capitalist) economy.

Both France and the United States struggled to find an appropriate balance between the public good and private rights. As the Marquis de Condorcet found, sometimes protecting the public good also means protecting private rights. Bugbee also explains in *Genesis of American Copyright*: “Two basic propositions have usually furnished the impulse wherever the legal protection of intellectual property has been established: (1) that the products of original and creative thought confer a benefit upon society, and (2) that such creative thought is stimulated to greater activity when offered governmental protection of rights in its products as an incentive” (9). In other words, when looking back at the history of copyright, we can see a moderate stance has been found necessary; the compromise between governmental oversight and the independent market balances potential malice or mistreatment on either side. Even with the Berne Convention's stance on the *droit moral*, ratification of the act becomes necessary to preserve it and protect it.

Strowel claims that the relationship between *droit d'auteur* and legal copyright is a dialectical one. To say that copyright is a battle between the marketplace and authorship is an oversimplification. Saunders also claims that “It remains important not to impose on the historical contingency of legal-cultural arrangements a neat opposition of (progressive) author-centred ideal and (regressive) trade-centered practice” (Saunders 87). What looking closely at these cases shows us, I believe, is this dialectical nature. To place the individual in opposition to

the market is fruitless and inaccurate. The legal trajectory of copyright has been a conversation, a back-and-forth, where those in the conversation have often desired a free market but have seen individuals abused therein or a strict privilege system which negates the rights of one's own intellectual "fruit." A checks and balances approach where the open market is tempered by personal protection has emerged—the subject can be reconciled with the object. Creative Commons can potentially temper the over-zealous mandatory protection of personal intellectual property *and* protect a market that allows creators to benefit from their works, whether monetarily or through non-tangible recognition or satisfaction.

CHAPTER 3

WHEN I WAS YOUR AGE:

AUTHORIAL CONTINGENCIES AND THE NEW MEDIA ERA

Every younger generation bears the burden of “When I was your age . . .” stories from the previous. A recent commercial for Konica Minolta's bizhub brings this point to comic light by applying it to technology's rapid rollover rate. In an office, a man about 30 years old approaches an only slightly younger man, maybe in his mid-20s. “Hey, newbie!” the slightly older man says, followed by, “When I was your age. . .” Then, as more only slightly older coworkers join, they recount the old days when they had to scan things by hand, send out for quality color copies, and fax using “slimy fax paper.” Then—in a hushed voice—one says, “It's the elder.” And another, in awe, “He who speaks of floppy disks.” A man, certainly no older than his mid-30s, walks by, regards the younger crew with disdain, and remarks, “You're all soft.” The commercial is funny, of course, and is meant to convince viewers that the bizhub provides them the most up-to-date technology while competitors may still be in the “floppy disk” era. However, the “when I was your age” mentality shows how our everyday functionality—in fact, the very way we view human positionality in relation to the world around us—is deftly changed by technology and emphasizes how contemporary technology changes much more quickly than in previous settings.

To see how authorship and copyright essentially co-mingle, we must understand both language theories and copyright laws. The Introduction and Chapter 2 have covered those important elements, but exploring the technological paradigms that have informed humanity's

relationship with meaning and authorship will show how our understanding of what constitutes authorship fluctuates as a direct result of context. While I cannot cover every historical attribute that affects authorship debates, looking at technological changes seems particularly fruitful because of its direct relationship with writing economies and the practical implementation of authorship activities. This chapter will highlight several different kinds of authorship understood as being important during several contextual moments, focusing not just on the history or on the post-structural analysis but rather on the “authorial contingencies” uniquely expressed in each and emphasizing the technology that affected the writing economy at the time (Saunders and Hunter 485). David Saunders and Ian Hunter's 1991 “Lessons from the 'Literatory': How to Historicise Authorship” challenges those writing histories of authorship to not follow a strictly historical nor strictly post-structuralist approach. They argue that “post-structuralist accounts of authorship are no less subject-centered than historicist ones. They differ principally in replacing history with discourse as the dialectical medium responsible for the birth of the author, and in emphasizing a permanent debt of consciousness to the unconscious rather than the eventual wiping of the slate promised by G. W. F. Hegel” (481). They suggest authorship “obeys no single logic” but rather works within authorial contingencies coming from variables such as culture, religion, technology, and (of course) law. In this way, this overview should “not just . . . describe a literary phenomenon; it also wishes to bring to light the conditions that make this phenomenon possible and thinkable” (479). Therefore, this chapter exposes the juxtaposition of history, theory, and technology as a means to lay the foundation for a deeper understanding of today's unique situation, which leads to distributed authorship support by Creative Commons licensing.

Following their call, this chapter will touch on six moments of unique authorial contingencies, each exhibiting an internal logic from its situation: The Man of God, the Scientist, the Genius, the Critic, the Blogger, and the Commons. While any of the categories could easily serve as a topic for its own in-depth book-length study, my purpose is not to deepen our understanding of any of the categories individually but to broaden our understanding of the power the situations found in each wield over concepts of the author as person and as function. Further, I understand that these descriptions may be seen as as overly simplified or generalized. When not discussing individual authors, as I am not, it is difficult to facilitate a broad understanding of authorship without providing some sense of generalization that could be attributed to many rather than one or few. A more in-depth discussion of the current negotiations in authorship ideology will be covered in Chapter 4.

I choose not to include any conception of a pre-literate author as part of these specific authorial discussions because I do not want to present orality and literacy as yet another binary to break, but it is important to note briefly how the shift from oral to literate represents perhaps the earliest technological shift that affected a concept of authorship. In the earliest human authorial traditions, we see the implementation of social structure and public conventions in the texts of authors often passed down orally. Before authors were almost solely connected with the written word, the spoken word exhibited its own set of rules and mores concerning the creation of “texts.” I use the word “texts” because, as Ong points out, to discuss “oral literature” seems “anachronistic” as literature and literacy are so closely aligned and orality existed with its own regulations before traditional Literacy transpired (*Orality and Literacy*, 13). In *Orality and Literacy*, Ong describes those attributes that oral traditions hold in comparison with the relatively

more recent literate traditions; he calls it the “psychodynamics of orality.” These include that oral traditions are:

1. Additive rather than subordinative
2. Aggregative rather than analytic
3. Redundant or “copious”
4. Conservative or traditionalist
5. Close to the human lifeworld
6. Agonistically toned
7. Empathetic and participatory rather than objectively distanced
8. Homeostatic
9. Situational rather than abstract (37-57)

Looking at this list, the psychodynamics of orality show that these creations were not seen as the individual product of an individual subject but a collective creation built by many people over many years. As Ong describes, this conceptualization is related to why the tropes of so many oral tales are familiar to us: the brave soldier, the beautiful princess, the strong oak. It is not imitation, stealing, or remixing to call an oak strong as so many other have before when the “strong” is so heavily interconnected with the basic understanding of what an oak is by nature. Through our Western paradigm, it is often difficult to see that “oral cultures, as one example of cultural divergence, speak a different world than those of written cultures” (Tomaselli, Shepperson, and Eke 18). In that, we must also understand that oral cultures are best understood through their own paradigm and not through our Western subjectivities.

Walter Ong's *Orality and Literacy* gives us possibly the most well-known comparison between primarily oral cultures and literacy-based cultures. He claims that in order to comprehend the difference between the two, we must see clearly that they do not just contrast in the means of communications but in the actual cognitive qualities of the individuals in the culture. To illustrate this, he relays the story of a study conducted by Aleksandr Romanovich Luria in which Luria and his associates asked questions of subjects from illiterate cultures. When asked which of the words hammer, saw, log, and hatchet belonged together, instead of categorically placing all the tools (saw, hammer, hatchet) together as an abstract, literate thinker would have, the subject placed the words situationally as saw, log, and hammer because a person would need these tools together to actually *make* something (51). As cultures have adopted more literate modes of being, they have become more abstract and less concrete as hearing-dominance gives way to sight-dominance. In this move toward abstraction, we have also become less additive and aggregative, making compositions more individually based and less correlative to real world situations around us. Ong also argues that we have recently entered into what can be understood as a secondary orality, which is “sustained by telephone, radio, television, and other electronic devices that depend for their existence and functioning on writing and print” (11). This secondary orality again changes, as he claims, not just how we communicate but the very cognitive functions we use to communicate. Therefore, technological changes represent an inherent variable of these conceptual metamorphoses from oral to literate and through varying kinds of literacy in a literate culture.

Since the late 1970's and 1980's, rhetoric and composition theorists (as well as linguists, sociologists, and experts in other related fields) have taken for granted that multiple types of literacy exist. One variable in that broadened understanding of literacy comes from the

proliferation of multicultural studies as well as open enrollment education in America. In “Under the Radar of Composition Programs: Glimpsing the Future Through Case Studies of Literacy in Electronic Contexts,” Danielle Nicole DeVoss, Joseph Johansen, Cynthia Selfe, and John Williams present three case studies representing various ways that students achieve “literacy in electronic contexts.” They remind us of three lessons: literacy is related to time and place, we must adjust in order to remain relevant, and we need to address and go beyond the literacies students already have. (For other interesting discussions of multiple literacies in a multicultural context see James Gee's *Social Linguistics and Literacies: Ideology in Discourses*, Sharon M. Darling's “Literacy and the Black Woman,” Maxine Hairston's “Diversity, Ideology, and Teaching Writing,” or Terry Dean's “Multicultural Classrooms, Monocultural Teachers”).

For these reasons, this chapter provides a focused discussion on the ways major technological shifts have drastically changed our views of who an author is since and because of our shift into literacy because those shifts have drastically changed our understanding of what a human is. Although these contingencies can be viewed diachronically in comparison, we must also see them synchronically in that each vision holds certain persuasive sway at any individual historical mark. Further, we can assume that they will continue to grow and metamorphose as human situational context, law, and particularly technology change. Viewing these concepts contingently and synchronically rather than merely historically or semiotically opens us up to these possibilities yet to come and a framework through which to view contemporary contingencies productively.

Literature Review

In recent years, topics of what Ong calls a secondary orality have been written about profusely and frequently. Many have focused on the creation of new media texts rife with hypertext, linking, and embedded visuals and the differences between that and previous writing economies. Few, however, have foreseen the quick burgeoning of the Commons mentality or have thrown as wide a net over authorial ideologies in relationship to today's author as this chapter does. The wide rather than deep nature of this chapter is intentional because it allows me to show that at any moment in history unique variables converge to affect author ideologies. When the situation changes, the author-function changes. Previous authors have emphasized previous authorship ideologies on individual bases, but I argue that the broad perspective a survey provides uniquely prepares us to engage the contemporary mindset from a well-advised perspective that other, more focused, studies might ignore.

In his 1987 text *Electric Language*, Michael Heim explores how aspects of language usage intrinsic to and unique to technology irrevocably change our writing habits. For example, the vast system of linking we now find commonplace in most hypertexts cannot be accomplished, or even conceptualized, with traditional literacy modes. In order for this to occur, there must have been “a change in attitude toward the computer. In the 1980's the microcomputer was not widely perceived as a personal tool” (xv). And, because it was not conceived as a personal tool, most people's ideas of the computer's usefulness were still neatly stashed away in a NASA room somewhere. One of the main differences in writing caused by the proliferation of the personal computer as it became more ubiquitous is the conflation of the writer and the editor. As Heim points out, “The contemporary word processor brings new responsibilities. Because the look of the page, the fonts, and the graphic design now belong to

software, the writer more easily controls the elements that formerly stood outside text creation” (xvii). Word processors, and now quick composing tools on the internet such as blogs, provide opportunity for every writer to also simultaneously edit, link, and remix. Similarly, Jay David Bolter's *Writing Space* from 1991 is a seminal text in rhetorical and new media studies that explains how, as Ong suggests, when we change the way we write technologically—in this case, a move from pen to paper and typewriters to computer word processors—it actually changes the way we conceptualize writing and, as a result, the function of the author. Twenty years after these milestone works, things have changed because new developments made available by the shared space of the internet have irrevocably changed the framework through which we view authorship.

Kathleen Welch's *Electric Rhetoric: Classical Rhetoric, Oralism, and a New Literacy* (1999) also addresses these issues of the way electronic literacy is the important variable in the “authorial contingency” of our time. In *Electric Rhetoric*, she describes the ways pre-Platonic thinkers were orally based, and the linear thinking that has dominated Western ideology is now giving way to new media that require a more web-based ideology in which an author does not provide a straight-forward linear argument but rather a text filled with images, links, and networks that lead the viewer down an endless path: the electronic “web” of information. The reality that the reader can also create text in reaction to it—leaving comments, linking it, copying and pasting—changes the dynamic, creating what has been called the read-write web. (For more on the read-write web see Dan Gillmor's *We the Media* or Dan Tapscott and Anthony Williams's *Wikinomics*).

This ability to *read* the web and then *write* it results from the coding embedded in the websites. Lawrence Lessig's *Code* calls us to pay attention to the ways coding controls our

interaction with the web. Although we like to think of it as a free space, it is, in fact, strictly controlled by coders who say what can be commented on, what can be copied, what colors we view, and to what information we are linked. Lessig argues that this affects our view of authorship because it creates barriers to our ability to share and remix the information we find, having a heavy-handed effect on the market, network architecture, the law, and acceptable cultural norms (234). His work *Remix: Making Art and Commerce Thrive in the Hybrid Economy* furthers this discussion as he argues that criminalizing behavior allowed by coding creates criminals where there should be none because copyright so closely connects an author with the economy and, therefore, punishment under the law. Instead, he says, we should reject this notion that the law is static and that we must bend to its will, instead providing compelling argument for a changed dynamic between internet users and content providers in which it is understood and *beneficial* that content will be shared, remixed, and placed into the knowledge commons. If the creator does not wish to participate in that economy, he is welcome to code the site in such a way as to impede remixing. This discussion reflects an important rhetorical variable of new media authors: *choice*. In many ways, the choices Lessig lays out represent the foundation of new common era writers. My exploration of the Commons furthers Lessig's discussion by contextualizing a commons author amongst previous authorship manifestations and emphasizing the influx of choice.

Recent collections in rhetoric and composition studies have addressed the new ways authors have behaved and composed in the new media environment. For example, the 2004 collection *Writing New Media* by Anne Frances Wysocki, Johndan Johnson-Eilola, Cynthia Selfe, and Geoffrey Sirc explores how new media writers compose and how composition

theorists and pedagogues can respond. Wysocki's chapter titled "Opening New Media to Writing: Openings & Justifications" defines new media as

those [texts] that have been made by composers who are aware of the range of materialities of texts and who then highlight the materiality: such composers design texts that help readers/consumers/viewers stay alert to how any text—like its composers and readers—doesn't function independently of how it is made and in what contexts. Such composers design texts that make as overtly visible as possible the values they embody. (15)

She further emphasizes that new media texts do not necessarily have to be digital as long as they work under the auspices of these criteria, which would not have been possible under previous contingencies. This definition provides a clear place to begin to understand a commons era author and to imagine ways to foster it.

Although a clear definition of new media exists, its application in venues that value more traditional texts and authorships has been a bit slower in coming. The collection *Originality, Imitation, and Plagiarism: Teaching Writing in the Digital Age* focuses on the confusion that new media texts cause some in academia as they attempt to teach students to attribute their citation in a world where remixing is commonplace. Although the collection is specifically centered around plagiarism in the classroom, its ruminations reach farther than its intentions. For example, Kim Walden and Alan Peacock's "Economies of Plagiarism: The i-Map and Issues of Ownership in Information Gathering" suggests "this economy has changed significantly in recent years, and it may be that its modes of operation no longer represent a shared culture across the groups who utilize and who maintain the academy" (133). Their text goes on to describe the ways the academy attempts to keep value in an old way of thinking: a book-literate way of

thinking that values clearly identifiable authorship and a strictly-followed set of rules that eliminate those who choose not to follow them or cannot understand them. My text argues that the change, despite friction and resistance, is inevitable and appropriate.

The recent *Lingua Fracta: Towards a Rhetoric of New Media* by Collin Gifford Brooke furthers this conversation by arguing that new media require their own framework through which to critically view them, one that does not adhere strictly to the critical notions we have inherited from traditional English departments focused on literature. To do this, he uses the rhetorical canons (invention, arrangement, style, memory, and delivery) and the trivium (grammar, rhetoric, and logic) to show ways these classical codes can be effective in dealing with new media if we re-envision them in appropriate ways. He says, “A rhetoric of new media requires us to rethink our disciplinary habit of attending to textual objects; however, we do not need to invent this rhetoric wholesale” (27). This process, which he argues should include the re-envisioning of the canons and the trivium, “should prepare us for sorting through the strategies, practices, and tactics available to us and even for inventing new ones. It is the difference between studying the finished products of others and preparing to generate our own” (22). Indeed, Brooke's call for creating a new critical vision for new media texts that can see past critical work as a tool but reject it when it becomes inappropriate in the new media paradigm is exactly what this dissertation aims to do. His work pushes rhetoric and composition and new media scholars in the direction of “actionary” work rather than reactionary. He builds his argument around the idea of ecologies, in that the ecology of writing has changed with the new media influx of the last twenty plus years, as Kathleen Welch, Jay David Bolter, and Michael Heim have previously noted. Brooke says:

Ecologies can achieve a certain level of systemic stability or balance and may even appear stable from a long distance, but they are in constant flux. Ecologies are vast, hybrid systems of intertwined elements, systems where small changes can have unforeseen consequences that ripple far beyond their immediate implications. This means we must begin to rethink notions of rhetorical effectiveness—whether defined in terms of persuasion, identification, or some other activity—because what is “effective” at one scale or location within an ecology may fail utterly in another context. (28)

Brooke's impetus comes from the realization that, as with any ecological system, when one variable is changed, the rest must be altered also. We react to these changes with a continual discursive process that challenges our relationship with the ideas of text, authorship, and readership as well as specific instances of texts, authors, and readers.

In his introduction to the collection *Authorship: From Plato to the Postmodern*, Seán Burke poses some of the central questions to the author's relationship with her work. He asks, “When an author writes or thinks to be writing, is that author simultaneously written? . . . Is the author the producer of the text or its product? Do we speak language or does language speak us?” (xv). These are, inevitably, the epistemological equivalents to “what came first, the chicken or the egg?” But, the negotiation between the two sides—text and author—has defined authorship throughout history as we understand it. Looking at the trajectory of that negotiation can provide insight into our current ideological context, and we must note that each ideological point represents its own unique situation, for human perspective is necessarily tied to its history. To think of copyright law and our understanding of the sign and symbolic language anachronistically is to do an egregious disservice to a discussion of these topics.

Burke poses an interesting viewpoint in *Authorship* that challenges readers to view historical authorship differently. He says:

One can see that so many of the problems that bedevil the author-debate arise from the failure to realise that the notion of the author has been falsely analogised with the transcendent/impersonal subject and that the only way to deconstruct this latter subject is not to replace it with theories of language, *différance*, anonymity, *écriture féminine* and so on, but to reposition authorship as a situated activity present not so much to itself as to culture, ideology, language, difference, influence, biography. (Burke xxvi)

Like others, he rejects wholly subjective views of authorship. He continues to clarify that traditionally humans have viewed authorship as either one of two options: imitation or inspiration. In other words, authors have been touched by God or the gods; a blissful connection with nature; “psychic voyages mediated between the spiritual and material worlds;” or the Hellenic Muse, which have given way to their genius creations, or they have merely imitated other authors or other works of art (5). For Burke, “The various imitative models—in their mimetic, didactic and technical senses—all affirm literature's connection with the public domain, whether that domain consists in an objective reality renderable by language, a shared vision of how the social should be restructured, or in terms of public conventions and traditions for the production and reception of discourse” (xviii). In Burke's model, the inspirational is representative of the subject self while the imitative parallels the object.

Authorial Contingencies

This chapter will show how these authorial contingencies exemplify the tension between the inspirational and the imitative framework laid out by Seán Burke and attempts to show the contextual nature of authorship as it moves from historical moment to historical moment. In doing so, I provide background evidence for the contemporary model—our current placement in which the inspirational/imitative binary is rejected for a collapsed subject/object that takes the form of a commons authorship. Following Brooke's impetus to see new media from its own internal logic instead of forcing it to fit into the box of previous historical situations and Burke's vocabulary of imitation versus inspiration, the following discussion will argue that pausing to view each ideological perspective—as it was, as best we can looking back—is the most fruitful way to learn to celebrate the current mindset. We often like to judge the past based on the knowledge we have now—“Geez, weren't they stupid to think that authors were geniuses?”—but placing a contemporary paradigm on centuries long gone serves no purpose other than to make us feel socially, morally, or intellectually superior. Contradictorily, we also like to cling to “the good old days,” swearing things were better before they got so complicated with modern life. This chapter attempts to provide a different approach: looking at snippets of authorship history for what they were, leading us to an expectation for seeing now as it is: a unique set of authorial contingencies never seen before and requiring a legal infrastructure to support it that neither downplays its history nor holds tightly to the “good old days.” Each section of this chapter will consider the juxtaposition of social, moral, technological, and legal elements that have combined to create an “author” of that time to prepare us to see the importance of engaging with today's “spirit of the age.” Therefore, the following discussions serve to firmly situate us in our own time, with an understanding of from where we have come.

The Man of God

The vast expansion of Christianity brought immense ramifications in conceptualizing the author through to the Medieval Age, as Christ became the ultimate inspiration. Certainly not all Medieval literature was church-related or completely focused on exegesis—Chaucer's *Canterbury Tales*, the Arthurian legends including *Sir Gawain and the Green Knight*, and the feminist writings of Christine de Pisan immediately come to mind. However, all literature of the time was influenced by a similar worldview, privileging Christian discussion and a Christian world order. These secular texts also show evidence of a growing market for writing in the vernacular. Seth Lerer says,

Manuscripts proliferate in the decades after 1400 in ways that they did not before; new venues for their production and reading emerge; shifts in the social concept and the practice of 'literacy' help create new audiences. 'There was now with the nature English writing of Chaucer and Gower (and, in a somewhat different context, Langland), vernacular poetry, in quantity, of a kind capable of attracting paying customers, customers themselves representative of a wider range of the literate public than the traditional court-based literary culture.' (Edward and Pearsal qtd. in Lerer 1251)

However, a Medieval understanding of literature, whether church or secular based, leaned heavily on an inspirational model that looked to a God in heaven for that inspiration and was perpetuated by a lack of technology to make copies.

A. J. Minnis says that the Medieval “theory of authorship, i.e. the literary theory, centered on the concepts of *auctor* and *auctoritas*,” author and authority (23). Under this mindset, the *auctor* received *auctoritas* from God, not from his own powerful insight. The *auctor* was merely

a vessel. St. Augustine of Hippo reignited the study of rhetoric in the Medieval era. However, he molded and adjusted its purpose for the Christian imperative of the day. Augustine suggested that Classic teachers should not be ignored because they were pagan, but that Christians could learn something from them about how to view language and, therefore, how to be better preachers and teachers of the Holy Word. In other words, invention for Augustine was already settled: “the world picture which the Middle Ages inherited was that of an ordered universe arranged in a fixed system of hierarchies but modified by man's sin and the hope of his redemption” (Tillyard 6). The Bible was the Truth and all lessons come from it; the Bible is, perhaps, the greatest example of the tradition of an inspired text, for in the Bible the author-god subject is exemplified as God-as-author.

In this view, the authorship of Biblical texts is inviolate because God's authority is inviolate. Moreover, “in Christian teaching the Second Person of the One Godhead, who redeemed mankind from sin, is known not only as the Son but also as the Word of God. In this teaching, God the Father utters or speaks His Word, his Son” (Ong, *Orality and Literacy* 175). Although this is a spoken act—God speaks the Word/Christ into being—this Word is at the core of the Bible: “Christian teaching also presents at its core the written word of God, the Bible, which, back of its human authors, has God as author as no other writing does” (175-6). Spoken or literate word, in the Medieval worldview, any legitimate authorship stemmed from an omnipotent, omnipresent God-head. As Burke explains, “Within the Medieval view of the book, the author (or *auctor*) was the scriptor through whom the Divine script was performed . . . Within the Medieval view the human author of Scripture has no power to originate, and his text derives from the creativity and authority (*auctoritas*) of God” (Seán Burke xvi-xvii).

Augustine's writings reflect this opposition of *auctor* and *auctoritas*. In his own autobiographical notes, *The Confessions*, Augustine describes himself as a broken vessel, a sinner through whom God can still achieve his mission. Unlike Plato and Cicero who declared that an *auctor's auctoritas* came from him being a “good man,” Augustine asserts that even a “bad” *auctor* can have authority through the *auctoritas* of God. In *On Christian Doctrine*, he says, “And so it may happen that an eloquent man, though bad, may himself compose a sermon in which truth is set forth to be delivered by another who, though not eloquent, is good. And when this is done, the former gives as from himself what belongs to another, while the latter receives from another what is really his own” (485). From this perspective, Augustine concluded that the Medieval person could find wisdom in the work of pagan men such as Plato, Cicero, or Aristotle. Their works, however, required adjustment to accommodate a Medieval Christian worldview: “it would not do to enjoy the *Aeneiad* as the epic of Augustan Rome: the poem had to be fitted into the current theological scheme and was interpreted as an allegory of the human soul from birth to death” (Tillyard 6). This Medieval worldview, parts of which persisted far into and after the Elizabeth era, insisted on an order with the God-head in the top position (followed by angels, humans, animals, plants, rocks, and so forth).

Augustine's *On Christian Doctrine* is mainly centered on the minister's interpretation of the Bible, applying Cicero's advice of pleasing, teaching, and moving to action for the context of Christian church. This discussion of the appropriate ways to interpret and preach on the Bible is important because the vast majority of the laity were not literate. Although alphabetic literacy obviously existed, technology had not yet advanced to the mass reproduction of texts, so only the highly educated could read in Latin and virtually only the clergy had access to the Bible. Therefore, the rhetoric of preaching—of persuading the congregation to agreement and truth—

was very important to the perpetuation of the Church because many did not have every day access to the texts. Yet, the insistence on the absolute Truth of the Bible could be stifling (this was, after all, the Dark Ages). The Middle Ages' emerging Christian culture changed views: “the notion of inspiration was reconciled with that of autonomous truth via the notion of *auctoritas* or authority derived from God. . . The Scriptural authors or *auctores* were thus granted the charisma of divinely-revealed truth which at the same time prescribed against any sense of individual originality” (S. Burke 7). Centuries went by with few new theories, few discussions, and few changes in education or rhetoric because of the inerrant and all-consuming *auctoritas* of God was protected by a relative lack of technology to produce many copies of the Bible, therefore insulating it within the church for all intents and purposes.

However, exegetical focus did change and scholastic education broadened viewpoints. Scholasticism, which pre-and post-dates the Reformation, attempted to juxtapose non-secular Christian doctrine with secular methods such as the dialectic. Much Medieval scholarship on authorship focused on Biblical authors (Minnis 24):

In twelfth-century exegesis, the primacy of allegorical interpretation had hindered the emergence of viable literary theory: God was believed to have inspired the human writers of Scripture in a way which defied literary description. Twelfth-century exegetes were interested in the *auctor* mainly as a source of authority. But in the thirteenth century, a new type of exegesis emerged, in which the focus had shifted from the divine *auctor* to the human *auctor* of Scripture. It became fashionable to emphasise the literal sense of the Bible, and the intention of the human *auctor* was believed to be expressed by the literal sense. (Minnis 27)

Through this ideological change, the concept of author became more strongly linked to the ownership of the author's text—i.e., the book of Timothy belonged to a man named Timothy, who wrote it, not necessarily to God alone, although Timothy (book and person) was inspired by and provided a route to understand God.

It is no coincidence, then, that shortly after this the Protestant Reformation took hold. If Timothy can read and write and interpret God, why can't I? I am by no means arguing that one is necessarily a direct result of the other but that the common understandings are related. With the huge technological leap forward in approximately 1450 A.D. of Guttenberg's printing press and the Protestant Reformation roughly linked to Martin Luther's 1517 *Theses*, major changes also occurred in rhetorical thought and education. The Catholic Church's authority was questioned and humanist education began to be popular. More and more people were being educated, including women, so more and more people were literate and had access to newly printed books and tools for writing themselves. This, of course, is just one aspect of “the complexity of the relations between pleasure and edification, Latin and vernacular, long and short, mature and youthful, secular and religious, which contributes to what literature was for medieval England” (Lerer 1252). The lack of technology to duplicate text had kept the vast majority of Western people illiterate in most cases (although not without exposure to stories and a literate understanding of the world). Because of social and moral pressure to conform to the theologically-driven values of Christianity, the powerful few who were given the opportunity to read and write and had access to the Bible remained in power because they could read and write and have access to the Bible. The *auctoritas* that came from God was, therefore, protected and insulated until the technology was available to spread that power more broadly.

The Scientist

At the end of the Renaissance, the scientific method and the technological advances it brought provided escape from Biblically focused *auctoritas*. Carolyn Merchant explains that “The colonization of the Americas, the rise of mercantile capitalism, the wars of religion, the revival of ancient learning, and skepticism over medieval philosophy made the early seventeenth century particularly transformative” (147). Technological-scientific leaps and bounds were made, resulting in new discoveries such as gravity, an understanding of the way the solar system works, modern mathematics, and instruments such as the telescope and microscope. Francis Bacon, considered the father of the scientific method, encouraged people not to simply receive accepted wisdom but to approach knowledge with a sense of discovery. Invention, for Bacon, involved scientific exploration; inspiration did not come from God but from the careful consideration of one's surroundings. He even suggested a change to the rhetorical canons to reflect scientific logic: we ought to invent, to judge, to retain, and to express. Invention, in this case, involves putting forward a hypotheses and then following with careful judgment testing that hypotheses. If the hypotheses is proven correct, retain it and then write about it so that others may understand it. In this way, as communication between people became more advanced and quicker, human knowledge could grow and build through communication of proven or tested hypotheses.

These scientific developments and hypotheses represent the abstract reasoning and analysis of literacy defined by Ong. In some ways, we might consider this scientific focus mimetic/imitative for it only presents information found and analyzed in nature. Creativity comes from the ability to closely observe one's surroundings and not from the inspiration of Deity or Truth, although many scientists still held to the assumption that God's hand was behind

the creation of the nature they observed. In fact, “Bacon's life and work spanned the period in which science (natural philosophy), technology (the mechanical arts), and mercantile capitalism conjoined with religion to make possible a new form of knowledge (an 'advancement of learning') in the service of humankind ('the relief of man's estate')” (Merchant 149). These men saw all forms of knowledge, however different in their practice, as serving the common goal of increasing human knowledge and knowing the unknown.

All of these variables come together to form a very particular kind of author—one whose contingencies rely on a new type of advancement of knowledge, which is also heavily influenced by barely-out-of-the-Middle-Ages religious thought and fear of the unknown coming face-to-face with new technological advances that were spreading throughout the economy. Merchant says, “The rise of modern science in the seventeenth century depended on a transition from occult to public knowledge of nature's secrets, from constraints against the penetration of nature's inner recesses to the assumption that nature herself was willing to reveal her own secrets” if, of course, the scientist was a careful observer (154). In this way, scientists (who could be anyone willing to observe his natural surroundings in a way to seek answers to the unknown) aimed for “as much spiritual enlightenment as power over the physical domain” (Hattaway 183). Because the concept of nature and the unknown was so inherently tied to a conception of the almighty God of creation, any revelation about the way nature works also led to a better understanding of God. Unlike the Man of God mindset described above wherein God revealed his truth and inspiration to man through the Bible or divine revelation of some kind, the Scientist is able to find God through his own search of his surroundings, using new tools and venues. This empowered the individual.

Perhaps as a result of the fear of the unknown, the good scientist was often very careful with his explorations, both natural and philosophical. Their inspiration took a very mechanistic view as with the appropriate mindset and the patience to observe one's surroundings, one could come upon answers but only if following the correct steps very carefully: Bacon says in *Novum Organum* that such work should “be done as if by machinery” (qtd. in Hattaway 191). Moreover, in order to share the findings, the scientist had to be able to clearly describe them, leading to a movement toward perspicuity. As a result of the proliferation of science, invention / inspiration was assumed to be somewhat unproblematic for everyone had the same capacity to look around them with their senses discover the same things. In the famous quote *Cogito ergo sum*, Des Cartes makes the *self* the place of inspiration rather than God. This is incredibly important because it shifts our attention away from the divine and toward the human—human ability, human ingenuity, human thought. The scientific method allowed authors to recognize that there were other ways to receive *auctoritas* than directly from God; observation allowed men to receive inspiration from nature and their surroundings.

Because nature was willing to open up herself and provide answers for many questions about the nature of nature, content often became de-emphasized in favor of the style with which it was presented. Debates over appropriateness of style and delivery were also popular at this time. David Hume's *Of the Standards of Taste* says that everyone has the same capacity for good taste but that some are naturally better at seeing it than others. Hugh Blair's *Lectures of Rhetoric and Belles Lettres* says that people should study in order to gain taste and style. Both men agree that some works of literature and art are just naturally better than others (Homer, for example) and that education should expose students to those excellent texts in order for the students to learn style (and, often, imitate that style). Because elocution was also important,

Gilbert Austin's *Chiromania* has diagrams directing rhetors how they should stand, hold their feet, and stretch out their hands to express various meanings and appropriateness. Therefore, the student merely had to study and memorize what was appropriate as had already been decided and then practice appropriate style and delivery in order to have good elocution. Authorship was almost purely mimetic—an imitation of what was considered “good writing.”

We see in this historical snippet that deific inspiration was de-emphasized in favor of enlightened science inspired by one's surroundings and the pressure of new technological mechanizations, and imitation was emphasized through the strong pursuance of hegemonic style and delivery. The Scientist finds himself at a unique juxtaposition between the divine and banal, the feudal and merchant, and the inspired and imitated. The Industrial Revolution that resulted emphasized mechanization and human ingenuity, and creative authors reacted. Given the scientist's focus on the individual human's ability to perceive coupled with an interest in nature's revelations, the jump to Romanticism was not huge but did differ in that the Romantics rejected the technological advances heretofore worshipped in favor of a transcendental relationship with Nature.

The Genius

Romantic ideologies of authorship involving the inspiration of Nature are well-noted (for more on the Romantic notion of genius, see Julian North's *Domestication of Genius: Biography and the Romantic Poet*, Anne McGovern's “From Romantic Genius to Committed Intellectual” or Dino Franco Felluga's *The Perversity of Poetry: Romantic Ideology and the Popular Male Poet of Genius*). In the time leading up to the Romantic era and influenced by the mechanism of The Scientist, “Both rhetoric and criticism operated empirically in an empirical age, examining successful works and identifying the features that made them effective; both relied on classical

works as models of enduring effectiveness; and both defined human nature as the general experience of humankind” (Bizzell and Herzberg 995). Romantic authors admittedly cannot and should not be lumped into one indecipherable mass for, in fact, they did not share one singular quality or creed. However, they did share what Shelley called in *Defence of Poetry* “the spirit of the age” (par. 25). This spirit involved a rejection of the outwardly-looking scientific method of the previous generations in favor of looking inward toward oneself or communing with one's surroundings in a transcendental rather than logical way. In this way, the Genius's technological contingency is actually a move away from new technologies and scientific reasoning and toward pseudo-science such as mesmerism. This movement, which focused on an individual's ability to have a transcendental (almost supernatural) experience involving magnetism in our bodies, and others masqueraded as science.

In this environment where individuals sought these transcendental experiences instead of the methodologies of the previous century, “The artist's mind . . . is more relevant to an understanding of art than the mind of the audience is” (Bizzell and Herzberg 995). Indeed, Charles Bressler says that although order was a ruling variable in the eighteenth century, intuition was emphasized in the nineteenth: “the nineteenth-century thinker believed that truth could be attained by tapping into the core of our humanity or our transcendental natures, best sought in our original or natural setting” (27). In the Enlightenment, because everyone had equal opportunity to observe the world around them, the author's audience was seen as equals. An important communication occurred and knowledge was passed, which is why thinkers such as John Locke insisted on the clarity and perspicuity of language. The Romantics held no such requirement of their authors: “The Romantic poet is engaged in a soliloquy, not an argument, and poet's aim is reflection, not action. The ideal genre is the lyric, not the oration or the essay”

(Bizzell and Herzberg 995). One need not reach out to context or fellow humans in order to receive inspiration. One's own existence signifies meaning.

Further, many Romantic writers held to the idea that their genius was contained within them and merely needed to be “birthed.” In “Offspring of his Genius': Coleridge's Pregnant Metaphors and Metamorphic Pregnancies,” Kiran Toor draws a parallel between the physical idea of conception in the mother's womb and conception in male poets' “brain-wombs” (261). Toor says, “ever since Athena was given birth through Zeus' head or since Socrates in 'Theaetetus' informed his interlocutor that he is merely a midwife to other men's pregnant thoughts, the idea of pregnant male poets and their brain-wombs, permeates literature” (261). In this article, a historical connection is drawn between the medical belief of the early 18th Century that a woman's thinking too hard on an object or being startled by an object during pregnancy could create a parallel deformity in the child. For example, a woman seeing a hare while pregnant might give birth to an infant with a “hare lip” (today known as a cleft palate). Similarly, what the male poet genius sets his mind on will be birthed in his creations. Therefore, no one—and no technological advancement—can take credit for the author's work except himself, from whom the creation came.

Because doctors of the time also did not understand completely conception and gestation, an understanding also existed that a fetus began fully formed (by God's hand) and merely grew in proportional style. The parallel continued to the poet, who “has his path of development suitably ingrained within. Like the air-sylph, he contains within him the seeds of his entire germination and potential growth, and everything that can *potentially* exist is already *within* him” (Toor 265, emphasis hers). In this light, the poet is a genius because what comes from him is of him, fully formed within him. If the words are genius, it can only be explained that the author is

a genius. If the poem is banal, the poet must also be. This mindset reflects the “spirit of the age” that rejected a strict scientific methodology and technology and embraced intuition and inspiration. The Genius does not need external technologies because he has his internal faculties.

Author Edward Young describes the Romantic view of the author's genius as a preference of inspiration over imitation in 1759:

The mind of a man of genius is a fertile and pleasant field, pleasant as Elysium, and fertile as Tempe; it enjoys a perpetual spring. Of that spring, originals are the fairest flowers: imitations are of quicker growth, but fainter bloom. Originals are, and ought to be, great favourites, for they are great benefactors; they extend the republic of letters, and add a new province to its dominion. Imitators only give us a sort of duplicates of what we had, possibly much better, before; increasing the mere drug of books, while all that makes them valuable, knowledge and genius, are at a stand. The pen of an original writer, like Armida's wand, out of a barren waste calls a blooming spring. Out of that blooming spring an imitator is a transplanter of laurels, which sometimes die on removal, always languish in a foreign soil. (qtd. in Burke 37)

Originality was the focus of the day, and an author was judged by his “genius,” his ability to find within himself a non-imitative work. As Young describes, imitative works were expected to fail or merely to be popular for a time while works of inspiration would only grow in favor as time passed.

M. H. Abrams and Stephen Greenblatt argue that in William Wordsworth's *Lyrical Ballads*, he sets “himself in opposition to the literary *ancien régime*, those writers of the eighteenth century who, in his view, had imposed on poetry artificial conventions that distorted

its free and natural expression” (6). The author had no obligation to his readers for clarity or the imitation of popular styles but only to himself and his own desires for the work. In opposition to the Enlightenment Period where scientific observations of the everyday world ruled the vision of authorship, Romantic authors William Blake and Percy Bysshe Shelley “described a poem as an embodiment of the poet's imaginative vision, which they opposed to the ordinary world of common experience” (Abrams and Greenblatt 7). This inversion into the self, however, is a common experience many Romantic authors have individually. For example, Byron sets his lyrics up so that the reader is meant to ally the author himself with the hero of his text. *The Prelude* is about Wordsworth's esoteric adventures in his own mind. They exhibit an almost obsessive fascination with themselves as subjects.

The authors' personal experiences with inspiration led them to deify themselves. As Séan Burke explains: “The inspirational source of literature has maintained a strong hold upon thought partly because it accords with the stated experience of writers themselves who have felt moved by a remote or otherworldly power to compose discourses of which they had no prior conception. Such a view of discourse at once elevates the poet or author as an elect figure—set apart from the rest of humanity via the gift of a divine afflatus—but deprives the author of the role of originating force” (5). Likewise, a focus on imitation or some impetus to abide by set standards of taste also removes the author's “originating force.” Even as the Romantics attempted to negate this inspiration-imitation binary, their focus on self (outside of either force) merely semantically shifted the inspirational focus onto the self rather than a deity. They perceived what Derrida would later call the transcendental signified; Romantics merely moved signification from God to Self.

These elements—a rejection of the scientific method; the inheritance of Nature-focused observation from the Enlightenment era; and a focus on the transcendental process of creating/birthing a work—led to an understanding of author as The Genius, in a state of constant creative pregnancy, gestating in his “brain-womb.” This was the image held by the audience but certainly, and even more importantly, by the authors themselves. This ideology has held on for generations and has also aided in and perpetuated contemporary understandings of individual authorship—that an author has a inherent right to his work because it is part of himself and representative of his personality. Further, many have held to the idea that an author has a right to protect the fruit of his brain from outside forces that might manipulate, change, or otherwise remix what he has labored over and presented as a work of individual genius. The idea of individual genius also overlaps into the next authorial contingencies, wherein The Critic begins to focus heavily on studying the history and whims of individual authors, and then New Criticism reacts by attempting to ignore the author altogether.

The Critic

The social movements of the time such as wider recognition of authors of color, wider recognition of female authors, the Uplift Movement, and the Industrial Revolution played an important role in understanding text with an obsession for knowing *who*, or *what*, wrote it. Moreover, the movement toward more urban environments by former slaves and their families in the Great Migration as well as incoming immigrants and simple population redistribution after the Civil War, while people were physically closer, left many alienated and separated from previous social identities. In this climate, people drifted further into a literate mindset (as described by Ong). Therefore, most of the 19th century shows a historicist approach to criticism (Kristeva 5).

This more technologically and mechanically-driven urban environment resulted in removing people from the natural world, leaving them often objectively distanced from their surroundings. These urban environments were not homogenous, but rather represented a vast array of people from multiple racial, cultural, and linguistic backgrounds often working together in the factories of the Industrial Revolution or building the infrastructure that would represent the era: enormous steel buildings, railroads, electronic grids, and (later) behemoth dams. The more people became separated from the natural world and from their traditional, conservative backgrounds in this era, the more analytic and abstract thinking became. Indeed, fear stemming from these socio-cultural and industrial changes have fueled the historical approach. When faced with great paradigm shifts, such as the one seen in the post-bellum era in the United States toward industrialization and mechanization, nervousness over these changes causes people to react.

One such reaction was the Chinese Exclusion Act of 1882. Many Chinese men came to the North American western coast in the 1840s for the Gold Rush and the 1860s to help build the Transcontinental Railroad. After the Civil War, however, that was seen as a Chinese intrusion and was not well-tolerated. By 1882, many American citizens wanted to stop Chinese immigration altogether. In fact, the Chinese Exclusion Act was the first legal act that impeded free immigration into America. No other group's immigration was impeded at this point in time, making the CEA purely racially motivated against the Chinese. The Chinese Exclusion Act was not changed until the Magnuson Act of 1943, which permitted Chinese to become naturalized citizens but only allowed 105 new immigrants every year. These measures were not repealed until 1965 when all immigration quotas were removed by the Immigration and Nationality Act

(“Chinese Exclusion Act (1885”). The Chinese Exclusion Act shows a national obsession with identity at the time that required people to question the origins and history of the people around them, who were unusual to their formerly small, conservative, and agricultural environments. This is reflected in the criticism of the time.

With this fear and exclusion, authors wrote realistic presentations of the dangers seen in a changing world such as the depictions we see in Theodore Dreiser's *Sister Carrie* or Frank Norris's *McTeague*, which both show the inherent dangers of a new, industrialized urban world where the previous socio-cultural system has been up-ended. In this new world, blacks and immigrants could not be trusted because each of these groups represented a threatening work force headed for growing urban centers. The newly industrialized economy saw more modernized mechanisms for production, including the assembly line in the early 1900s. This new (and frightening to many) era required a different interpretive lens that encouraged the critic to judge author before text.

Nineteenth century critics such as Matthew Arnold and Henry James saw themselves as able to reasonably and logically evaluate literature through careful and methodized criticism, eschewing the Romantic notion of transcendentalism and intuition. Arnold believed that poetry was the very best mankind had to offer and that it provides standards to which all of us can aspire. Therefore, by focusing on the value of poetry, the critic served the important role of protecting and preserving the value of the poetry, as a type of “watchdog”: “By taking Wordsworth's concept of the poet one step further, Arnold separated both the critic and the poet from society in order to create a type of poetry and criticism that could supposedly rescue society from its baser elements and preserve its most noble characteristics” (Bressler 32). Arnold, therefore, places the critic—who methodically guards the art form—in a position of

authority and importance alongside the poet/author himself. In this symbiotic relationship, the critic equates himself in importance with the author-god.

As a genre growing in popularity, the novel became the focus of Henry James's attention. He believed that—far more than the transcendental aspects of poetry—the novel was superior because of its ability to realistically present an impression of life. Charles Bressler says that James “rejects the romantic notion of either Wordsworth or Coleridge that the reader suspend disbelief while reading a text. For James, a text must first be realistic, a representation of life as it is and one that is recognizable to its readers. Bad novels, declares James, are either romantic or scientific; good novels show us life in action and, above all else, are interesting” (Bressler 33). With his influence, James was able to gain more respect for the novel genre. However, he continued a focus on the author by claiming that only good authors could write good texts while bad authors could only write bad texts. With Arnold and James's influence, critics emphasized biography and history as a means of textual evaluation. The vast variables influencing the 20th century, however, led to equally variant viewpoints about literary authorship, each with its own set of contingencies to focus on.

New Criticism, notably, attempted to disavow the author's cultural and historical influences that might affect the text. Lead critical names of the day Cleanth Brooks and Robert Penn Warren say in 1938's *Understanding Poetry* that “though one may consider a poem as an instance of historical or ethical documentation, the poem itself, if literature is to be studied as literature, remains finally the object for study” (xi). In this way, although New Critics attempted to release the author from his connection to the work, they (ironically) inherently set the author in the subject/object binary, opposing the author from his text in the constant negotiation for

meaning. The focus on the author—his historical situation and biography—quickly swung in the other direction.

As we headed even further into abstract and analytic thinking resulting from the alienation of an industrialized modern era, critics of the era engaged the author in this binary by actively writing about their perceived separation between author and text. T.S. Eliot writes in “Tradition and the Individual Talent” from 1919 that we have a “tendency to insist, when we praise a poet, upon those aspects of his work in which he least resembles anyone else. In these aspects or parts of his work we pretend to find what is individual, what is the peculiar essence of the man” (74). Eliot challenges readers, however, to see that individual talent is actually just a piece of the greater artistic puzzle to which artists have been adding and shifting throughout time. Any creation of art “happens simultaneous to all the works of art which preceded it” and, in theory, follow it (74). Eliot calls the author to give up himself in his authorship to the greater call of art “which is more valuable. The progress of an artist is a continual self-sacrifice, a continual extinction of personality” (76). Eliot asserts that all poetry is living, malleable, and is related to all other poetry past and future. In this essay, Eliot addresses contemporary obsession with the author him/herself. He claims, then, that because “The emotion of art is impersonal” that “the poet cannot reach this impersonality without surrendering himself wholly to the work to be done. And he is not likely to know what is to be done unless he lives in what is not merely the present, but the present moment of the past, unless he is conscious, not of what is dead, but of what is already living” (Eliot 80). Therefore, Eliot encourages poetry to speak to poetry, not necessarily author to speak to author. He also, then, upholds that texts are partially imitative in that they build on one another—the author is of lesser importance. Much as earlier critics had

focused on the biographical identity of the author as a way to explore 19th century racial ideologies and the new environment of an urban, industrial world, New Critics worked to ignore socio-cultural variables in authors in their textual focus that emphasized alienation and the abstract.

New Criticism challenged literary critics not to be distracted by the author's personal life or historical context but rather to focus strictly on the text in front of them. In their well-known essay "The Intentional Fallacy", W. K. Wimsatt and Monroe Beardsley argue that "the design or intention of the author is neither available nor desirable as a standard for judging the success of a work of literary art, and it seems to us that this principle which goes deep into some differences in the history of critical attitudes. It is a principle which accepted or rejected points to the polar opposites of classical 'imitation' and romantic expression" (90). Even as they acknowledge that "A poem does not come into existence by accident. The words of a poem, as Professor Stoll has remarked, come out of a head, not out of a hat," they simultaneously claim "The poem belongs to the public. It is embodied in language, the peculiar possession of the public, and it is about the human being, an object of public knowledge" (92). Later in the 20th century, thinkers such as Foucault would extend the idea that knowledge occurs in the public knowledge of the interaction of words. New Criticism is often itself criticized for its exclusive focus on text, for it represents a reactionary pendulum swing back from the historical author focus of the 19th century. Neither represents a moderate or inclusionary vision of the author-text relationship and neither addresses the problematic linguistic elements a text automatically represents; these textual complications were accomplished with the post-structural discussions of the middle of the century.

The Blogger

In the late 20th century, technology usage changed and with it the author's economy as more individuals used personal computers on a day-to-day basis. Previous writings were mainly analog, tangible, paper-based. While most books bought are still paper-based, other forms of writing such as news, journals, and mail have switched to a digital economy. The Blogger is an author comfortable with the new media technologies available to her, who writes with tactics such as hypertext linking, self-editing, and self-publishing described early on in the personal computer and internet era by Bolter and Heim. In the early days of the internet, it “was an essentially read-only Web on which you needed an account with an ISP (Internet service provider) to host your web site, special tools, and/or HTML expertise to create a decent site” (Gillmor 23). As software and coding increased in sophistication, the Web became writable as well as readable, and “for the first time in history, at least in the developed world, anyone with a computer and Internet connection could own a press. Just about anyone could make the news” (Gillmor 24). The Blogger uses the read-write web to publish her own stuff, but also to link to what other bloggers are saying, react to news stories, post pictures, and leave a forum for others to comment.

These interactions allow never-before-available options for communications. The ubiquity of the internet combined with our ability to interact with it made the early internet era particularly prepared for The Blogger, who actively used this technology to her best advantage. The blog, short for “weblog,” allows The Blogger to log in his texts in a diary-like format, once a day, multiple times a day, once a week, once a month—whatever serves the Blogger's purposes. Often, the Blogger allows readers to make comments about whatever has been posted, but some people de-activate that option. Blogging services such as blogger.com allow for pre-

manufactured, generic blogging styles so that The Blogger does not need to know how to code in order to publish to the web, although if they do the options for their blog are more opened to them.

Whereas the earliest web activity was based on “visiting” sites or “surfing” the web, the read-write web, also called Web 2.0, is defined by our express interaction with it: Steven Levy says it is “things to do, ways to express yourself, means to connect with others and extend your own horizons. Cyberspace was somewhere else. The Web is where we live” (par. 8). Further, as hardware has also become more sophisticated with the extent and popularity of personal devices such as Blackberries, iPhones, and the iPad, our interaction with the web has become less an infrequent treat and more interwoven in the very fabric of how we spend our everyday lives. Perhaps *because* of its commonality in most peoples' days, some have considered web publishing banal and less (perhaps) respectable than traditional forms of writing. Collin Brooke accurately describes the resistance many in the academy and beyond have had, maybe even subconsciously, in legitimizing new media texts such as blogs. He says, “Our tendency has been to treat discursive technologies as if they were simply another specialty among many in our discipline, the province of a handful of experts, one of whom could be hired into a department thereby satisfying that particular 'area.' This attitude, another of our legacies inherited from English departments, has left us underprepared for the shift from page to screen” (5). Indeed, the mass of writing being done today is not page-driven; therefore, our “analysis must shift from textual objects to medial interfaces” (xvi). For example, many in rhetoric and composition and new media studies have begun to push for greater acceptance of non-print-centric texts for tenure review (see Cheryl Ball's online Tenure & Promotion Portfolio, which serves both as argument

for her personal tenure as well as a well-constructed argument for the inclusion of similar digital media in the field's tenure reviews more generally).

Blogs represent a mediated space between older forms of communication and authorship and what may be possible for authorship. Dan Gillmor says, “Weblogs and their ecosystem are expanding into the space between email and the Web, and could well be a missing link in the communications chain. To date, they're the closest we've come to realizing the original, read/write promise of the Web. They were the first tool that made it easy—or at least easier—to publish on the Web” (28). The rhetorical situation and authorial contingencies that lead people to author such texts are as real as any of the previous ones and deserve attention for its content and its medium. As Marshall McLuhan tells us, sometimes the medium is the message. The content of blogs appealing to a wide array of people may be trite (<http://www.perezhilton.com>) and serious (<http://www.huffingtonpost.com/>), or it may be intended for more personal interaction with more intimate blogs about a stay-at-home mom's day-to-day activities (<http://segreiner.blogspot.com>) and making it as a young lawyer in Chicago (<http://thenambypamby.blogspot.com/>). These blogs could not function as they do without the embedded coding that allows relatively “un”professional individuals to publish their words, pictures, and remixed links for a public audience.

_____The Blogger is also identified by the speed with which she can create her texts. Because an editor, publisher, typesetter, and marketing department are not involved, The Blogger embodies all these roles herself. The efficiency of collapsed role-playing creates a minimum timeframe between a text coming into existence and it being published. For these reasons, The Blogger expects quick interactions with her reader, expects to be able to link, to share, to comment, to be commented on. The blogging economy revolves around a system of shared

linking—blogs become popular, possibly having advertisers approach them to support the blog financially—because readers link to the blog and word grows in the internet economy.

_____The dynamics are surely different than a century ago, but (as previously described) even novels needed a helping hand from Henry James as critic to find legitimization from readers in the late 1800's. Most Bloggers do not desire some great public approval of their text or their format. Although many would probably be greatly surprised to find their blog about their corner bakery become national news, it's not a requirement. Because they publish their own works, Bloggers do not require a professional editor and publishing company to stroke their enormous creative egos. Bloggers often receive the most fulfillment from other bloggers, friends, or family who simply comment on their blog or link to it in another blog. These blogs "tend to be part of running conversations" in which bloggers point to one another's work and further the general blogging conversation (31). This sense of community interaction filled with commenting and linking made available by the hardware and software of the read-write web defines The Blogger, an individual author publishing to one, few, or many.

The Commons

In the Commons, however, we now create many-to-many or few-to-few texts. This is the subtle but important difference between the Blogger and the Commons: the Blogger has laid the groundwork for the Commons's distributed authorship. The acceptance of this type of written interaction wherein linking and commenting are the currency of the new media economy and wikis are a major repository for information is based in the new media technologies allowed by the developments of hardware and software is hastened by the speed with which these interactions occur. Surely, one of the most important contingencies of the individual Blogger that leads into the collective Commons is sheer speed. Because of the velocity of text in the

read-write web, participants necessarily feel like members of a community. Where friends hundreds of miles away would have had to wait weeks to hear news of the birth of a child, for example, Facebook allows those same friends to announce the birth, post pictures, and say “Congratulations!” within moments of the event. If I prepare a delicious Spinach, Pesto, and Cheese Lasagna for dinner, I can share it while my partner does the dishes and my college friend in Kentucky can have it the next night. Where in previous generations, the idea of community was limited to the physical proximity around us and the shared experiences of that limited physical space, community can now signify the experiences shared via status updates, postings, links, images, and comments of the blogs and social networking sites. E-mail, while a wonderful tool, doesn't recreate the same kind of community because it replicates the one-to-one or one-to-many platform we are so familiar with through “snail mail.”

Moreover, what this speed and sense of community allows is greater comfortability with the sharing of information. The frequent over-sharing of information or images, which many find unprofessional, might be representative of the misunderstanding of the public nature of the audience of the web. It is *definitely* representative of the attitude of normative sharing. The type of writing that most often occurs in contemporary life is most likely mini-blogging on Twitter or status-updating on Facebook. Does this show that contemporary life is irrevocably voyeuristic and narcissistic? Well, maybe. But, it is also indicative of the types of authorship most embraced by contemporary people and the reasons common authorship is growing in popularity: for Twitterers, Bloggers, and Facebookers, the Commons best represents the network communities.

People collectively respect the wisdom of the collective and its economic ramifications. Pierre Lévy “argues that we are passing from a Cartesian model of thought based upon the

singular idea of *cogito* (I think) to a collective or plural *cogitamus* (we think)” (Provenzo xi). As Gillmor describes: “It boils down to this. In the past 150 years we’ve essentially had two distinct means of communication: one-to-many (books, newspaper, radio, and TV) and one-to-one (letters, telegraph, and telephone). The Internet, for the first time, gives us many-to-many and few-to-few communications” (26). More all the time, the “spirit of the age” is reflected in the on-line communities with which we associate and the online economy of sharing.

In *Wikinomics*, Dan Tapscott and Anthony Williams explain how the idea of collective intelligence is not only a reflection of democratic independence in the creation of knowledge but also is seeping into how we view and use capitalism effectively in our society. They call this collaborative economic theory “wikinomics. This is more than open source, social networking, so-called crowdsourcing, smart mobs, crowd wisdom, or other ideas that touch upon the subject. Rather, we are talking about deep changes in the structure and modus operandi of the corporation and our economy, based on new competitive principles such as openness, peering, sharing, and acting globally” (3). They emphasize that this new collaboration ideology is a natural progression in economics because “Most people were confined to relatively limited economic roles. . . even their elected representatives barely concealed their contempt for bottom-up participation in decision making. In all, too many people were bypassed in the circulation of knowledge, power, and capital, and thus participated at the economy’s margins” (10). A frustration as a result of this disconnection between power and knowledge led people to create, desire, and seek out ways to give themselves more agency in the invention and delivery of knowledge and goods. Now, “billions of connected individuals can . . . participate in innovation, wealth creation, and social development in ways we once only dreamed of” (3). The public now has the power to create together something potentially better than the previously named experts

could create on their own using “weapons of mass collaboration” (11). Pierre Lévy tells us “power is now conferred through the optimal management of knowledge,” and people do not want to forfeit their ability to participate in the exchange of power and knowledge that web interactions allow for them to experience (1).

Naturally, as the way we compose changes, so will our thinking processes. This ideological shift to *cogitamus* is about more than process, though. Tapscott and Anderson say:

we're talking about something dramatically different. The new promise of collaboration is that with peer production we will harness human skill, ingenuity, and intelligence more efficiently and effectively than anything we have witnessed previously. . . . Twenty years from now we will look back at this period of the early twenty-first century as a critical turning point in economic and social history. We will understand that we entered a new age, one based on new principles, worldviews, and business models where the nature of the game was changed. (18-19)

A great attribute of collective intelligence on the web is that people are more often than not *not* being paid to participate; they are “amateur culture—where amateur doesn't mean inferior or without talent, but instead culture created by people who produce not for the money, but for the love of what they do” (193). The public has shown that it desires to collaborate of its own free will by the popularity of blogging and, particularly, the collaborative on-line encyclopedia Wikipedia. Further, these authors do not desire or demand that what they write necessarily be “original” (whatever that contentious word might mean) or protected from re-posting. In fact, many expect it. Rather than fighting this idea that the current internet economy *requires* copying, pasting, linking, etc., many blogs

and traditional websites have built-in modes of sharing. These sites frequently provide options for viewers to quickly repost in one or two steps to Facebook, Twitter, MySpace, LinkedIn, or through e-mail. Rather than fight the movement, they have embedded the functions of the new economy and have simultaneously left a “paper” trail of attribution back to the original posting, embodying the share and share alike mentality.

Conclusions

More than a decade ago the 1994 text *Hot Property: The Stakes and Claims of Literary Originality* by Francoise Meltzer introduced case studies that “[signal] a moment when 'originality' itself is a construct, or even as a mythology, risks being destabilized, or uncovered as the greater fraud” (3). Creative Commons licensing can be tagged as a release of the anxiety described by Meltzer and, I would argue, a representative freedom to find “originality” by scaffolding the work of others, and we are uniquely situated for it in our current new media economy as the Blogger has made way for the Commons. The Man of God, the Scientist, the Genius, the Critic, the Blogger, and the Commons reflect different writing economies, different contingencies, but they share the reality that in their contemporary environments, the controlling terministic screens reinforced the assumption of the truth in each. No less now does our own mindset control how we see the Commons.

A moderate stance such as the one Creative Commons represents provides an option that facilitates the newest incarnation of the author in the Commons. Some rights reserved is already supported by the infrastructure of the web. Copyright maximalists want to impede these measures while copyright minimalists fight to make things as free as possible (some would say

too free). Chapter 3 will discuss the major points of this conversation playing itself out now because of the growing recognition of Commons authorship. People's increasing recognition of collective, distributed or any kind of non-individual authorship is expedited by the speed of our most recent technological advances.

As some resist the change, clinging to the good old days when the singular genius of an author and his inherent right to his work were assumed, others insist we should react in the opposite way, negating all individual rights to intellectual property and embracing a type of authorial atheism. This conversation negotiating contemporary authorship represents this contemporary juncture between the past visions of solitary authorship and the current swell of the Commons. Variables such as internet access, word processing programs, blogs, wikis, social networking, and others are the contingencies that have helped build Commons authorship. Certainly, in 50 years there will be new contingencies that will make today's generations say "when I was your age," but we must engage with and insist that our legal structure reflect the needs of the Commons in order to provide an appropriate infrastructure that does not criminalize behavior that is appropriate for the current authorial situation.

CHAPTER 4

I HATE QUOTATIONS:

THE COMMONS MOVEMENT AND RHETORICAL VELOCITY

Legal, technological, and ideological variables have shaped authorship in the past and will continue to do so in the future. As the trajectory of Chapter 3 lays out, today's authorship is defined by the juxtaposition of these factors, specifically the tension between fostering a continuation of individual authorship glorified by the Romantic genius and embracing the movement towards Commons writing that is being enacted daily through web relationships that were never before available in the analog world. These two sides are represented by copyright maximalists who favor the strict enforcement of all rights reserved copyright and copyright minimalists who favor the public domain. These sides can certainly also be re-imagined in the subject/object binary wherein the all rights reserved copyright maximalists feverishly protect the individual subject while no rights reserved proponents reject the subject in favor of the text object.

As I have discussed, every historical moment has a unique set of variables that frames the role of the author-function within that time. Technology in particular plays an important role in shaping authorship for it is the means by which texts are created and published. For example, Medievalists received their *auctoritas* from God, and the literacy of the few was protected by a lack of technology to copy texts. Today, we have quite the opposite situation: so many texts exist—changing, being remixed, being linked to—that they fight for our attention (see Richard Lanham's *The Economics of Attention* and Cynthia Selfe's *Technology and Literacy in the*

Twenty-First Century: The Importance of Paying Attention). With so much communication occurring in what some call our post-scarcity economy, many people have organically come to communities of creation where distributed or shared authorship works to create commons texts, where everyone who participates can feel connected to that text without individually owning it.

The history of copyright shows us that the idea of an author's right to something he has written has not always been considered inherent and has not always been recognized by the law. Only in the last 300 years have laws officially recognized “copyright,” and the enforcement of those laws within the American court system has focused in many cases as time has passed on a zealous protection of individual rights connecting an individual (or corporate) entity's interests over the interests of the public. This focus on the individual comes despite the fact that in the origins of American copyright law, focus was placed on its implementation for the purpose of the public good: to entice people to innovate and to create a uniquely American literary personality. Indeed, the dichotomy between the personal and the public still fuels current discussions about copyright law. In this negotiation, Creative Commons has emerged as an ideological alternative to the two opposing sides.

This chapter will delineate the major veins of the current discussion and argue that a moderate standpoint such as some rights reserved most appropriately meets our contemporary requirements for legal protection of public *and* private interests. Moreover, this chapter finds itself focusing on new vocabularies and theories that have emerged from the remixing of texts, most specifically how those texts that are ReadWrite in Lessig's terms can find themselves going “viral” on the internet. This text explores what the implications of such movements are. In particular, the terminology “rhetorical velocity” put forward by Jim Ridolfo and Danielle Nicole DeVoss in their work “Composing for Recomposition: Rhetorical Velocity and Delivery”

embodies why the author-function today relies so heavily upon the speed of information transfer. In their description, rhetorical velocity is “a conscious rhetorical concern for distance, travel, speed, and time, pertaining specifically to theorizing instances of strategic appropriation by a third party” (Section “Remix” par. 4) and “an understanding of how the speed at which information composed to be recomposed travels that is, it refers to the understanding and rapidity at which information is crafted, delivered, distributed, recomposed, redelivered, redistributed, etc., across physical and virtual networks and spaces” (Section “Velocity” par. 2). As they describe it, rhetorical velocity could only be a recent manifestation of delivery because, as Bolter also describes, the speed with which we can trade information has been increased exponentially by technology, necessarily making writing more urgent and communal rather than secluded and individual. No matter what some may think authorship should be, this is what it *is* in this space and time.

For these reasons, Creative Commons is not merely a theoretical concept born out of the author debates; it is a practical and vibrant option for artists, writers, scientists, educators and website creators of all sorts. In the fewer than ten years since its inception, Creative Commons has caught on like wildfire, drawing fans from all walks of life and all levels of popularity and fame. For example, the White House's official website, www.whitehouse.gov, requires that all third-party contributors to their site (for example, people who post comments or questions) agree to license that content under a Creative Commons Attribution license (meaning that viewers are legally allowed to use their comments in a new text given that they attribute the original comment to the person who made it). The Executive branch's high-profile support of Creative Commons (both overt and tacit) inevitably brings more interest in the Creative Commons movement by people who might have never thought about copyright before. We often take

copyright for granted—it just is, right?—but the addition of an option triggers layperson and professional alike to consider more thoroughly what “right” we actually have to copy or not copy others' works.

As high-profile use of Creative Commons and other more grass roots uses have spread, Creative Commons has garnered more attention and has been attacked from both sides of the copyright fence: supporters of all rights reserved and supporters of the no rights reserved or public domain movement. Each side has their reasons for believing that some rights reserved copyright goes too far or does not go far enough. Therefore, this chapter will explore the vibrant and sometimes vicious argument occurring concerning the idea of intellectual property as it relates to the two sides' relationships with Creative Commons. Creative Commons provides a moderate option appropriate for the Commons author that allows for individuals to make the decisions for themselves about which legal definitions of copyright appropriately apply to the work they are doing and the rhetorical velocity they wish it to have. This chapter contributes an in-depth look at a few examples of texts that use some rights reserve tactics in the practical world and have benefitted from it, going beyond theories and romantic ideas into the realm of what actually works.

In many cases, the addition of an option may be reason enough for people to pay attention and use Creative Commons. The “some rights reserved” movement might seem radical or unnecessary to some, but it has instigated a newly renewed energy in the conversation on authorship and copyright law—a much needed conversation in light of changes in authorship practices resulting from the immediacy and ease of internet publication. It is yet another manifestation of a long-running conversation: “Most creative disciplines have grappled with the concept of remix” (“Remix My Lit” 159). In a strictly all rights reserved system,

copyright law is automatic. It reaches out and controls what you create—whether you intend it or not, and whether it benefits you or not. An academic publishing a paper wants nothing more than people to copy and read her paper. But the law says no copying without permissions. A teacher with an innovative lesson plan for teaching Civil War history would love nothing more than for others to use his work. The law says others can't without clearing the rights up front. The essence of copyright law is a simple default: No. For many creators, the essence of creativity is: Of course. (Lessig, *Remix* 276-7)

For this reason, many creators are embracing Creative Commons copyright in America and abroad. Moreover, in the coming years its popularity should spread among creators as more and more people learn of its existence and want to join in the commons—by choice. Rhetoric and composition theorists must pay attention to this movement, for it represents a change in the way human beings create knowledge with the interaction of text. As described in Chapter 3, the *cogito* of eras past must make room for *cogitamus* in a writing economy that fosters many-to-many communications. For us, as those who study the ways language attempts to create some kind of meaning, anything less than a willful engagement in this ideological shift proves folly.

Literature Review

For the most part, composition theorists have only partially engaged with Creative Commons as a topic of study. Many have mentioned Creative Commons briefly in passing, to help prove other points, and certainly authorship topics represent a vibrant portion of discussion in rhetoric and composition, with Rebecca Moore Howard, Chris Anson, Danielle Nicole DeVoss, and others leading the conversation. Further, many have embraced it practically for

their own websites, written work, or journals. Presently, *The Writing Instructor*, *Kairos*, *Present Tense*, *Computers and Composition Online*, and other well-respected, refereed, online rhetoric and composition journals use Creative Commons for their publications. Despite this use and tacit approval of the some rights reserved idea by many in the field, no full-length exploration of its repercussion in the field has yet been published.

Charles Lowe's 2006 unpublished dissertation "The Future is Open' for Composition Studies: A New Intellectual Property Model in the Digital Age" from Florida State University delineates the intersection between Creative Commons and composition and argues that the more electronically-based our publications become the more strict copyright holders will close in upon literacy, innovation, academic publishing, and fair use (vi). He sets up the National Project to Expand Technological Literacy put into place during the Clinton administration as a jumping off point for understanding the ways technologically based intellectual property has been controlled by laws and regulations. He also outlines several other governmental acts, including the 1995 National Information Infrastructure Copyright Protection Act, as examples of how intellectual property ideologies have been moving ever more swiftly into a corporate system rather than an individual one, for "the content industries have deep pockets and can afford to lobby again and again for changes in legislation" (7). He claims, "The principles of sharing, access, and collaboration found in these projects not only function as a counter-culture example to the existing intellectual property paradigm, but are also in sync with many of the principles held by composition teachers and can offer rich insight for expanding theory" (8). However, Lowe focuses primarily on the binary opposition between strict intellectual property and the open source movement without acknowledging the strength of the third option: some rights reserved. He spends a good deal of his discussion on Creative Commons, but he allies it more with no

rights reserved than some. Although similar in topic, our research takes different pathways as my research explores what a rejection of that binary looks like and views Creative Commons as third, fourth, and beyond options rather than a manifestation of the binary.

Despite its relative novelty in rhetoric and composition as a topic of academic inquiry, an animated conversation about Creative Commons is currently occurring in legal studies, media studies, and with the public-at-large. Minjeong Kim describes in his 2005 dissertation in communication from the University of North Carolina in Chapel Hill how advocates of strong intellectual property rights had hoped that technology would allow them to exert even more control over copyrighted works. What they saw was that technology allowed for the instantaneous production of copyright infringements through copying and pasting or P2P program such as Napster. On the other hand, “Proponents of the public policy vision hoped that digital technology would promote production and sharing of cultural products. Instead, they observed that contemporary copyright law has become so restrictive that they fear it may impede future innovation and creativity” (6). Kim's study, through qualitative and quantitative content analysis of Creative Commons licenses, concludes that Creative Commons can be a “solution” to the conflict between what he calls “the private property vision” and “the public policy vision” (4). While I do agree with Kim that “‘some rights reserved’ . . . is an alternative to the ‘all rights reserved’ model of copyright law” we have seen develop over the last few hundred years, it is also an alternative model to the free information no rights reserved movement that some espouse (8). I disagree with his portrayal of Creative Commons as a “solution” for copyright, as the dissertation title suggests. To envision strong copyright as a problem without also showing the opposite as a problem merely perpetuates the binary ideology that intellectual property discussions have taken recently. Although Kim's findings are illuminating and positively discuss

Creative Commons's potential, Creative Commons does not “solve” what does not need to be “fixed.” It does, however, complicate a conversation that often falls into an oversimplified shouting match of opposing sides and offers alternatives to make the system more tenable for today's authors.

From that binary view, many people claim that Creative Commons does not go far enough to challenge the current all rights reserved copyright system. Peter Russell claims in his short essay “Anti-Copyright” that “Thoughts are free. They should remain free, and be given freely. And, following the universal law, the more we give the more we shall receive” (pars. 6-7). He gives a very brief theoretical overview of why intellectual property does not work in the same ways actual material property does and strongly argues for an open and free culture. Likewise, Anna Nimus's essay “Copyright, Copyleft and the Creative Anti-Commons” (which has been widely published and re-published on-line in various places) vehemently argues that Creative Commons actually perpetuates the property ideologies held by traditional all rights reserved copyright. In her text, she retells the history of how copyright laws came to be and claims that intellectual property is a fraud. She says, “Ideas are viral, they couple with other ideas, change shape, and migrate into unfamiliar territories. The intellectual property regime restricts the promiscuity of ideas and traps them in artificial enclosures, extracting exclusive benefits from their ownership and control” (par. 14). She further describes the ways different movements have revolted against the idea of intellectual property including Dadaism and detournement (necessary plagiarism). Other thinkers have advised that authors change their names because “the use of multiple names requires a self-effacement that draws attention away from the name of the author” (par. 19). Proponents of this tactic have used the name Monty Cantsin and Wu Ming (which means “no name”). Nimus also espouses the idea of copyleft,

wherein instead of ensuring the privatization of intellectual property a person's creation is put in the public domain to be freely shared by others. While I love the concept of ideas being promiscuous, Nimus ignores the potential pitfalls of such a system including malicious exploitation and the desire of many artists to be able to make a living from their works.

While these examples argue that Creative Commons does not strongly enough oppose the all rights reserved copyright that upholds the author-god mentality, others continue to argue that the current copyright structure is solid and appropriately defends the economic and moral rights of copyright holders. Responses posted to Lawrence Lessig's blog show the passion with which many people oppose any changes to the current copyright system that would, in their eyes, weaken their ability to receive monetary compensation for the work they have done. A poster calling himself lee g says,

the US copyright laws give everyone who creates intellectual property all they need to protect that intellectual property that they own. Anyone who is working in intellectual property—creating it and using it—has a responsibility to learn those laws and understand their rights. . . . The creation of this kind of alternative crap does more harm than good . . . If you really want to educate people about their rights under US copyright law and how they can choose to control their work—how it's used, how it's displayed, how it's modified and how they can actually earn something in exchange for their creative effort, or even how they can give it away if they choose—you could just educate on how to use the very excellent copyright laws we have in place. (December 2, 2007, pars. 2-5)

He continues throughout his postings to repeat ideas such as “there is no need for creative commons,” it is “trying to reinvent the wheel,” and “we have all been doing just fine for

decades.” Through the conversation he has with other posters to the blog, he expresses his concern that if amateurs begin giving away their work for free that professional artists who rely on the compensation for survival will not be able to make enough money. This is an argument similarly echoed by strong copyright proponents: if the copyright holder is unable to reserve all rights, even long after his death, it precludes him and/or his children and grandchildren from reaping the benefits of his work. This, of course, also applies to companies with copyrighted material such as Disney's Mickey Mouse. In fact, the Copyright Term Extension Act of 1998 is often dubbed the Mickey Mouse Protection Act, as it extends copyrights in America for individual authors from the death of the author plus 50 years to the death of the author plus 70 years and corporate authors from 75 years to 125 years, therefore extending copyright terms longer than they have ever been in America's history (which might certainly shock the Supreme Court justices of 1834 who decided that copyright did not guarantee a “perpetual protection” of personal property) (Saunders 152). What this type of thinking ignores, however, is that a some rights reserved copyright does not preclude anyone from choosing the all rights reserved option. If artists feel that all rights reserved is the best choice for them, the mere existence of Creative Commons will not keep them from choosing that option.

Others argue for wider understanding of copyright options rather than its complete abolition. The wiki “Definition of Free Cultural Works” (originated and moderated by Erik Möller), for example, argues that, although Creative Commons generally might be a beneficial endeavor, users should avoid the Non-Commercial option. The section “The Case for Free Use: Reasons Not to Use a Creative Commons-NC License” claims the non-commercial option available to users actually hinders Creative Commons's mission. This text calls the *non-commercial use only* licensing option “a growing problem for the free culture community” (par.

3). This group of authors claims, and rightfully so, that because the copyright choice a person makes about a work can only be made once and might have repercussions beyond the immediate that the decision should be informed. They argue that the non-commercial license should be avoided because it can preclude further remixes of the text that the original creator may not be able to foresee: “if you choose an -NC license, your work will not be compatible with Wikipedia, Wikinews, Wikibooks, and similar free content projects which have more permissive philosophies and practices” (par. 7). Bloggers who rely on advertisements for income would also be legally forbidden from using these works. As this text explains it, “while you may feel you are making a donation to the public domain when licensing your work under an NC variant, you are effectively supporting the existing, extremely long international copyright terms. The restriction on commercial use will remain in place until the copyright of your work expires which, for most practical purposes, is *never*” (par. 18). The key point of the article is that if we value and want to preserve and tender a free content economy based on choice, the non-commercial option can actually hinder that endeavor and further perpetuate the commercial interests of traditional copyright.

The article also argues that in the vast majority of cases that creators can just as easily use the Attribution Share-Alike license, requiring that if others reuse or remix the work, they must also use the Attribution Share-Alike license, severely limiting any potential commercial uses in order to achieve a similar goal without the aforementioned pitfalls. With great power comes great responsibility, Spider-Man tell us (a variation on Luke 12:48: “from the one who has been entrusted with much, much more will be asked” from the New International Version). Perhaps this is cheesy, but the sentiment is true: the addition of options in the copyright system empowers the system and requires us to inform ourselves about how those options work in order to use

them responsibly. Because some rights reserved requires more focused consciousness, it also requires greater responsibility.

Other websites and texts also emphasize that choice and being informed are the new keys to appropriate copyright licensing and attempt to present options in a fair and balanced way. For example, Joel Friedlander for *The Book Designer* says that “Each of these opposing forces—strict licenses of intellectual property to enable monetization, and the need for culture to have the fruits of its history available to build upon—has a role to play. The trick is getting the balance right” (par. 3). The article provides a nice overview of what Creative Commons is and the various options it provides but does not favor one side over the other. The site in general intends to provide self-publishers with the options they have for publication in order to make wise and appropriate decisions. However, this site and others like it fail to complicate the copyright discussion in any productive way, and, therefore, do not provide viewers with quality guidance because they ignore the on-going conversation and neglect to place the reader/creator in that conversation. Rhetoric and composition theorists then have a responsibility, as we have devoted careers to the study of making meaning with words, to foster a more nuanced conversation.

Possibly the most important figure in that conversation right now is Lawrence Lessig, to whom lee g had responded. In addition to being an integral part of bringing Creative Commons into existence, Lawrence Lessig has written extensively about the negotiation of intellectual property in a new media economy. In *Code and Other Laws of Cyberspace* in 2000 and then *Code 2.0* in 2006, he explains that the way the internet is structured and websites have been coded allows for sharing through copying and pasting and linking. Therefore, he argues, the internet inherently supports these types of activities and people should not be judged or held legally liable when they do what the system naturally encourages. Instead, the coders who create

the websites should work to build in protections for any material they do not want remixed elsewhere. In *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, he continues to discuss his dismay that many individuals—especially teenagers who have never known anything but the internet era—are penalized for remixing the works they find there, which are freely available and have no built-in fencing system. He says, “the only nature of digital technology is that it conforms to how it is coded” (40). Lessig describes the differences between a Read-Write culture (RW) where permissions are given to use and remix and a Read-Only culture (RO) which allows only the consumption of a particular text (28). He contends that our economy—as it pertains to what we now conceive as intellectual property—can be a hybrid between the two with the use of appropriate coding.

Other texts also argue that the battle between all rights reserved and no rights reserved (what Kim calls the private property vision and the public policy vision, what Lessig refers to as RW and RO in *Remix*, and what others have labeled differently in other texts) is fruitless. Instead, we should adapt a vision that allows choice, promotes comprehension of the terms, and avoids the binary opposition of the two ideologies. In this light “The Romance of the Public Domain,” written from a legal studies perspective, Anupam Chander and Madhavi Sunder eloquently argue that while proponents of a free and open public domain have rightfully challenged the romantic vision of the genius author that they have also failed to recognize the romantic notion of the commons. They say:

scholars obscure the distributional consequences of the commons. They presume a landscape where every person can reap the riches found in the commons. This is the romance of the commons—the belief that because a resource is open to all by force of law, it will indeed be equally exploited by all. But in practice,

differing circumstances—including knowledge wealth, power, access, and ability—render some better able than others to exploit a commons. (1331)

They continue to explain how, ignored, the romance of the commons can be just as dangerous as ignoring the romance of the author. They are disturbed by the “increasingly binary tenor” of intellectual property negotiations that attempt to force people to choose between intellectual property rights or the public domain because such ultimatums “[obscure] other important interests, options, critiques, and claims for justice that are embedded in many new claims for property rights” (1334). In particular, they challenge the reader to look at the ways the public domain has traditionally been a way for the powerful to exploit the less powerful such as with traditional American Indian knowledge or the holistic medicines of the East.

Chander and Sunder argue that “the commons . . . is not always kind to commoners” (1338). Their article very persuasively shows that while the commons can certainly have benefits that it must be viewed with as keen an eye for misuse and misappropriation as we do the Romantic genius because the powerful few are still the most likely to be able to use any commons material to their advantage because of access and that no matter how strongly proponents of the commons believe that it is open to everyone, the reality is that most common people do not have equal access to information because of poverty, lack of education, or other infrastructure-related issues. Therefore, while many benefits exist from sharing information in the commons, “to the extent that we adopt commons approaches, we need to pay attention to their distributional consequences” (1343). Like those who argue for informed decisions, Chander and Sunder show us that a complete picture, although far more complicated than binary thinkers would suggest, provides the foundation for a morally complete view.

Chander and Sunder's argument alongside Lessig's argument for a “hybrid” economy and the call of many online for creators to make themselves aware of the options out there show an increased interest in and conversation about choices in intellectual property laws that govern (and, some would say, limit) our use of knowledge in America and abroad. With texts such as Chander and Sunder's the discussion becomes more sophisticated because it is more nuanced and well-rounded. This chapter aims to enter into that place in the conversation by avoiding romantic notions of the author-god as well as romantic notions of the commons. Instead, this chapter will show Creative Commons as an option that more and more people are choosing to adopt for themselves because of its inherently moderate nature. As more people become involved, the some rights reserved community also grows to serve the needs of authors in the Commons era.

Rhetorical Velocity

The Commons is fostered by rhetorical velocity, for the movement of ideas is the fuel on which the Commons feeds in the new media economy. Lessig says in his work *Free Culture* that he wants to discuss “the forms of creative expression and freedom that get trampled by the extremism of defending a regime of copyright built for a radically different technological age” (xvi). The changes brought on by our technological age are not only physical; they are social, ideological, philosophical, and legal. Ridolfo and DeVoss, who have coined the term rhetorical velocity, are interested in the ways some texts are created for the explicit purpose of being repeatedly reused, remixed, and republished. The text then has “velocity” because of the speed with which it can be disseminated throughout the world via the internet and other media modes. But, it isn't just the text that has velocity, although it can certainly move quickly, but more so the

rhetorical purpose of that text moves forward providing information, entertaining, disgusting, and/or changing as it goes.

This is inherently connected to authorship in the new media era, when the writing economy so strongly depends upon moving text through space and time. Rhetorical velocity is the speed at which a rhetorical object, such as an image or a tweet, can be propelled forward into cyberspace through the system of linking, remixing, and derivation to which we are all accustomed via the Internet. Therefore, the rhetorical velocity of a text two hundred years ago would have been so slow as to be practically non-existent; further, it would have lacked the will of its creator for it to move forward. Now, however, rhetorical snippets can literally move at the speed of light as they are sent intentionally out over the Internet in a thousand different forms. Popular pieces, such as the YouTube video of the little boy fresh from the dentist asking “Is this real life?” will, ostensibly, have a higher rhetorical velocity than a video of my cat sleeping upside down. Ridolfo and DeVoss are not necessarily as much interested in measuring rhetorical velocity as they are discussing its rhetorical significance, however. As a concept, rhetorical velocity adeptly sums up our newfound ability to share texts. Unlike in olden times where a physical book might be passed from one reader to the next, technology allows us pass something quickly via link or copy. Yet, because that link or copy might be construed as a “re-publication,” copyright infringement becomes a concern. But, it should not have to be. With the right information and an appropriate copyright license, rhetorical velocity can help rather than hinder the market by providing the facilitation of a legal route for authors to publish and interact in the ways this new media economy allows and encourages. Despite whatever theoretical negotiations may be occurring in the academic and intellectual property communities, the use of Creative Commons copyright for internet interactions seems a natural development for many. In fact, the

Commons authors will be stifled without such a copyright re-envisioning. For this reason, many bloggers have been using Creative Commons for years while more discover it daily.

The findings of the RemixMyLit Case Study argue that “Bloggers are recognised to be among the first groups truly to embrace the CC scheme, and remain some of its strongest proponents. . . . This advocacy is driven by the desire to cultivate new voices and alternative viewpoints, challenging the enduring corporate dominance of mainstream media” (“RemixMyLit” 139). Bloggers, by nature, are accustomed to a patch-made or collage style of writing. Bloggers often use not only their own words but their own and others' pictures, video, and live links to create an interactive new media text. In other words, bloggers are already involved in the work of creating coherent texts from the harvested work of others—they fuel rhetorical velocity. One can sensibly believe that bloggers would, indeed, be the most likely to adopt Creative Commons licenses because it makes the most sense and is the best legal fit for the work they are already doing. In addition, the popularity of Creative Commons for bloggers has not only aided the fair shaping of their legal copyright status but also has spread the popularity of Creative Commons to other media beyond blogs and has made way for the Commons: “The proliferation of CC licences through the blogosphere has led to its adoption by increasing numbers of new media organisations” (“RemixMyLit Case Study” 140). Creative Commons licenses are popping up everywhere in digital media and, sometimes, more traditional media like books. The velocity they represent is most unhindered, however, when digital.

The attributes that contribute to rhetorical velocity also add perceived legitimacy to blogging. Many non-bloggers have a vision of it as a megalomaniacal act perpetuated by immature individuals who, with the age of the internet, have the ability to publish what would once have been their most private thoughts recorded only in a diary fastened with a lock. While

blogs that reflect this perception most certainly exist, any blog done with a bit of self-consciousness and outwardly-focused conscientiousness can become a new media text full of any number of positive outcomes from the vapid to the divine, and many are interactively focused rather than author focused.

In archivist Catherine O'Sullivan's "Diaries, On-Line Diaries, and the Future Loss to Archives; or, Blogs and the Blogging Bloggers who Blog Them," she argues that blogs should be valued and archived as we have previously done diaries and journals in a tangible format, valuing them as types of literature. The same attributes that give blogs rhetorical velocity—quick interchange, linking, and the renewal of information—is also what makes them vulnerable to being lost. She says of the difference between traditional methods of personal record-keeping and web-logging that blogs have an "appreciably shorter life span . . . without some form of human intervention due to the gradual obsolescence of hardware and software environments" (54). She emphasizes the importance of blogs in this particular contemporary context for us to understand *now* but also later: "seemingly trivial observations can shed light on major trivial observations can shed light on major historic events. The evidential value that diaries possess for a particular age, or a particular diarist, cannot be overestimated" (64). Value lies in the blog's ability to record—in an instant—a historical tidbit laden with content and format and medium and the relationships at work in those connections. As a piece of information, some text, or an image is flung forward in the rhetorical velocity of the blog system, its movement reflects what is important or interesting in that place. Its existence represents pertinence to one person; its velocity, to many in the content, context, and connection.

Indeed, blogs are more communal than diaries have ever been, and what is posted on them can be serious rhetorical activity with real world outcomes. Mark Blumenthal claims in

“Toward an Open-Source Methodology: What We Can Learn from the Blogosphere” that the poll data posted and widely discussed on blogs during the 2004 U.S. Presidential election received widespread attention. While Blumenthal writes from a pollster's point of view, his insight shows how important blogs have become to our cultural understanding of the world: “In February 2005, Gallup reported that 15 percent of Internet users and 12 percent of Americans read political blogs at least a few times a month” (656). Therefore, one can reasonably assume that this attention brought some effect on people's voting preferences in the election, even if it was to strengthen currently held positions and voting intentions. Further, Blumenthal argues that during that election, blogs were just as engaged in the political atmosphere of the time as any other form of media. Indeed, there was increased rhetorical velocity when blogs “posted leaked midday exit poll numbers” (656). In fact, he reports that some of the most popular political blogs were so overwhelmed by demand that they crashed.

By adopting a Creative Commons copyright, bloggers outwardly present to their readers that inward consciousness of themselves as authors in a new media world. Further, they provide an impetus for their readers to consider their own authorship. For bloggers searching other blogs for information to link to, the CC license requires pause. For example, the CC icon says others can use the information found in the blog, but they must attribute it. The searcher wants to use the information, so she attributes it. But, now she's become interested in CC herself, so she takes a little time to CC her own blog. And she tells her friend. And so on. And so on. We can see in these examples that blogs can increase the rhetorical velocity of information—poll findings, for example. By combining rhetorical velocity with creative commons, the authorship discussion spreads more quickly and efficiently and to those who might not otherwise participate.

Therefore, new media texts such as blogs also speed the rhetorical velocity of the concept of some rights reserved.

The contemporary speed of rhetorical velocity requires a more flexible version of copyright to support today's author in today's writing economy. Rhetorical velocity enhanced blogging, which has now been a springboard for acts of distributed authorship: sharing, linking, commenting, remixing, interacting, manipulating, and reposting. In the few-to-few or many-to-many writing economy of the internet, the rhetorical velocity of a piece of information keeps authors involved in the ReadWrite nature of the web. Without some type of attribution, this information might fly off, unhinged. Some rights reserved allows text to have the rhetorical velocity to move at will while keeping it grounded with attribution. Certainly, in an all right reserved system, a person could ask permission from an artist to use her work. Yet, this step hampers the text's rhetorical velocity. However, why support a less efficient system when artists who are so inclined can increase their rhetorical velocity by pre-emptively telling the world the conditions under which the world can use their work? The addition of options actually makes the copyright system more efficient because the rules are clarified up front, and the author(s) choose(s) the speed.

Case Studies

RemixMyLit has been the most publicized and collective work that embraces some rights reserved as a tool available to support artists' creativity, but other authors are also out there using some rights reserved copyright and championing it to fans, readers, and audiences. Blogs, books, wikis and projects like RemixMyLit show the collaborative nature of some rights reserved, but individual writers also do important work that informs others of and instigates

conversations about the role of copyright in our textual interactions. While some simply use Creative Commons for their works, others also write about copyright in their personal blogs, professional blogs, or for professional publications. Others challenge the traditional notions of all rights or no rights reserved copyright by publishing traditional books but occupying a negotiated space somewhere between all rights reserved and no rights reserved. This section will present a brief overview of living, working authors who occupy the negotiated space between the subject and object in contemporary publishing. These case studies, as I am calling them, exemplify the range of options available to creators when the binary no longer suits their needs.

For example, Tristan Clark's relationship with his publisher concerning his work *Stick This in Your Memory Hole* shows that Creative Commons can work within a more traditional publishing framework. In "November 2008, Melbourne boutique publisher Aduki Press released Tristan Clark's *Stick This in Your Memory Hole*, recognised as the first Australian book licensed by a publisher under Creative Commons" ("RemixMyLit" 140). When asked about the use of Creative Commons for a small / independent publishing house such as Aduki Press, a representative of the publisher replied that "licensing under Creative Commons was the perfect way to reconcile Aduki's commercial requirements with the author's moral and philosophical objections to copyright" ("RemixMyLit" 143). This positive negotiation between author and publisher is an example of ways that a mediated copyright can serve the needs of many: the publisher, the artist, the audience, legislators, jurists, and potential remixers. We should not apply Creative Commons to traditional copyright methods because they automatically or inherently deserve it but because stretching the boundaries of an already established system may be the best way to challenge its structure and leave the market more flexible and easily adaptable for the Commons author now and what may come in the future. This conversation forces us to

recognize that “Read/Write has always been a dichotomy in literature; with the author on one side of the production process, tolling away in solitude to produce the manuscript which is read by many, in solitude. But is there a more collaborative space for literature? Can your pages be Read&Write?” (“RemixMyLit” 159). With Creative Commons, they can be, but they do not have to be. The choice exists. These case studies explore the successes of these choices in three distinct situations.

RemixMyLit

Perhaps because blogging is already adapted for the kind of textual interaction that Creative Commons perpetuates, Creative Commons's application into other textual spheres has been slower in coming. There are many books published with a Creative Commons license, but it *is* much more difficult to remix a physical, paper book than a quote from a blog that can be quickly copied and pasted. However, creative thinkers still make the effort because they believe in the creative potential the licenses offer; in many media, they want to practice it and raise awareness about it. One manifestation of the movement occurs in the RemixMyLit project. RemixMyLit “is a Brisbane-based, international remixable literature project. . . It will spin out a number of projects, each of which will endeavour to embed legal appropriation of works into aspect of publishing environment. RemixMyLit is [as much] a research project as an exercise in creative practice” (“RemixMyLit” 159). RemixMyLit's first publication involves established Australian authors writing short stories and licensing them under a CC Attribution-Noncommercial-Share Alike license. Other writers were then invited to use the original stories and adapt them. All the stories were then to be put side-by-side in a collection to be read, and, as a pre-publication release said “the best remixed stories will appear in the anthology alongside the original stories. The anthology will be distributed online and in a hardcopy print run”

(“RMLCS” 160). Now published in 2009 by the Sydney University Press, *Through the Clock's Workings* represents a breakthrough in some rights reserved copyright theory: it is a published (both physically and electronically) book that represents not just an original work published under Creative Commons, which is proportionately rare, but also several remixed versions of the original documenting the authors' various interactions with one another.

The authors' works are no less valuable, interesting, or worthy because they are not “original” works; in fact, the conversation between the parts makes the collection better—intrinsically increases its value—because of the interplay of meaning, plot, and narrative structure. The whole is truly greater than the sum of its parts as the reader can see the conversation occurring side by side. While poster lee g argues against Creative Commons in Lawrence Lessig's blog that “it takes a lot more skill to create something from nothing, something that was just inspired by past works rather than to take existing works, modify them a bit and call them your own,” these stories embody a different opinion (December 6, 2007, par. 3). In fact, *Through the Clock's Workings* shows how enriched a text can become in the adept hands of another. The conversation is no less and no more difficult than other creative outlets; it does provide a different avenue. While *derivative* is often used pejoratively, RemixMyLit shows a positive act of derivation. The collection is, in fact, so much more than just a collection of short stories or a collaboration (which are both wonderful things). It shows a different kind of interaction that can only be achieved through a some rights reserved license and that might very well be impeded by the strictly all rights reserved system, in which remixes would not occur, or no rights reserved, in which the interaction that enriches the experiences might be lost without a trail of attribution movements.

Because of this web of relationships built in the interactions between texts, it is interesting that the collection has not mixed up the remixes but rather places them immediately following the original. This forces the reader to think about the interaction between the texts, between the authors, in the various meanings of the individual works and their connections. We see the text's rhetorical velocity laid out in front of us, and know, through Creative Commons, its potential to continue with infinite numbers of remixes that could be created. One need not read all the remixes to find enjoyment in reading these stories, for the individual works can be enjoyed all on their own. The experience is enriched, however, in the playfulness of their relationships. The creative minds in charge of the collection take joy in this playful and somewhat groundbreaking attitude they have taken in producing *Through the Clock's Workings*. The official RemixMyLit website (www.remixmylit.com) says:

Not many books begin with a word of warning. *Through the Clock's Workings* does. This anthology of literature is not some textual tome, frozen in time and space. It is alive, evolving organically in a constant state of flux. Why? Because each story is available under a Creative Commons licence, giving you rights to share and reuse the book as you see fit. This is a world first: a remixed and remixable short fiction anthology.

Certainly, it is a unique collection; however, we have seen collections of remixes before. Angela Carter's *The Bloody Chamber* and the series of multicultural remakes of the Cinderella story come to mind immediately.

The difference between Carter's adaptations or other fairy tales and *Through the Clock's Workings* is that the earlier works played with stories or fairy tales with oral and literate traditions spanning throughout several cultures and nations. Further, those stories were not

copyright protected as they existed in the public domain because of their age. The 2009 collection represents contemporary authors working concurrently in the types of situations that would normally warrant traditional all rights reserved copyright, yet they willingly give up that automatic copyright in favor of a some rights reserved copyright. Admittedly, the collection is somewhat an experiment: individuals interested in authorship issues are playing with the idea of a distributed authorship and the ways attribution can work to build a wider expanse of creative works to be enjoyed and studied. In another way, however, these stories exemplify what many have believed all along: authors are merely the caretakers of transient ideas that continue moving through them to the next person, who takes that idea and adds to it.

Despite what dogmatic ideologues might have us believe, authors have a stake in both sides of the conversation as copyright holders and those who would benefit from the shared use of texts. Given this, it is not surprising that some would actively support the some rights reserved movement, which advocates for both sides. For Creative Commons, we must note that these authors willingly make this choice, whereas other copyrights are given automatically:

The decision to rely on a non-commercial remix licence for the first project reflects some early observations of the publishing industry's reaction to remix as a concept. Firstly, that the authors involved in the project were willing to experiment with new ideas but only where the reuse of that material was for non-commercial purposes. Equally, the Share Alike requirement reflects the need, at least during the seeding stage, to require ongoing remixability to ensure the concept is properly propagated into a creative discipline that as yet has not widely acknowledged and adopted remix practices. (“RemixMyLit” 160)

These authors exemplify the commons standard that Creative Commons enables and supports. They do not just want some rights reserved to be for others to create and them only to use when they need something. They also want to share their own work with others. This is the essence of the commons authors: share and share alike.

Cory Doctorow

Like the RemixMyLit participants, other creators do what they can to publicize the existence of alternatives to strictly subject or object focused intellectual property laws. Canadian Author Cory Doctorow has chosen to apply a Creative Commons copyright to his work and to draw attention to it in his blog, in his readings, and at other public engagements. Reading the Canadian author's website (www.craphound.com) reveals much on his feelings about copyright. On it, he publishes a speech he recently made at the Canadian National Reading Summit entitled "How to Destroy the Book." In this speech, Doctorow addresses not all rights reserved law but those who want to abolish copyright altogether. He echoes Chander and Sunder's argument that the public domain can be dangerous:

There is a group of powerful anti-copyright activists out there who are trying to destroy the book. These pirates would destroy copyright, and they have no respect for our property. They dress up their thievery in high-minded rhetoric about how they are the true defenders and inheritors of creativity, and they have sold this claim around the world to regulators and lawmakers alike. There are members of Parliament and Congress-people who are unduly influenced by them. They say they're only trying to preserve the way it's always been. They claim that their radical agenda is somehow conservative. But what they really see is a future in which the electronic culture market grows by leaps and bounds and they get to be

at the centre of it. They claim that this is about ethics, but anyone who thinks about it for a minute can see that it's about profit.

At the bottom of Doctorow's website, the reader can also clearly see the some rights reserved Creative Commons icon, which shows his support of Creative Commons even though he vehemently rejects concepts that call for the destruction of copyright all together. Doctorow represents a mindset that many artists no doubt necessarily share: a moderate one. To get rid of copyright altogether would be a dangerous thing; copyright exists, in part, to protect authors / creators from the *exploitation* of others. Yet, copyright can also become limiting and stifling with its broad strokes and automatic, across-the-board implementation of rules. In many cases, it is also more fiscally profitable for the publishing company than the creator(s).

This power dynamic between the corporations and the individual is a major theme in Doctorow's non-fiction essay writing, which is posted frequently on the internet through the blog *Boing Boing*, which he co-writes, and in *The Guardian*. In a June 2010 posting for *The Guardian*, he writes on the Digital Economy Act, a recent law enacted in the United Kingdom, which, as I understand it, allows the government to cut off internet access to entire households because someone in that household *may* have infringed on another's copyright, "because once the state decides that it has a duty to police the internet to maximise the profits of a few entertainment companies (no matter what the public expense), it sets itself on a path of ever-more-restrictive measures" (par. 10). While hundreds of thousands of individuals use Creative Commons, Doctorow actively engages in the current conversation about it as the two sides battle, and he rejects complete allegiance to either side of the binary.

In this conversation, he lodges himself firmly in the belief that individual rights outweigh the rights of corporations. In a comment to that same article about the Digital Economy Act, he

responds to a reader who challenges his position by suggesting that Doctorow only wants free access to things that should rightfully be paid for and likens his stance against the DEA to supporting theft in the local corner shop. Doctorow responds with a nuanced answer explaining, as many do, the ways intellectual property in a digital age diverges from real property in real time. Following the corner shop metaphor, he claims the DEA gives corner shop owners “the power to search your house and demand CCTV footage from third parties to determine if you're shoplifting” and “the right to prohibit your entire family from using any shop at all, for a year, on the strength of unproven allegations about your shoplifting activities” (1 Jun 2010, 11:49AM). With this explanation, Doctorow engages himself and his readers into the discussion about authorship through his example and his passion. He refuses to fall into any binary position in the copyright debate: he rejects all rights reserved but also, as shown above, the no rights reserved movement. Doctorow's case study shows that the copyright conversation does not have to be a binary one, that there are many nuances to authorship and many ways to explore authorship in the digital age and challenge radical, fundamental, dogmatic beliefs. Individuals can find nuances, exceptions, and reason in the debate while acting out their beliefs through their works.

The moderate stance Doctorow and others such as Lessig take is often misunderstood and rebelled against, as shown in the angry posts responding to their work. Dogmatic believers in all rights reserved or no rights reserved accuse them of merely wanting to use other people's intellectual property for free. This is profoundly untrue, which is proven in the symbiotic relationship of the some rights reserved system; those who use the system agree to have their work used in addition to possibly using the work of others. They don't want something for free; they are giving something for free. Doctorow is an apt representative of this type of some rights

reserved authorship: those who use the Creative Commons license and actively work to inform the public about authorship issues.

David Shields

While Doctorow speaks and writes about the copyright debate and actively embraces Creative Commons copyright in his works, other authors have aggressively addressed the confining nature of the copyright binary in various interesting and creative ways without using Creative Commons, and they are getting a lot of attention as well. These authors break out of the traditional author-god relationship with the text and, therefore, challenge the theoretical basis for current restrictive copyright but also negate anti-copyright by working within the copyright system, stretching and questioning as they go.

In *A Heartbreaking Work of Staggering Genius*, Dave Eggers illuminates the relationship between publisher, copyright, and author as he takes over the copyright page with narration. Eggers openly mocks his publisher's control and copyright by placing himself as author even on the copyright page with narrative text. He says on the copyright page, for example,

Random House is owned *in toto* by an absolutely huge German company called Bettelmann A. G. which owns too many things to count or track. That said, no matter how big such companies are, and how many things they own, or how much money they have or make or control, their influence over the daily lives and hearts of individuals, and thus, like 99 percent of what is done by official people in cities like Washington, or Moscow, or São Paulo or Auckland, their effect on the short, fraught lives of human beings who limp around and sleep and dream of flying through bloodstreams, who love the smell of rubber cement and think of

space travel while having intercourse, is very very small, and so hardly worth worrying about. (Copyright page)

In this, he ironically mocks himself as author while also challenging the publisher's right to impose itself on his work. A corporate publisher is definitely the most lucrative and widespread way to market one's work, so in choosing that route, he acknowledges its almost necessity. However, his handiwork in the copyright page shows an attempt to prove that the corporation is not in charge of his work as an artist: he is. (One can certainly argue, however, that, in the end, the publisher allowed the book to be presented that way.) Because the text and Creative Commons came into existence within months of one another, we can see a movement toward similar ends represented.

In a similar move, David Shields's *Reality Hunger: A Manifesto* also challenges his corporate publisher's right on the pages of his text. *Reality Hunger* has ignited a vivid conversation about remixing and copyright in literature; Susan Greenberg calls Shields's text a "kaleidoscopic treatise" (63). This work, which could be defined as both literature and literary criticism, comes in a series of 26 chapters letter A to Z. Each chapter has numbered sections with material, some quoted, some paraphrased, and some Shields's original, and none of which is clearly cited. Shields has also included an Appendix at the end of the work declaring "Your uncertainty about whose words you've just read is not a bug but a feature" (209). The work intentionally draws the reader in to the ideological quagmire of the author-function. In fact, the book represents a type of meta-commentary on the author. He continues: "A major focus of *Reality Hunger* is appropriation and plagiarism and what these terms mean. I can hardly treat the topic deeply without engaging in it. That would be like writing a book about lying and not being permitted to lie in it" (209). He then informs the reader that his publishers have forced him to

include an appendix that lists where his information has come from. He admits that he doesn't remember where everything came from, but he has provided some guidance in the form of endnotes, although he doesn't want the reader to use them. He suggests that the reader take a pair of scissors and simply cut the appendix out. "Stop," he says, "don't read any farther" (209). I am guessing that many who read those words will not cut the section out because the attention drawn to the issue intrigues our curious minds (I did not). That same attention, however, should envelope the reader in the conversation Shields is having with himself, with the publishing industry, and with readers at large about who owns words, ideas, and what role attribution plays.

The joy of reading Shield's text lies in its very meandering nature. At times, Shields is deeply philosophical and theoretical; at other times, the prose presents a great deal of seemingly disconnected humor (seemingly because it leads itself back around to the breadth of his conversation about derivation). For example, in section 492 he presents his / Paul Bravmann's crush on Sarah Silverman because of "her willingness to say unsettling things about herself" (163). On many occasions, Shields reflects on popular culture examples, both positively and negatively, as a way to broaden the conversation from literature exclusively and into other forms of cultural creativity. He uses *The Real World* and other more recent reality television series to reflect on what society may believe "reality" is: manipulatable, manipulated, marketable, and marketed. More seriously (at least on the surface level), Section 95 poses the disturbing questions of "What if America isn't really the sort of place where a street urchin can charm his way to the top through diligence and talent? What if instead it's the sort of place where heartwarming stories about abused children who triumphed through adversity are made up and marketed?" (36). This section introduces several lines of thought about contemporary American society, including the idea that the American Dream is a fictionalized version of reality, deeply

connected with our current obsession with reality television wherein a housewife from Pennsylvania can compete on *Dancing with the Stars* or a morbidly obese individual can become thin, beautiful, healthy, and famous *while* earning a boatload of cash. Can one pick oneself up by one's own bootstraps without the aid of a camera crew? An instigation of this forces us to wonder if one can know reality and creativity in an organic way, not touched by the hands of the market system of entertainment where intellectual property could include one's own face on the television screen. He challenges the status quo of acceptance of corporate control of the most popular creative outlets of our time, of intellectual property, of the author.

Chapter Z, entitled the coda and numbered 618, tells us “Part of what I enjoy in documentary is the sense of banditry. To loot someone else's life or sentences and make off with a point of view, which is called 'objective' because one can make anything into an object by treating it this way, is exciting and dangerous. Let us see who controls the danger” (205). These are Shields's words because they are controlled by him, but they are also (according to the appendix) Anne Carson's words from *Decreation*. The question Shields's text challenges us to consider is: what does it matter who originally put these particular letters, spaces, and punctuation marks together in this exact series if they are “reality” for this particularly context in this textual moment. Further, he calls us to question the objectification of ideas and words while simultaneously also questioning the subject's absolute right to his words.

These cultural narratives are directly tied to his tacit argument that concepts do not belong to an individual but are manifested from and nourished within the cultural commentary of their time. Shields takes the quotes he uses from others—some would even call it plagiarism—but he does not present them as his own. He purposefully says they are not his; he reserves only the rights to what he has put together *as a whole*, but makes no claim to the individual parts.

Even though *Reality Hunger* does not use Creative Commons, it does well represent some rights reserved because it occupies the space between the subject of all rights reserved and the object of no rights reserved. His self-proclaimed purpose in this structure is that he is “trying to recover the freedom that writers from Montaigne to Burroughs have enjoyed, but which we, as victims of a very litigious society, have sacrificed over the past 30 years” (qtd. in Greenberg 63). In other words, he wants us to not take all rights reserved copyright for granted but to engage in a conversation and negotiation about what is appropriate for appropriation, what is not, and under what circumstances.

In this conversation, Greenberg argues that “Remixing is a powerful tool, but in an era of rampant intellectual dishonesty, it's weakened by Shields's disdain for citation” (63). I would argue that Greenberg may be somewhat missing the point and falling prey to logical fallacy. Is intellectual dishonesty rampant? Or, do we merely have a skewed understanding of what intellectual dishonesty is because of our obsession with copyright and citation? *Reality Hunger* argues through its narrative organization that our obsession with copyright has created our obsession with citation. Similarly, Meltzer tags a fear of plagiarism as “a symptom of originality” (4). Shields does attribute the pieces of his work to others by admitting that many of the pieces are drawn together from other sources, although he does not put all those pieces in the proper place to complete the puzzle. That unresolved tension engages the author and reader together in a type of wordplay. It is also representative of new forms of authorship made available in our current environment.

Conclusions

While Eggers and Shields do not use Creative Commons, they certainly occupy the grey space of some rights reserved, exemplifying that using Creative Commons is not the ONLY way to challenge the copyright binary. At this point, Creative Commons is the most popular tool in this conversation that participants can use to increase visibility of the issue and act upon their convictions concerning the issue. A more nuanced option is, in fact, one of the most appealing things about Creative Commons to me and to many others. Rather than being forced to yell, argue, or lobby for copyright changes in the law and practice, creators can simply choose to participate in a legal, valid, and viable copyright option that expands the current system without destroying it. As Chapters 1 and 2 lay out, our economy and our ways of making meaning with text have changed over the last centuries and decades and the law has not yet caught up with the ideological changes many of us already recognize. Lessig's works, particularly the 2008 text *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, explain why this is unacceptable and unsustainable. For example, he finds the concept of teenagers being prosecuted for pirating music and movies morally questionable. He says, "In a world in which technology begs all of us to create and spread a creative work differently from how it was created and spread before, what kind of moral platform will sustain our kids, when their ordinary behavior is deemed criminal? Who will they become? What other crimes will to them seem natural?" (xviii). He suggests a redefinition of the system that recognizes normative behavior for the Commons authors function as legal rather than deviant behavior (xix). Remixing and sharing amongst creators is a natural thing for many and the law has put up unnatural boundaries, which we have come to learn as normal because of our social and cultural connection to the legal system.

As Chris Anson's "Fraudulent Practices: Academic Misrepresentations of Plagiarism in the Name of Good Pedagogy" discusses, "The socially situated and mediated nature of literate activity is easily revealed when we compare practices across culture, but it is also apparent when what appears to be a 'violation' of a norm within a culture, or a practice 'outside the mainstream,' turns out to be entirely acceptable and of functional value within the community where that alternate practice occurs." Indeed, Creative Commons invites people to join a community of practice where remixing is not necessarily experimental or occasional, but normal. It represents a breaking of the subject/object binary represented in the copyright law system.

Lessig also upholds this idea of norming the behavior Creative Commons encourages. He says, "More creators need to take part in this conversation. More need to ask those who don't why they don't. We all need to work for a norm that doesn't condemn copyright, but rather condemns senselessly deployed copyright" (Lessig 279). Although Lessig has certainly been challenged and accused of being radical or, in the words of a peer discussing him at a recent conference "out there," his suggestions for the practical application of his ideas are quite moderate seen in comparison with the fundamentalist notions of all or no rights reserved advocates (Anonymous, CCCC 2010, Louisville, KY). Clarity of copyright laws is important because we so often take them for granted, to detriment. In this way, Creative Commons serves to *demystify* copyright as much as to *be* copyright. It engages us in the continuum between all rights reserved and no rights reserved. Moreover, it negates the binary that serves only to perpetuate itself.

CHAPTER 5
CULTURE AND COPYRIGHT: THE MUTUAL INTERESTS
OF MULTICULTURALISM AND CREATIVE COMMONS

In the past several decades, composition theorists have been compelled to bring post-modern, post-colonial multicultural theories and critical methodologies into the composition classroom through pedagogical practices and have, of course, also written about them length in our field's publications. Debate has existed about the appropriateness of this endeavor; for example, Maxine Hairston's 1992 essay "Diversity, Ideology, and Teaching Writing," argues that students do not need their composition instructors to bring such political discussions into the classroom for students have inherent politics they bring to the classroom themselves. However, the connection between the subjectivities discussed in multicultural studies and the subjectivities inherent in any discussion about intellectual property rights invokes a discussion between the two as the struggle for or rejection of the former is often paralleled in the latter.

As more intellectual property options become available, the need for responsible interrogation of the relationship between cultural studies and intellectual property grows. Anupam Chander and Madhavi Sunder argue in "The Romance of the Public Domain" that "the commons . . . is not always kind to the commoners" (1338). They claim that while many have deconstructed all rights reserved copyright for its frequent control by corporations and potential exploitation of the weak or powerless, the opposite complete support of no rights reserved also shows evidence of exploitation. As the authors explain, most of the contemporary conversation about copyright and the commons "presumes a landscape where each person can reap the riches

found in the commons. This is the *romance* of the commons: the belief that because a resource is open to all by force of law, it will indeed be equally exploited by all. But, in practice, differing circumstances—including knowledge, wealth, power, and ability—render some better able than others to exploit a commons” (1332). In addition to strict all rights reserved copyright, which often puts power into the hands of corporations rather than individuals, the public domain also has exploited “the labor and bodies of the disempowered—namely, people of color, the poor, women, and people from the global South” (1335).

On the other end of the spectrum, the powerful have also found benefit in plundering the public domain, which is filled with traditional cultural expressions, and using them for benefit. Wend Wendland tells us that “...open sharing does not automatically confer a right to use the knowledge (of indigenous people)... traditional cultural expressions are not in the public domain because indigenous peoples have failed to take the steps necessary to protect the knowledge in the Western intellectual property system, but from a failure of governments and citizens to recognise and respect the customary laws regulating their use” (172). In other words, because the traditional cultures do not recognize and work within the Western copyright system, their works are often co-opted from those within the system. Intellectual property is favored by a Western system and favors those who work within the Western system. Therefore, to ignore the lengthy history that publishing and copyright has in relationship with non-hegemonic people groups who have been exploited, from American Indians to African Americans to women from any background and too many others would be negligent and short-sighted.

The American Folklore Society claims that strict intellectual property laws might inhibit community efforts to protect traditional cultural expressions (Wendland 151). This inconsistency happens mainly because the information of traditional knowledge and art, when

taken out of its community, “works to the systematic advantage of a few identifiable constituencies” (1337). As they point out, “the movement to privatize the commons generally involved breaking down a more communal social order and concentrating wealth in the hands of the power” (1340). And while the romantic conception of the commons often sees its “emancipatory” potential, “it is also naïve, idealistic, and removed from reality” (1341). Chander and Sunder claim that the the global intellectual property system as it is currently set up actually moves wealth from the poorest countries in the world to the richest (through art, holistic medicine, minerals, genetic information and more) while simultaneously arguing that the exploitation of these resources is a good thing because a wide public domain benefits everyone.

Further, when discussing non-hegemonic authorship in America, one must think about the ways that achieving subjectivity has been prioritized by many, while other groups have chosen to willfully ignore the privileged subjectivity of Western thought, and others have chosen to seek out alternative means of publication outside the hegemonic norm, shirking potential exploitation. This chapter will argue that some rights reserved copyright offers unique opportunities for creators from various cultures, backgrounds, and formerly perceived objectivities by providing an alternative to strongly subject-driven copyright or the exploitation of commons knowledge. Further, some rights reserved embraces the types of non-singular, collective authorship projects so many multicultural authors have been creating for generations. By exploring the examples of a few authors, I show how multicultural authors have interacted with copyright for generations through subversive narrative techniques and how some rights reserved copyright acknowledges the value of such strategies. I argue that this acknowledgment, while it could be easily appropriated, misrepresented, or neutered in its use, need not perpetuate

and could diffuse (or begin to diffuse) old binaries of subject/object that parallel all rights reserved and no rights reserved.

This argument is undergirded by rhetorical and composition theorists such as Mike Rose, Maxine Hairston, and Victor Villanueva who have long argued that the relationship between a person's writing (or not-writing) and his or her perceived place in academia specifically and the world generally is strong. Rose says, for example, "To be literate is to be honorable and intelligent. Tag some group illiterate, and you've gone beyond letters; you've judged their morals and their minds" (561). This predisposition to belittle and invalidate those non-hegemonic voices has been the force attempting to bottle multicultural voices for generations. In the popular essay "When the First Voice You Hear is Not Your Own" by Jacqueline Jones Royster, she says, "subject position is everything. I have come to recognize, however, that when the subject matter is me and the voice is not mine, my sense of order and rightness is disrupted. In metaphoric fashion, these 'authorities' let me know, once again, that Columbus has discovered America and claims it now, claims it still for a European crown" (613). Her insight shows that questions of authority and subjectivity are still very relevant in the minds of many who feel that "status" being kept from them maliciously, and pedagogical strategies can reinforce those concerns.

The idea of subjectivity is essential to understanding the relationship between the author and his text, as described in the Introduction. Moreover, it is essential to the post-colonial framework. Hegel, from whom we have inherited the vocabulary of the subject / object framework claims, "Universal history goes from East to West. Europe is absolutely the *end of universal history*. Asia is the beginning. Africa is in general a closed land, and it maintains this fundamental character. It is characteristic of the blacks that their consciousness has not yet even arrived at the intuition of any objectivity" (qtd. in Villanueva 841). In light of this power

differential, then, equally important is our responsibility to question and deconstruct the subject and its subjectivities: “we have little idea of the potential that a variety of subjectivities—operating with honor, respect, and reasonable codes of conduct—can bring to critical inquiry or critical problems. What might happen if we treated differences in subject position as critical pieces of the whole, vital to thorough understanding, and central to both problem-finding and problem-solving?” (Royster 615). The view of subjectivity as an elite status available only to the few and unavailable to everyone else leaves those to whom it is supposedly unavailable without creative outlet, at least not a creative outlet that is validated by the controlling power structure.

The history of the colonized world is rife with objectification and exclusion. There is no need to recount here all the many ways underrepresented people groups have been ill-treated. The ways that objectified groups have been excluded from or forced to submit to certain rules surrounding publication, however, shows a particular pertinence to the current conversation. As Sarah Robbins says, “tools such as social class, race, and gender in our studies of intellectual property can help us complicate the picture” of the subjectivity of authors and its relationship to copyright (158). Women's authorship, for example, has always been challenged under the auspices of clearly inferior intelligence and natural affinity for things of the home rather than things of the mind. Often, only female works that were about the “home” were deemed appropriate for female authorship. Not until the 19th century were American female authors and editors upholding a strong position in the literary economy (157). Robbins explains that “Nineteenth-century American women's texts provide an especially fertile ground for intellectual property case studies, partly because of U.S. culture's tendency to position a woman's labor as both private (belonging to her family in the home) and public (belonging to the community), and, in either case, *not* clearly possessed by her individually” (158). Elizabeth Flynn says that studies

of women's feelings about intellectual development have also shown that the attempt to find a subjectivity often transforms or interrupts “women's ways of knowing” and that “this sense of self is embedded either in external definitions and roles or in identifications with institutions, disciplines, and methods” (576). Women have traditionally been viewed as objects; under such an ideology it is incredibly difficult for men *and* women to adjust that mindset and accept a female author's subjectivity in that same subject/object ideological framework. As Joy Ritchie and Kathleen Boardman describe in “Feminism in Composition”, composition theorists should be “pushing for notions and accounts of agency that exceed limited ideas of the determined subject” (606). This chapter, then, argues that doing so parallels well with the current conversation in copyright law, which also seeks to find agency outside of the the subject/object binary through some rights reserved.

However, such an assertion does not go without complications. For example, a challenge to the subject/object binary might come easier for those who already embody that preferred subject status. As Linda Hutcheon says in her chapter “Circling the Downspout of Empire: Post-Colonialism and Postmodernism,” “The current post-structuralist/post-modern challenges to the coherent, autonomous subject have to be put on hold in feminist and post-colonialist discourses, for both must work first to assert and affirm a denied or alienated subjectivity: those radical post-modern challenges are in many ways the luxury of the dominant order which can afford to challenge that which it securely possesses” (168). This chapter attempts to enter into that contested space where the subject is both loathed for its oppression and desired for its power. Further, this chapter argues that multicultural authors' contributions to authorship discussions lend to the potential of some rights reserved to provide evidence of the existence of a consciousness alternative to subject/object. In this, there are three major ways that the purposes

of the some rights reserved movement parallels cultural studies: in the rejection of binary logic, in the protection of the right to create textual critiques, and in the choice to embrace alternatives to normal textual expectations through narrative distribution.

Literature Review

The problem of the subject in rhetoric and composition is certainly one of the most familiar in the discipline. A discussion on the subject is necessary in the contemporary theoretical framework and is therefore necessary in order to explore the relationship between the study of underrepresented groups such as those from non-Caucasian backgrounds and women. As this study has already delineated, the subject is inherently connected to intellectual property, also; therefore, an exploration of the connections between the three are exigent to providing a thorough view of contemporary intellectual property in a multicultural world. Because the rhetoric and composition engagement with subjectivity is so broad, there is no need here to review the many contributions on this topic.¹ However, the Rhetoric and Composition theorists who have connected our discipline to the multicultural and polyvalent conversations of the last several decades have laid a foundation for the juxtapositions I propose between the power differentials of identity politics, some rights reserved copyright law, and composition.

Victor Villanueva's 1993 book *Bootstraps: From an American Academic of Color* provides insight into the ways that—no matter how well-intentioned or progressive many academics claim to be—the American university system still harbors latent racism and classism

For more on this, see Linda Brodkey "On the Subjects of Class and Gender in 'The Literacy Letters,'" Ken Macrorie "The Objectivity-Subjectivity Trap," Robert B. Heilman "Except He Come to Composition," Lester Faigley *Fragments of Rationality: Postmodernity and the Subject of Composition*, or Joseph Harris *Teaching Subject: Composition Since 1966*, among many others.

that prevents the full integration of “academics of color.” When teaching students, he claims that cultural literacy must be a part of academic education for “one has to know how to be heard if one is to be heard” (95). He describes how, in his interactions with students, he has seen students from non-hegemonic backgrounds (of color, gender, and class) struggle to achieve the type of academic subjectivity required to be successful in many cases, resent the process required to achieve this, and question the desirability of such a goal. In this environment, he argues, many academics of color resent the tokenism of affirmative action because “tokenism, not competence, is assumed” (120). Further, this environment promotes a situation where such hegemonic mindsets are perpetuated with tacit consent.

Similarly, in “On the Rhetoric and Precedents of Racism,” Villanueva relays anecdotes of departmental politics and complicates terms such as “multicultural,” “interest group,” “cultural pluralism,” and “ethnicity” claiming we often find them easy alternatives to actually discussing the issues they try to gloss over with rhetoric. He strongly claims that “multiculturalism hasn't improved things much” because “The disproportionately few people of color in front of the classrooms or in our publications, given the ubiquity of the bootstrap mentality, reifies the conception that people of color don't do better because they don't try harder” (835). He continues to claim that the solution to this misconception is frank discussion about racial and cultural issues; this will attract, he says, more students of color and, therefore, break the cycle of perpetual underrepresentation.

Open discussion also fueled other arguments on multiculturalism in the classroom. Patricia Bizzell's 1994 “‘Contact Zones' and English Studies” proposes a rearrangement of English Studies around the idea of “contact zones” taken from Mary Louise Pratt. In her text, Pratt describes the contact zone as “the social spaces where cultures meet, clash, and grapple

with each other, often in contexts of highly asymmetrical relations of power, such as colonialism, slavery, or their aftermaths” (qtd. in Bizzell 482). She expresses the desire to acknowledge that America is a site of multiple contact zones; that, in fact, we live on “contested cultural ground” and that we should “represent something of this complexity in our study of literature and literacy” (482). Her rationale for this restructuring focuses, at least in part, on resistance to multiculturalism being perceived as forced upon some instructors. In this way, “no longer would we be trying to squeeze new material into inappropriate old categories, where its importance could not be adequately appreciated” (484). It also would bring rhetoric and composition into literacy studies as the old delineations would be put aside in favor of a more holistic focus on the rhetorical problems people would be interested in. Unfortunately, her idea never quite took hold, although some certainly use the idea of contact zones in laying out syllabi and lesson plans for individual courses. Perhaps what has kept her idea from spreading is fear of questioning the traditional subjectivity of hegemonic authors alongside the growing authority of the less familiar and more multicultural.

Min-Zhan Lu likewise engages with the idea of the contact zone in the 1994 essay “Professing Multiculturalism: The Politics of Style in the Contact Zone.” Lu presents a vision of what teaching multiculturalism might look like in the composition classroom and challenges English studies to reject the ghettoization of multiculturalism. Calling on Gloria Anzaldúa, bell hooks, and Mike Rose, Lu challenges us to not attempt to rid our classrooms of power differentials but to acknowledge them and acknowledge that “a sense of ambivalence might be put to constructive uses in writing” (493). She then explores through qualitative analysis how some students from backgrounds that are traditionally underrepresented in higher education view language use and challenge our ideas of what basic writing is.

While these thinkers have pressed for more overt discussion of cultural literacy in our composition classrooms, Maxine Hairston calls for a less overt strategy. “Diversity, Ideology, and Teaching Writing” (697) addresses the ethics of bringing an overtly political agenda into a composition classroom. She provides numerous examples of the politicization of composition theory over the previous years. She suggests that such politicization is “a model that puts dogma before diversity, politics before craft, ideology before critical thinking, and the social goals of the teacher before the educational needs of the student” (698). She suggests that the composition instructor who does not emphasize the standard dialect is actually harming the student more than providing them with their individualized voice and that teaching them the theorists that we are interested in may be selfish. She suggests that we do not have to bring multiculturalism into the classroom because the students provide that with their own varied experiences. Instead of having a duty to bring politics to the students, we have a duty to develop low-risk, open assignments that allow the students’ “organic” diversity to flourish and for the students’ benefits, not our own agenda (711). Her argument, therefore, does not discount multiculturalism in the composition classroom but rather endorses an approach that de-emphasizes the instructor bringing in multicultural topics to discuss. She says, “Writing courses, especially required freshman courses, should not be *for* anything or *about* anything other than writing itself” (697), therefore bringing attention away from the cultural as a forced topic of study but not closing it off, either. While each of these authors is concerned with the subjectivity of authors in composition classrooms, they do not connect subjectivity with intellectual property, leaving space for further explorations such as this one.

Along with a cultural studies focus, gendered exclusions from subjectivity in composition have always existed as well, and scholars have more readily connected women and intellectual

property. Andrea Lunsford's "Rhetoric, Feminism, and the Politics of Textual Ownership" discusses ways scholars had hoped that a more nuanced view of intellectual property "would give voice to many women and members of underrepresented groups, as well as to many means of cultural production not valued by modernist epistemologies or economies" (530). She expresses disappointment that this moment in the 1980's "passed swiftly" (530). She also expresses concern about an if-you-can't-beat-'em-join-'em mentality to claim denied subjectivity of women, particularly women of color (as discussed by Royster and Hutcheon), for it merely encourages perpetuation of the ideologies it opposes (533). She supports the ways many in composition have hoped for "a shift in the values underlying the model of ownership, a shift (articulated by many in the digital world) that might redistribute 'intellectual property' in new and beneficial ways" (534). I believe that the moment has not passed too swiftly for us to implement permanent changes and continue to rustle with the challenges copyright law poses to alternative considerations of authorship.

"Composing as a Woman" by Elizabeth A. Flynn addresses feminism as it relates to composition theory. Flynn discusses the shift of the perception of the English teacher moving from "authoritative father" to "nurturing mother" (572). She suggests that we see composition theory as a discipline that has always welcomed women into the field and has been greatly shaped by women, although in many ways "difference is erased in a desire to universalize. Men become the standard against which women are judged" (573). In a Freudian analysis of women's roles in composition, she suggests that the struggle for self and voice—here equated with subjectivity—are very important to women's studies: "the quest for self and voice plays a central role in transformations of women's ways of knowing. Silent women have little awareness of their intellectual capacities" (576). In an analysis of the writings of male and female students,

she finds that male writing stresses the individual while female writing is more community and relationship oriented. She suggests that composition instructors use pedagogical strategies that bring awareness of the politics of gender to the students by encouraging female students to “write from the power of that experience [of the politics of gender]” (583).

“Feminism in Composition: Inclusion, Metonymy, and Disruption” by Joy Ritchie and Kathleen Boardman gives a very brief overview of women in composition theory since its inception, but emphasize that “the absence-presence binary” that resulted from that history impeded their studies (589). When studying women in composition, they suggest that “a narrative aimed at *including* women may also function to *contain* feminism within narrow boundaries” (590). They warn against including only white, middle-class heterosexual women in feminist looks at composition studies. They suggest that “the personal testimony remains an effective—and still necessary—tool of disruption” (600). When this disruption is most useful in the history of feminism is when we emphasize the “dialogical relationship between theory and experience” (605). Further, they suggest that we often need the energy that feminism brings to institute change.

Jacqueline Jones Royster's 1996 essay “When the First Voice You Hear is Not Your Own” addresses the experience of a non-“middle class, white woman” in the academy. She says, “How can we negotiate the privilege of interpretation” when everyone’s experiences are unique (618)? Her most poignant example is when someone tells her after a talk that she was using her “authentic voice,” not understanding Royster’s ability to code-switch. She discusses the difficulty and privilege of being a contradiction, being authentic in more than one place in the academy and otherwise. From this perspective, she says, “I have concluded that the most salient point to acknowledge is that 'subject' position really is everything”; yet “when the subject matter

is me and the voice is not mine, my sense of order and rightness is disrupted” (611, 613). She challenges readers (teachers of composition) to recognize that multiple subjectivities exist and that they may all be “authentic” and in this place negotiate meaning in inclusive ways.

Sarah Robbins's “Distributed Authorship: A Feminist Case Study Framework for Studying Intellectual Property” discusses ways Anna Barbauld's primers exemplify women's authorship in the 18th and early 19th centuries. As previously mentioned, her work suggests that introducing gender, race, class, etc. into intellectual property conversations complicated it by bringing it beyond “past eras 'versus' authorship today” or collective versus individual authorship “to resist excessive protectionism and to celebrate collaboration” (157). These “contingencies” (to return to the vocabulary of Chapter 3) give us a fuller view of authorship, including material contexts and the considerations of a nativist power class. Similarly, Mary Queen's “Genders and Authors” explores the power differential inherent in gendered authorial constructs by questioning how and why “the masculine pronoun is connected with *author*” (105). She begins by recounting a particularly frustrating incident with a student repeatedly referring to a female author as “he,” even after being informed of the the author's gender numerous times. This exemplifies the cultural notion of authorship as masculine, active and substantive rather than lacking. She claims, like Linda Hutcheon, that for feminists, the subject is particular troubling because “feminists work to *author/ize women's* (and other marginalized, oppressed people's) *own authority as cultural subjects with agency*, with the ability to speak for an act on behalf of themselves and others” while theorists such as Roland Barthes are claiming the death of the author and negating the subject; therefore, women cannot afford to question the subject as men can because women have been denied subjectivity for so long.

These sociocultural power differentials necessarily perpetuate hostile, fearful, resentful environments. But, the prominent cultural rhetoricians of the last few decades have written extensively about rhetorical choices writers can make that reject the binary and favor the active over the reactive, the productive over the reductive. Many have written about the rejection of binary systems in a multicultural context, which often involve collective authorship or authorship with many voices. For example, in the introduction to the 1999 collection *Beyond the Binary*, editor Tim Powell suggests that the Self/Other dynamic as laid out by Hegel and then expounded upon by Freud, Lacan, et al. is no longer appropriate for the exploration of cultural dynamics. He is, of course, referring to racial and national ideologies; but, no reason exists to negate its application to other venues. The Self/Other binary is a symptom of structuralist diacritical difference, i.e. anyone who is NOT me is the “Other” and should, therefore, be viewed suspiciously and, often, aggressively. We can also see this fear of difference in the implementation of traditional copyright law. The “Self” side of the binary coin can represent “all rights reserved” copyright and its tendency to elevate the individual / creator / “author-god”, while “Other” becomes those literary intruders who might break the copyright and manipulate the “Self”’s text. In this binary situation the “Self” must protect himself and his proxy work from outside invading forces. The text is an ideological extension of individual physical self. Barthes undergirds Powell’s assertion that this binary is outdated—our obsession with the author-god-Self is no longer appropriate in a postmodern world. In fact, it seems anachronistic. In this way, *Beyond the Binary* shows how binaries have proven less and less acceptable in a multicultural world. Powell says:

One of the most effective strategies in this initial phase of the cultural
deconstruction of Eurocentrism was the identification of theoretical binaries such

as Self/Other, Center/Margin, Colonizer/Colonized that helped scholars to delineate the inner workings of oppression and to establish a critical paradigm that would allow minority voices not only to be heard but to be esteemed as a critically important point of view. It has become clear in recent years, however, that a binary form of analysis that collapses a myriad of distinct culture voices into the overly simplistic category of “other” defined in relationship to a European “Self” is theoretically problematic. (1)

The focus of the *Beyond the Binary* collection forces readers to acknowledge the problems of ideological binaries: they reject the “the polyvalent nature of lived cultural identity” (5). A some rights reserved copyright system embraces polyvalence and polyphonics because it allows for a more fluid movement of texts and removed some pressure for monetary profit (or fear of losing).

Unlike a some rights reserved system, the powers of a traditional “all rights reserved” system can often work to close itself off from those who choose not to play the game by its rules. bell hooks says of systematic suppression that, “Those of us who write and are published remain few in number. The context of silence is varied and multi-dimensional. Most obvious are the ways racism, sexism, and class exploitation act to suppress and silence. Less obvious are the inner struggles, the efforts made to gain the necessary confidence to write, to re-write, to fully develop crafts and skill—and the extent to which such efforts fail” (8). bell hooks and Henry Louis Gates, Jr. provide evidence for a tradition in African American communities for artists building on the work of others and a release of traditional “ownership” of texts. hooks's term “talking back” refers to ways artists use their texts to transgressively speak to, illuminate, or challenge work that has come before, often work that would seek in some way to keep an(other)

population in deference/difference. hooks comments on the transgressive power of a challenge to that dominant system: “For us, true speaking is not solely an expression of creative power; it is an act of resistance, a political gesture that challenges politics of domination that would render us nameless and voiceless. As such, it is a courageous act—as such, it represents a threat” (hooks 8). Talking back, for hooks, is both a challenge to controlling powers and an opportunity for creativity/creation: “Moving from silence into speech is for the oppressed, the colonized, the exploited, and those who stand and struggle side by side a gesture of defiance that heals, that makes new life and new growth possible. It is that act of speech, of 'talking back,' that is no mere gesture of empty words, that is the expression of our movement from object to subject—the liberated voice” (9). Talking back is the presentation of a confrontational attitude in juxtaposition with a deference to other authors and texts. The use of these previous authors and texts provides an avenue to negate and/or challenge Western subjectivity.

Similarly, Gates's work on signifying provides evidence of a long cultural tradition for African Americans that involves not only exaggeration and playing with the signification of words but also the practice of taking a previously existing texts and manipulating it to make them new and appropriate for a different purpose, often a transgressive one. In *The Signifying Monkey: A Theory of African-American Literary Criticism* from 1988, Henry Louis Gates, Jr., outlines the historical precedent in the African-American community for the playful exchange of meaning between signifier and signified in the act of “signifying,” which is an undeniably collective act. Signifying, which includes rapping, exaggerating, and call and response, generally does not rely on initial or singular authors but builds upon the previous work of others. Further, it often interrupts the connection between the signifier and signified by relaying multiple meanings simultaneously. Decentered textual meaning provides the opportunity to challenge

preconceived notions of authorship, especially in cases where socio-economic, cultural, or racial biases might perpetuate the notion of author-god subjectivity.

Signifyin(g) serves many purposes: it is an identity-maker, a community-builder, subversion, tricking, art. The Signifyin(g) Monkey, as Gates explains, is the most important character in the evolution of African American rhetoric. Kermit Campbell's "The Signifying Monkey Revisited: Vernacular Discourse and African American Personal Narratives" tells us, "As consummate trickster, as bad-talker, as braggadocio, the Monkey displays his ability to use language to affirm his own identity and reverse the power differentials of the jungle" (467). That is the trickster's job: to take something that on the surface-level seems small and weak and use it to do something powerful. Signifyin(g) as a specific form of tricking is "the use of language or discourse to affirm cultural identity and community in the face of the imposition of cultural dominance and oppression" (463). Campbell speaks accurately when he says, "I don't see signifying as mere playground activity or as a coping mechanism. Indeed, because signifying is so deeply embedded in the everyday lives of African American people, I rather see it as an attitude or stance toward humanity" (464). Signifyin(g) has been a key to rocking the boat of cultural oppression for the African American community. Yet, to see Signifyin(g) as only "slippery strategies of resistance," although it certainly is, is neglecting the pure rhetorical art of story-telling and textual manipulation. It also shows the existence of other worldviews beyond the Western system.

Others have also insisted that African cultural traditions cannot be forced to fit into the framework of the West. Tomaselli, Shepperson, and Eke argue that much of deconstructionism "[assumes] particular sets of modern and post-modern conditions and periodizations not necessarily replicated in Africa in quite the same ways" (18). Their work, which focuses on film

rather than literature or composition, challenges readers to see how Western critiques (many psychoanalytic) “are often inappropriately imported into African critical canons” (32). As they claim, when Africans are still struggling to negotiate the aftermath of colonialism, post-colonialism, or any other kind of post-theory becomes untenable. Works such as theirs strongly advise us in the West (who often take these Western theories for granted) to take care when transposing these ideologies onto cultures for whom they are ill-fitted.

Indeed, I also argue that these frameworks have become ill-fitted to the contemporary multicultural, multimedia West (specifically the United States). Ong describes a type of secondary orality in *Orality and Literacy* wherein, because of visual and audio media, we have come once again to rely on communications alternative to the written word and all its abstractions (although also relying on it) to build many of these new media. The ever-growing exposure to and acceptance of unfamiliar languages, cultures, foods, music, dress, and lifestyles necessarily negate an insular view of self as many people embrace their multiple subjectivities. This multiplicity of identity scares many, as evidenced in violence against other races, the deaths of homosexuals at the hands of heterosexuals, or laws that have forbidden marriages of different races or similar genders. Yet, theories exist to support and adopt these multiplicities, insisting that a singular, coherent subject is neither achievable nor desirable.

For example, Gloria Anzaldúa pushes the boundaries of the binary to negate the subject's power. Through her rhetoric called *mestizaje écriture*, Anzaldúa validates and provides a vocabulary for the rhetorical choices of people who live in the Borderlands and have mixed identities, and she entreats them to action. *Mestiza* is the idea of all at once being different from and separate from others while also being the same as and connected to others, representing multiple identities at once. Modeled in a non-linear fashion, Anzaldúa's work exemplifies her

assertions as she challenges herself (and all humanity) to see the world not as either/or, but to include and validate all facets, especially those that exist in the “borderlands.” In her work, Anzaldúa delves into the geographical, linguistic, and cultural spatialities that govern these Borderlands, which are not only formed by geographical demarcation, but by the cultural spaces in which society allows those interminglings to occur.

Although Anzaldúa rebels against linear and binary ideologies, she acknowledges their existence and the need to work with their existence. Rather than creating an equal and opposite new set of these demarcations, she calls for herself and others to “be proactive rather than reactive” (qtd. in Reuman par. 29). She does not desire a revolution of ideas that requires two binary sides to resist against each other; “it is not enough to stand on the opposite river bank, shouting questions, challenging patriarchal, white conventions” (1597). Rather, she says that we must work with what we have been given and change ideologies from the inside out. In order to avoid the use of binary oppositions, which would just perpetuate the hegemonic logic, AnaLouise Keating says that Anzaldúa encourages writing and resistance not “entirely *outside* the dominant culture’s inscriptions. To do so would participate in the dualistic thinking that subordinates women of color and other oppressed groups” (133). By acknowledging and sometimes working within the language of mainstream society, she creates the opportunity for productive resistance and effective change.

The collection *American Indian Literary Nationalism* addresses American minority life differently and attempts to place positive connotation on the term *nationalism* while deconstructing it. Authors Jace Weaver, Craig Womack, and Robert Warrior argue that “despite horrendous measures arrayed and deployed by colonizers to achieve the physical annihilation, disappearance, and/or subservience of Indigenous people, ‘Indians are still Indians’” (xii).

Although the authors denounce insular nativism as Walter Benn Michaels describes it, they embrace nationalism under the auspices that an American Indian literature provides the power to write as American Indians beyond the white, objectifying gaze. Simon Ortiz's preface to the book says, "Nationalism is a term on a short list, one that also includes sovereignty, culture, self-determination, experience, and history, that is central to understanding the relationship between the creative expression of Native American literature and the social and historical realities that such expression embodies" (xv). He continues to argue that "such a methodology is not only defensible but that it is also crucial to supporting Native national sovereignty and self-determination, which we see as an important goal of Native American Studies generally" (xxi). Therefore, we need not see Native national sovereignty and self-determination as a sign of subjectivity as it is in Western thought. We must understand that in a native nationalist stance, self-determination is internally propelled by Native ideologies rather than a reaction to hegemonic American ones. In this they argue for a "nationalism that is not based on notions of nativism or binary oppositions between insider and outsider, self and other; a nationalism that does not root itself in an idealization of any pre-Contact past, but rather relies on the multifaceted, lived experience of families who gather in particular places; a nationalism that may be unlike any of those with which most literary critics and cultural theorists are familiar" (244). Like Gates and Anzaldúa, these American Indian nationalists show a resistance to reactionary theories and an affinity for the more organic and naturally affiliated theories that represent their own context.

An alternative copyright protection provides a unique opportunity to embrace the mindset Gates, hooks, Anzaldúa, and others represent because it rejects the old power structure without opposing it. Some rights reserved and the efforts of feminist and cultural critics complement one

another's objectives. Because these authors and theorists do not need an outside structure telling them how to copyright or publish their works or that they must or cannot, the recent history of multicultural literatures shows that many authors already question author-godship through their narrative techniques, plot structures, and publication histories. I will now explore a few texts as evidence that multicultural authors have found de-centered or distributed authorship, collaboration, and transgressive publication fruitful for generations of writers and readers. Queen says, “Analyzing the historically, politically, socially, and culturally constructed nature of authority and authorship can help students and teachers alike understand a political economy in which all writers and readers are shaped by the solitary, masculine 'figure' of the Author but can reshape this figure to better represent an 'alternative' economy of rich dialogic, citational, collaborative practices of all writers and readers” (115). These examples lead to an understanding of some rights reserved as an alternative that lies both within and outside the traditional copyright binary and provides evidence for its potential to recognize formerly ignored or belittled authorship traits such as commons authorship, collaboration, and derivation.

Slave Narratives and the Binary

A look at Walter Benn Michaels's *Our America* lends an analogy relating national identities to individual identities often used in maximalist copyright arguments. He claims that nativism and modernism both represent a commitment to identity, which I link to the “author-god” concept through the *droit moral*. He says, “in nativist modernism, identity becomes an ambition as well as a description” (3). By making a replacement, the sentence could just as easily read “in [all rights reserved copyright licensing] identity becomes an ambition as well as a description,” as all rights reserved copyright has a tradition, shown in Chapter 2, of relating to

the moral rights and personality of the author. Again, Michaels is not concerned with copyright issues in this text, but the nativist and “author-god” complexes come from similar places of self-preserving individualism, the desire to keep an(other) out. We can see this nativist impulse play out in the perpetuation of racially-based ideologies about slaves writing their own captivity narratives and the desire to impede others from telling the stories (creating an identity) for the nativist (white) subject while simultaneously attempting to keep the object from his or her own subjectification. In order to alleviate the tension caused by such a juxtaposition, an introduction, preface, or letter is required from within the nativist circle to make assurances that the text poses no threat to their own subjectivity.

In particular, captivity narratives seem excellent examples of the “need” for a perceived subject to vouch for the perceived object's experiences to perpetuate the power differential. What better example of a human object than a slave or captive viewed as chattel to sell or barter or garner power? When the slave's or woman's body is already culturally commodified, there is no better example of a subject/object relationship. What better way for a human subject to impress his subjectivity upon an(other) than to fill the object's lack of subject with his own subjectivity in essence taking ownership of the text himself? Indeed, some of the most famous captivity narratives in American literary history exhibit this strange subject/object relationship in the cultural sub-conscious: “Western women have been excluded from both 'natural rights' and 'property rights' systems because women themselves—as well as African American and Native American males—were considered the 'property' of males, commodities to be possessed” (Queen 109). They exhibit how, in some cases, the identity of an author can become political capital and, therefore, can be used to benefit the all rights reserved system. In this history, there are many examples of white men (or, in the case of black female authors, white women) vouching

for the author in order to supply the female object—whose work is “*not* clearly possessed by her”—with white (male) subjectivity by proxy.

Catherine Gallagher explains in *Nobody's Story: The Vanishing Acts of Women Writers in the Marketplace* that the idea of a woman's “lacking” something because of her gender pervaded the the seventeenth and eighteenth century literary marketplaces. She says, “women's presumed genital lack and their secondary ontological status in relation to men, overlaps with the conceptual disembodiment that all commodities achieve at the moment of exchange, when their essence appears to be an abstract value” (xv). Her text argues that “author-selves” are “rhetorical constructions” and that many female authors of the time embodied a nobody-ness in the sense that their literary identities represented a fictional person that did not represent a tangible person to which to be attached because it differed so greatly in such an environment from the actual person writing the text. Indeed, the question of “owning” one's intellectual property is indelibly tied to a person's gender (and socio-economic and racial status) because “manifestations of the persistent imbalance of power, especially economic power, between the sexes . . . the presentation of authorship as the effect of the writer's inability to *own* the text remains constant and is explicitly linked to the author's gender” and, I would add, other manifestations of power differentiation (xx).

For example, Olaudah Equiano's *The Life of Olaudah Equiano, or Gustavus Vassa, the African* from 1789 contains a preface vouching for the accountability of the text. Praising Equiano's role in advancing the British movement to stop the slave trade (called the Bill for the Abolition of the Slavetrade), the preface author calls Equiano's text a “round unvarnished tale” and a “true relation of occurrences which had taken place” in an attempt to replace any doubt of Equiano's voracity with the Preface author's own (3). Throughout the work, Equiano continues

to acknowledge his awkward role as both subject and object in his case: he recounts his time as an object of the slave trade, necessarily embracing his perceived subjectivity in order to tell his story but simultaneously recognizing that many who will read will continue to see him as an object and question his ability to author this work. In this, he attempts to achieve some kind of *ethos* with his audience by shirking the cloak of subjectivity:

I am not so foolishly vain as to expect from it either immortality or literary reputation. If it affords any satisfaction to my numerous friends, at whose request it has been written, or in the smallest degree promotes the interests of humanity, the ends for which it was undertaken will be fully attained, and every wish of my heart gratified. Let it therefore be remembered, that, in wishing to avoid censure, I do not aspire to praise. (10)

In this passage, Equiano shows that he feels he must convince his reader that he does not desire subjectivity, that it has been forced upon him by others and that his aspirations lie in the good of humanity, not himself. He feels that they will only accept his subjectivity if he rejects it, i.e. knows his place. This first slave narrative written in English about the trans-Atlantic slave trade set the standard for future American slave narratives to come in its arrangement and obligatory renouncement of desire for subjectivity, through the authorship of the captive.

Frederick Douglass's *Narrative of the Life of Frederick Douglass, an American Slave* from 1845 and Harriet Jacobs's *Incidents in the Life of a Slave Girl* from 1861 also follow this format, with a letter, preface, or introduction from a well-known and respected member of the white community to achieve *gravitas* enough for publication. Wendell Phillips, who completes the recommendation letter for Douglass by writing *to* Douglass, declares to Douglass that he and the reader can “put the most entire confidence in your truth, candor, and sincerity. Every one

who has heard you speak has felt, and, I am confident, every one who reads your book will feel, persuaded that you give them a fair specimen of the whole truth” (14). This letter to Douglass provides support for Douglass and for the reader that Douglass's subjective authorship can be trusted. Douglass alone cannot be trusted in the mind of many of his contemporaries; in the cultural framework in which he publishes, Douglass *lacks* because he is a black man. He needs the white man's addition to reach the “full” authorial standard.

Likewise, Harriet Jacobs is provided with her own certificate of authenticity in the form of an introduction from a white person sharing her socially recognized Subjectivity with Jacobs. Like Equiano and Douglass, Jacobs necessarily acquiesces her authority by begging the reader to believe the representation of her account. She says, “Reader, be assured this narrative is no fiction,” and then later, “I wish I were more competent to the task I have undertaken” (119). Like Equiano, she inhabits a negotiated space between the subject her readers would have expected from an author and the object her readers in social power would have projected upon a person of her background. Lydia Maria Child's introduction addresses what she perceives as the readership's questions about the author's ability to “write so well,” which might “excite surprise” (121). Child, by then a famous name in the abolition movement, lends her famous reputation to Linda Brent (Jacobs's pseudonym), in order to convince readers of the appropriateness of reading the story. Although it holds some gruesome details about Jacobs's sexual abuse over years of slavery, Child is able to give the work the needed authority by taking this “indecorum” upon herself (122). The audience's expectation would already create a perceived lack in Brent—in her case doubly because she is a woman *and* black—which needs to be filled in order to achieve authority.

These examples show that some of the earliest and most famous pieces of multicultural American literature exhibit the tension between subject and object as set up in a colonized world where some people are seen as objects while others are subjects. In this hegemonic ideology, a subject had to step up to vouch for the object in order for a text to be accepted—no other arrangement would be amenable to the contemporary mindset. Post-colonial criticism has long challenged this framework, along with the growth of literature by multicultural authors and the expansion of understanding non-binary forms of writing such as found in the oral traditions of some American Indian tribes. Certainly, many other examples exist of white men attempting to negate the subjectivity in another person's writing or of the struggle for subjectivity through authorship in the Western world by multicultural authors. I use these examples only to steer toward the conversation encircling publishing and the multicultural subject and to lead us toward the possibility of a subject-less or a many-subjects texts and the implications of these possibilities in a multicultural world. As we begin the twenty-first century, a collective voice arises that holds the power to complicate the centuries-old conventions of linear logic and binary oppositions. Authors and rhetoricians such as bell hooks, Henry Louis Gates, Jr., and Gloria Anzaldúa write alternatives to the hegemonic way of thinking that invades Western philosophy and rhetoric and ask that it be replaced with a new way of thinking.

In rhetoric and composition's on-going conversation about the multicultural subject, we should see a connection between these struggles for subjectivity and actions students must make in order to enter the academic economy. The slave narratives followed certain preset rules that had to be followed, while our students similarly must find their way in disciplines filled with norms that may be at odds with the norms of their cultural or linguistic backgrounds. Indeed,

this echoes a large community of people who feel the binary copyright system also misrepresents contemporary cultural normals, which broaden from the singular subject author.

Derivation, Cultural Critique, and Cultural Expression

In light of this contemporary movement which has seen mainstream ideas of authorship expand because of the ubiquity of communication outlets on the internet, we should continue to value and protect those texts that use forms of derivation on appropriation to provide cultural critique. The more maximalist copyright theories are applied, the less legal right we will have to negotiate cultural legacies through creative texts. Looking at examples of cultural critiques we can see how this tactic has been valued as a tool to challenge intellectual property claims in the past and should be protected in the future to preserve this right to critique.

For example, Charles Chesnutt's *The Conjure Woman* shows both community and individual aspects of the Signifyin(g) tradition as he uses the popular Uncle Remus stories in an attempt to reclaim the African stories used in the popular retellings. By looking at the context out of which *The Conjure Woman* came, we can see several ways that Chesnutt has Signified by playing with his own textual authority and rhetorical prowess: First, he has used the traditional Signifying Monkey tale as the frame for some of his stories, particularly "Hot-Foot Hannibal," yet has made it his own. He has also revised, manipulated, and repeated the conjuring stories, reserving the frame of the original but building upon it and changing it for new purpose. Although Chesnutt's name is attached to the stories, they come from a tradition of signifying trickster stories and are a direct reaction to Joel Chandler Harris's Uncle Remus stories. The popular Uncle Remus stories, written by a white man, had appropriated the tales. Harris's

versions re-appropriate them as a cultural critique on a white society that bought into Harris's version.

Chesnutt has Signified on Joel Chandler Harris by playing off the popularity of the Uncle Remus tricking stories and continues to do so in the texts of his short stories by using a white narrator to be tricked. Chesnutt builds a more mature and full picture of Signifyin(g) by using adults and real people instead of anthropomorphic animals. Meaning is deferred, the signification of words is often lost in translation, and the reader is being tricked. SallyAnn Ferguson says in her introduction to Chesnutt's *Selected Writings* that Chesnutt “grins and lies throughout his canon, knowing whites believed too deeply in their stereotypes of blacks—those testaments to their ignorance of and distance from African-American reality—to recognize his truth until he, like his character Uncle Julius, had successfully accomplished some coup” (5). Chesnutt is such an adept Signifier and eloquent rhetor—using the Harris texts to his advantage—that we are left with a lesson in African American culture and language providing entertainment, social norms, rhetoric, culture, and history. The negotiated space of his text provides entertainment but also an example of the way authors from varied backgrounds have long practically embraced the appropriation or derivation of other texts to build their own and have distributed authorship amongst themselves and others.

Jamaica Kincaid's 1990 novel *Lucy* effectively illustrates hooks's theory of talking back as a form of critique in the American 20th Century. *Lucy* shows how the consciousness of a hegemonic culture can be implanted into a colonized culture but also how the colonized woman can reject that oppressive understanding from within the hegemonic culture. Jamaica Kincaid “talks back” to the dominant culture around her by objecting to the implementation of hegemonic culture onto the colonized. An image that occurs throughout the text is the daffodil. As a

schoolgirl, Lucy was taught the William Wordsworth poem “I Wander Lonely as a Cloud,” which references daffodils. The literature of the British colonizers is forced upon the colonized in a context that makes no sense—there are no daffodils on Lucy's island. She always wonders why she would be taught such a poem that has no relationship to her life. Upon moving to America to be an au pair for a white family, Lucy is physically introduced to daffodils. Her employer, Mariah, believes that Lucy will be pleased to see daffodils and to finally be able to visualize the poem she never understood. Instead, Lucy just feels empty. She gets no pleasure nor anger out of the experience. Her neutral reaction, therefore, neutralizes the cultural power the poem represents. She not only rejects the poem and its imagery but the very culture from which it came. She “talks back” to the poem by simply ignoring it and negating it, making it impotent.

Lucy further rejects dominant master narratives through her job as an au pair. She does not embody the master narrative of the Mary Poppins nanny. Lucy contemplates during her time with the family how many of the other au pair / nannies she knows are foreign women coming into the country to care for American children. Many of them do not sing to their wards, and none of them fly on umbrellas. She reflects on how unnatural it is for a girl outside the national culture to be forced into the most intimate carryings-on of the family. Mariah attempts to be Lucy's friend, but Lucy rejects her friendship. Lucy astutely understands that she and Mariah cannot be friends because Mariah is (1) her employer and (2) of a higher socio-economic status. Further, Lucy serves a purpose for Mariah: she is a modern day slave—an object, and therefore, cannot be equal within that framework. On vacation in the Great Lakes, Mariah reveals her love of nature to Lucy. She credits her affinity for the outdoors to the fact that she is “part Indian.” Lucy is shocked because of the blonde, Caucasian appearance of the woman. She

asks herself, “How does a person come to be both the oppressor and the oppressed?” In *Our America*, Walter Benn Michaels suggests that Americans psychologically need to invent themselves as indigenous Native Americans in order to legitimately claim nativist rights to this country. As Michaels suggests, Mariah shows a sense of entitlement in all she does, and, in this case, even entitles herself to be disenfranchised by appropriating a Native American heritage. Her white, liberal guilt makes her look foolish for she is inherently a part of the system that supports the binary and she can no more inhabit both sides of the binary in such an environment than Lucy can.

Lucy does not become further disenfranchised, however. She “talks back” by taking what she has learned about the flaws of hegemony and using that knowledge to build power for herself. In the end, she leaves her employer-family: rejecting culturally defined “perfection” and the narrative of the daffodils (which parallel the image of the blonde heads of her employer family). She envisions herself as an artist, and she plans to study to be an artist. Her plans place her in a position of creating rather than consuming. The material situation of her employment and socio-economic status create a unique context for her that allows her to see the weaknesses of her employer subjects in ways they cannot. It allows her to set up a life for herself beyond the nativist framework, exemplified by the daffodils she neuters with her apathy. By interacting with this poem by Wordsworth, surely one of the most apt representatives of the Romantic genius concept, Kincaid takes the opportunity to remix the poem in a new cultural context. In doing so, she removes the power of the genius and replaces it with Lucy's unique positionality as an island girl living in New York with a British education artist.

Unlike Kincaid and Chesnutt, who manipulate “white” texts as a form of cultural critique, the hegemonic appropriation of minority texts is a different matter for it represents an abuse of

power for the sake of gain under false pretenses within an all rights reserved system where all rights would be taken from the source. Joel Chandler Harris's texts (arguably) provide example of that, as do some songs by Elvis Presley, Johnny Cash, and The Beatles, for example. The canon inherently resists transgression within its own borders because of the mostly mainstream and hegemonic make-up of the authors in it. The controversy around *The Wind Done Gone* shows us that protectionism of mainstream texts and that we must continue to vehemently protect the right to appropriate texts in a critical way. In 2001, SunTrust (the trustee of *Gone With the Wind* author Margaret Mitchell's estate) brought suit against Houghton-Mifflin for making plans to publish Alice Randall's *The Wind Done Gone*, which provides a narrative criticism of *Gone With the Wind*. As Australian copyright expert Matthew Rimmer explains, this novel “belongs to a distinguished literary tradition of 'shadow texts which seek to re-write and subvert canonical texts from fresh perspectives and view-points. [For example,] in *Wide Sargasso Sea*, Jean Rhys seeks to re-write Charlotte Bronte's novel *Jane Eyre* from the perspective of a Caribbean woman” (par. 4). However, SunTrust was able to get the court to grant an injunction against Houghton-Mifflin to prevent them temporarily from publishing *The Wind Done Gone*. Houghton-Mifflin then appealed to have the injunction lifted and subsequently to publish the work.

Ivan Hoffman explains that the appellate did lift the injunction, mainly because of its transformative nature: “A later work is 'transformative' of an earlier work when it uses that earlier work in a manner that gives new meaning to that earlier work, i.e. it enables us to see the earlier work in a different manner than might have been originally intended” (par. 21). In a fair use case such as this one, the court looks at four criteria:

1. The nature and purpose of the work.
2. The nature of the copyrighted work.

3. The amount and substantiality of the portion used.
4. The effect on the market value of the original.

In this case, the court lifted the injunction, for they agreed with Houghton-Mifflin that the parodic and critical nature of *The Wind Done Gone* not only benefitted from the use of *Gone With the Wind* but necessitated it. Randall's commentary directly addresses the particulars of Mitchell's novel: “*Gone With the Wind* has become an icon and a pervasive point of reference for people's understanding of the Civil War-era South, but the picture presented by *Gone With the Wind* is inaccurate and extremely racist. Just as troubling is our culture's continued acceptance of the work” (Houghton-Mifflin pars. 4-5). In this way, her commentary could not exist without the direct use of Mitchell's text for it would not engage the appropriate literary and cultural themes. The nature and purpose of the work required a critical engagement with *Gone With the Wind* directly because of the iconic nature of *Gone With the Wind*.

For these reasons, the court supported Randall's right to use Mitchell's work in a transgressive and critical way. The only difference in this case from *Wide Sargasso's Sea* or appropriations of Shakespeare was that an entity still “owned” the text that was being remastered. Had the court not lifted the injunction, Randall's book would have been delayed until 2032, when the copyright extension granted to Sun Trust will expire—unless, of course, the copyright is extended again. The court's findings, however, were based not on a theoretical conceptualization of an artist's tendency to speak to works before her but on the premise that “copyright does not immunise a work from comment and criticism” (qtd. in Rimmer par. 7). Therefore, artists are legally encouraged to build critical works (a valid endeavor indeed) but not to create less critical works that further, build upon, or enhance the original text through derivation. As many work to strengthen all rights reserved, these fair use guidelines are

constantly under attack—as recently as July 2010, Congress recognized the need to update Fair Use guidelines for some digital productions.

Looking at these three texts—*Lucy*, *The Wind Done Gone*, and *The Conjure Woman*—because they come from different historical eras and material contexts show how under-represented and frequently under-estimated people groups have long used the appropriation of canonical or hegemonic texts as tools with which to build new authorships, new connections. However, as appropriations are often used as criticism of the previous texts, they are (rightly) protected under Fair Use guidelines as such. Yet, this protection makes an important distinction: criticism is protected while other potentially creative and meaningful remixes, appropriations, and manipulations are not. Criticism *should* be protected and we should question the reasons why other forms of textual derivations are not covered under fair use. Criticism is the *exception*, not the norm, as far as the law is concerned. Were distributed authorship not considered abnormal, deviant, or dishonest it might not be frequently accompanied by punishment (physical, monetary, or social). These texts show what a powerful tool criticism and derivation can be. Rhetorical play, such as talking back or signifying, has taken (and will certainly continue to take) an irreplaceable roll in the continuing conversation of deconstructing cultural implications in a multicultural world. The opportunity is upon us to recognize, nurture, and protect these and other variances of word play that can extend and complicate these conversations, giving the capability to thrive rather than be stagnant. Some rights reserved can support such an endeavor because its licenses foster a community that uses these tactics freely.

Narrative Distribution

The constant back and forth of action and reaction, while challenging, is not the only option for authority. An extended conversation trajectory involving textual remixing and some rights reserved could show that a text need not be *critical* in order to contribute deeply to the knowledge-base, to be productive, or to be powerful and creative. In that, some authors have chosen to work within their own narrative structures to challenge the idea of the singular author-god productively but not reactively. Rather than criticize others' works, they use a built-in system whose internal logic upholds a “pantheistic” notion of authorship.

Rather than presenting a picture of themselves as omnipotent, monotheistic, author-god, they show themselves to be a more pantheistic author-deity, willing to make room for others with authority in order to build a complete picture, a communal work in progress. In *Caramelo*, Sandra Cisneros uses techniques that some rights reserved could further including the interlacing of pre-existing texts (both real and unreal). Although Cisneros has not so far used Creative Commons licensing, she provides a link between all rights reserved copyright and no rights reserved copyright by including previously copyrighted material in her fiction text in the form of faux-academic footnotes. This tactic is more than mere typical allusion; it aggressively challenges her authorial identity as a singular creator by inviting the interaction with these previously published texts for her own, new use. The relationship between her as author, her narrator, and interrupting footnotes, moreover, provides evidence of a potential relationship between multicultural theories like bell hooks's “talking back” or Tim Powell's thoughts on thinking beyond the binary and some rights reserved copyright.

Cisneros’s plot addresses the relationships between the members of a Mexican-American family, and her style—filled with poetry, Spanish and English intermingled, footnotes, and

narrators that converse with one another and openly admit to lying—embodies the mixed cultural heritage of the characters in the story. Her unique narrative style is not traditional and upon critical study shows itself to be a masterful strategy of narrative usurpment. *Caramelo*, as well as her other works, is “a contribution to the current debate on Chicana writers’ relationship with mainstream literary and theoretical framework” (Marino 230). Cisneros’s exertion of rights involves her use of revolutionary language to challenge the norms of literary academia as well as society-at-large. She does not criticize or appropriate a text like Randall’s; she creates a self-contained challenge to authorial assumptions. Some rights reserved could extend such efforts by providing the legal means to turn such conversations into group efforts rather than the self-contained narratives like Cisneros’s. But, much like Eggers and Shields (see Chapter 3), hers presents an alternative means of extending this conversation through her mestiza narrative.

Cisneros challenges authorial traditions through her work in both linguistic presentation and narrative style. She says, “My weapon has always been language, and I’ve always used it” (Cisneros qtd. in Elliott 105). Because the characters come from a borderlands existence—neither wholly Mexican nor wholly American, but simultaneously both—they provide an apt example of opposition to convention, and their stories provide a framework through which Cisneros can address issues that she wishes to illuminate for the reader. In fact, as Deborah Madsen explains, “the fragmented structure of the text embodies a quest for freedom, a genuine liberation that resolves rather than escapes the conflicts faced by the Chicana subject” (109). AnaLouise Keating says that many authors of mixed heritage—including Leslie Marmon Silko and the aforementioned Gloria Anzaldúa—endorse an “active discursive manifestation and transformation of ideology” (205). Anzaldúa, in particular, terms the rhetorical choices she exhibits and encourages as a *mestizaje écriture*, or writing of mixed existence. Creative

Commons echoes a similar perspective: binaries are no longer a useful theoretical framework (in fact, may never have been) and that stretching or jumping the boundaries of binary infrastructures (such as traditional copyright law) is a worthwhile endeavor. Cisneros subtly does that in her work.

Anzaldúa's works—such as 1983's *This Bridge Called My Back*, 1987's *Borderlands / La Frontera*, and 2002's *this bridge we call home*—draw readers and thinkers away from the binary oppositions of tradition. Cisneros embodies the writing of the *mestiza*: a mixture of her Mexican-American heritage exemplified in poetry, prose, Spanish, English, and other contradictory elements. Feminist, mixed-cultural heritage authors such as Anzaldúa show a shift away from narrative as a representation of a single author-god simultaneous to representations of several traditions, cultures, languages, and sources. By looking at these texts closely we can see a move against author-godship and toward a more flexible definition of authority. Possibly, these authors are *most* apt to present this kind of change *because* they already exist outside the norms of “authority” in American culture.

The first chapter of *Caramelo* begins with Spanish lyrics to a song, “María Bonita”; the narrative then moves into English prose. The titles of Cisneros's chapters are sometimes in Spanish (“Qué Elegante”), sometimes in English (“Mexico Next Right”), and sometimes a mix between the two (“I Ask la Virgen to Guide Me Because I Don't Know What to Do”). Cisneros often also uses Spanish and English within the same sentence, constantly reinforcing the idea that she is not Mexican or American, but both at the same time. These sentences exhibit the *mestiza* qualities of Cisneros, her narrators, and her characters. For example, Lala's Aunty says, “He said that when he saw me he knew. That's what he said, I don't know. I didn't see him in that way at first, but he says he knew the instant he saw me, I was *el amor de sus amores*” (265).

The characters in Cisneros's fictional world exist in the borderlands of Mexican-American existence, building a foundation for the metanarrative of Cisneros's own narrative style.

In mixing Spanish and English, Cisneros makes use of the interplay of what Mikhail Bakhtin terms national languages or “the traditional linguistic unities (English, Russian, French, etc.) with their coherent grammatical and semantic systems” (Holquist 430). These two separate linguistic entities—Spanish and English—combine in the person of Cisneros and are, therefore, reflected in the characters. She does not represent one language, one culture, one author-god but rather a slough of contingencies that position her in her work and without. Because of the linguistic deracination found in the interplay of these two languages, the borders between these national languages are blurred; they form a *mestiza* national language that occupies that borderland and creates a narrative with a dual meaning-making structure that simultaneously represent both positions. Cisneros uses her narrator to engage in these negotiated discourses by engaging in a work of individual authorship but also enacting a narrative of distributed authorship. This borderland therefore challenges the idea of a Spanish/English binary and the idea of a singular author-god with a nationalized, insular identity.

Mikhail Bakhtin likens the novel to this kind of literary confrontation on social norms. In “From the Prehistory of Novelistic Discourse” he says, “the novelistic world arose and developed not as a result of a narrowly literary struggle among tendencies, styles, abstract world views—but rather in a complex and centuries-long struggle of cultures and languages” (83). The novel, he says, is formed out of the very kind of struggle Cisneros's work embodies. Susan Lohafer affirms this attribute in her texts: “Sometimes overtly, and almost always by implication, the narrator becomes a ‘site’—of multicultural tensions, of revisionist storytelling, of negotiated discourses” (Lohafer 89). The novel is an example of an utterance, what Bakhtin

calls “the *real unit* of speech communication” (“The Problem of Speech Genres” 71). An utterance is a complete speech act that is constructed “from language units: words, phrases, and sentences,” and it is complete when it can be reacted to (75). It is presented as an individual story but it represents multiple subjectivities. *Caramelo*, which Cisneros has presented as an entire utterance by presenting the inextricability of Spanish and English for her characters, asks to be reacted to. Simultaneously, though, the text has already reacted to and enveloped other works. It is a “negotiated discourse” between several texts – a composition action of which Creative Commons should approve. It represents an ongoing conversation, not a completed act.

This paradox is successful because Cisneros’s narrative style effectively convinces the audience that it accepts these values of negotiated narrative style and challenged binaries. Cisneros’s narrators always speak and act in accordance with the overriding norm of the text: textual remixing as an appropriate form of text creation. Other authors also use this tactic. Kathy Acker, for example, envelops others' works into her own: “the conventional crime of writing—plagiarism—is consciously deployed to call attention to what she sees as the current impossibility of 'owning' language and to the need for alternative rhetorical practices for enacting multiple selves in discourse” (Lunsford 539). Although the two take very different tones and topics for their works, Acker and Cisneros each use their creative texts to challenge strict notions of authorship, providing vivid (and sometimes rhetorically intoxicating) prose that distributes authorship among themselves and others. When the internal logic of the narrative includes evidence of distributed authorship and that internal logic is accepted by the reader, distributed authorship becomes less deviant, although still novel in concept to some. This puts it in the unique position to have enough cultural gravity to be noticed but not so much recognition to be stale or lose its power to provide commentary and conversation. It becomes a desirable means of

transgressive creativity. This desirability, I feel, is an important aspect of distributed authorship in multicultural (or any) texts. Although many have come to expect author-godship and assume its superiority or normalcy, new media authors and authors from non-hegemonic backgrounds have shown evidence that alternatives exist and are equally interesting and valid. Although fictional representations may differ from non-fiction and those from the current darling creative non-fiction, any example of narrative pantheism undergirds its perceived validity.

Further, these authors show that the some rights reserved mindset is not all that novel nor is it abnormal, although its manifestation in the legal world may be.

Conclusions

These examples provide evidence that those wishing to promote an intellectual property model that also promotes values conducive to multiculturalism in a postcolonial world *should* support Creative Commons. Some rights reserved presents an ideological framework that rejects the subject/object binary, support our rights to cultural critique, and presents authorial alternatives to the traditional singular author-god—these tactics have long been used and supported by authors from non-hegemonic backgrounds as tools to claim rhetorical traditions that more appropriately represent their lived multiple selves. Understanding some rights reserved this way reinforces its importance as a pedagogical tool in situations where singular authorship becomes inappropriate. Moreover, introducing some rights reserved to students can instigate discussions about these shared values, fostering a multicultural environment but not forcing it, as Hairston encourages.

As these examples have shown, the narrative play that many authors from various cultural and social backgrounds use to challenge oppressive binary logic and to represent the multiple

identifications of a *mestiza* existence bely the all rights reserved/no rights reserved binary. Some rights reserved provides the opportunity to change the binary copyright system from the inside out. Villanueva says, “there are attitudes from those we have revered over the centuries which we inherit, that are woven into the discourse that we inherit” (840). And while some of this discourse is valuable, others support an inherently excluding power structure that, as Chunder and Sunder argue, sometimes attacks from both sides. Rather than destroying the copyright system or aligning with one (potentially dangerous) side, some rights reserved acknowledges that multiple copyright possibilities are more appropriate than an opposing two.

An all rights reserved copyright represents the interests of the subject, being protected against potential intrusion / miscegenation from an outsider. Nativist impulses often lead to protectionism of personal or national identity, which can also be extended into authorial identity. With the author-god, the text is an extension of the author's subjectivity, just as many French theorists argued at the inception of copyright laws with the concept of *droit moral*. When the text is seen as the extension of the subject, the protectionist impulse is strong. When the text is a representation of many selves which are not connected to some (monotheistic) author-god ideology, the text is released from the burden of nativism. We can see in the example of Sandra Cisneros an author who rejects the notion of protectionism by embracing the texts of others (in her case, historical texts) and exemplifies *mestiza* narration. As Gloria Anzaldúa explains, “The future will belong to the *mestiza*. Because the future depends on the breaking down of paradigms, it depends on the straddling of two or more cultures. By creating a new mythos—that is, a change in the way we perceive reality, the way we see ourselves and the ways we behave—*la mestiza* creates a new consciousness” (Anzaldúa, “La Conciencia de la Mestiza: Towards a New Consciousness” 379). Her work shows the negotiation between individualism

and community-based authorship, which reflects the contingencies of today's multicultural environment wherein many selves require recognition. In the twentieth century, as individuals reject the idea that they must choose, we see hybrid characters or authors become even more complex and more challenging. We see the adoption of new vocabulary; for example, rather than the “tragic mulatto” of the 19th century we have Gloria Anzaldúa's powerful image of mestiza consciousness.

African-American examples also exist that uphold a tradition of shared authorship and narrative transgression. As Houston Baker tells us in “Autobiographical Acts and the Voice of the Southern Slave,” in “transmuting an authentic, unwritten self—a self that exists outside the conventional literary discourse structures of a white reading public—into a literary representation' the ex-slave loses an 'authentic' self” (qtd. in Herndl 263). Diana Price Herndl goes on to explain that the slave narrative tradition met requirements of the “prescribed form” (263). In meeting that prescribed form, they were denied the opportunity to create their own text, informed by the experiences and pre-existing traditions of their own culture, forced to mold their experiences to the culture of others. In other words, they were forced to meet the standards of the author-god to publish in an infrastructure that required it but when possible used signifying to transgress the norm. Anzaldúa, Cisneros, Acker, Chesnutt, and so many more not mentioned show responses to the long and still on-going conversation about multiple positionalities of those who have often been denied subjectivity. In these examples, we can see that the traditional Western subject *can* be excised from a text and it still be left standing, meaningful, interesting, authoritative, and relevant.

Although Creative Commons did not exist when these many of these texts were written, they show that authors from various backgrounds have historically and contemporarily used

strategies that parallel those encouraged by Creative Commons such as the sharing and manipulation of texts whose origins lie elsewhere. Their narrative structures challenge the reader's idea of the role an author should play in the text: mainly that the creator of a text must rule as author-god over it, the text must be an extension of the author's very being and come from the author's own genius. We can also see in these examples the promise that the proliferation of Creative Commons copyright might encourage authors from non-hegemonic backgrounds to compose. As Chander and Sunder describe, no rights reserved can be as harmful as all rights reserved because it opens sacred texts up to exploitation. Some rights reserved and other non-binary copyright options “break the binary” and ignore the romance of fundamentalism on either side. Andrea Lunsford suggests we find “methods [that] work toward a balance between protecting individual dignities and rights—especially those *not* protected by earlier regimes of intellectual property—and protecting the public good” (536). The flexible, low-stakes nature of Creative Commons provides a venue for more authors to compose this way and for more understanding of the validity of this narrative play.

Creative Commons acknowledges—in fact, encourages—a system where multiple voices interact together. These voices are not segregated as “multicultural,” but all enter the system on the same plane. As Royster says, “we need to get over our tendencies to be too possessive and to resist locking ourselves into the tunnels of our own visions and direct experience. As community members, we must learn to have new faith in the advantage of sharing. As strangers, we must learn to treat the loved people and place of Others with care and to understand that, when we do not act respectfully and responsibly, we leave ourselves rightly open to wrath” (615). Texts, therefore, present a myriad of possibilities and directions informed by a world of human

experiences. Some rights reserved does reserve some rights of the original creator of the text, but negates its existence as a singular subject from which object manifestations must be protected. More than that, it represents the possibilities for multiple subjectivities and contingencies that inform the negotiations we participate in every day.

CHAPTER 6

SOME RIGHTS ARE RESERVED: TOWARDS A COMMONS PEDAGOGY

The distance between intellectual property laws passed in the halls of Congress and the first-year or advanced compositions being turned in in the halls of higher learning is short. All writers, whether creative or academic, are affected by international copyright laws and the ideological powers behind them. The discipline of composition's short history shows this connection, for example, as the author-god began to be questioned and process pedagogies attempting to challenge it popped up. The materials we use in our classrooms are affected by Fair Use guidelines. Students are constantly creating copyrighted content on-line. We are *deeply* embedded in the culture of intellectual property because the meat of composition studies lies with students and writing. Certainly, every composition theorist has her own unique ideas about ways to teach students writing: an exposure to literature, experience writing frequent blogs, mood boards, traditional five paragraph essays, the writing process, and so on and so forth. The bottom line is, though, that composition studies is about involving students in the conversation about and practice of *writing*. Students, who often struggle to conceptualize their own rhetorical situation, could benefit from a broadened and deepened discussion of authorship and copyright as it relates to *their* writing. To not separate them from other types of writers and to facilitate their awareness of themselves as writers is to reject what Amy Robillard calls the “discipline's collective unwillingness to 'allow' [students] to become authors” in order to perpetuate ourselves as “heroes” (43).

In this chapter, I will show how a commons perspective can illuminate composition issues such as plagiarism and collaboration by providing fresh ideas about authorship. I will also spend significant energy in suggesting concrete pedagogical strategies that can be implemented using some rights reserved ideologies; I am calling these suggestions “commons pedagogy” in order to distinguish them from more traditional collaborative suggestions as I see a distinction between the thought behind traditional collaboration and a focused pedagogy fostering (but not solely using) commons tactics. While many collaborative pedagogies actually reinforce the idea of a singular subject as author (even if that subject represents several individual manifested as a single textual identity), commons pedagogy would open up possibilities for textual remixes, derivatives, copying and pasting and other of the strategies I have previously discussed. As Lisa Ede and Andrea Lunsford have pointed out, theorists often enjoy theorizing about the theoretical concepts I have laid out in this discussion but then neglect to provide practical alternatives to the hegemonic conventions of the classroom (“Collaboration and Concepts of Authorship”; see also Rafael Heller). Therefore, I suggest that we should seek out assignments that challenge previously long-held ideas about authorship and, in fact, structure classrooms in such a way that a continual engagement with the concept of authorship is sewn into the fabric of the classroom. For after all, what is more central to the composition classroom than the function(s) of the author?

In the 1997 essay “Students, Authorship, and the Work of Composition,” Bruce Horner argues that in the university, “there is resistance to recognizing the social production of consciousness because it undermines the concept of the Author as a quintessentially autonomous (masculine) individual on which English literary study—and academic institutions and capitalist ideology generally depends” (508). In other words, there are institutional reasons for resistance

to the commons: we are all invested in the idea of individual genius. Often jobs, salary, tenures, fame, and awards depend on it. Horner continues, “This concept of the autonomous Author is linked to the removal of writing from the social material world, redefining it from a socially located activity to an aestheticized, idealized art object—from writing as an activity engaged in to writing as an object produced for the sake of 'art'” (509). When students consider writing a piece of art—finished and static in its art-ness—they often become frustrated because they cannot force their process to look like what they expect art to be, and they don't know where to begin to make themselves the genius author-god they believe society and their instructor expect. How often do writing instructors hear a student say “I'm just not a good writer”? This attitude is the enunciation of the students' conception of the disparity between composition as a verb-activity and composition as a noun-text. Certainly, a composition is a noun-text, but the work of a composition classroom should be focused on the verb-activity. We can see this epistemological change in the composition shift of the mid-20th century from product to process (see Berlin Chapter 6). Yet, the now hackneyed process pedagogy we are so familiar with changed much in the activity of the classroom but little in the ideology of student authorship. After completing *the writing process* (pre-writing, drafting, revising, and then editing while being carefully monitored and assessed by the instructor on how well they complete *the writing process*), grading is still centered around the noun-text created by a singular author-god, whose process may have changed through process pedagogy but whose authorship identity really has not.

The ideological changes technology has fostered allows teachers and students the opportunity to move past these “habits of mind” and into a new commons space. Let me be clear: commons opportunities allowed by composition technologies do not *automatically* or

necessarily lead to commons pedagogy. Common sense should tell us that a tool in the wrong or even lazy, tired, or ignorant hands can be either ineffective or dangerous. We have learned this lesson already in the new technology age with instances of cyber-stalking and identity theft. However, used in conscientious, careful hands and circumstances, classroom technology can achieve many pedagogical goals, including student engagement with the malleable concept of authorship for the metamorphoses of technology have been the catalyst for many of these changes in thought.

Literature Review

Rhetorical and composition theorists have thus far been a huge part of this conversation, and will certainly continue to be. Indeed, Andrea Lunsford and Susan West claim that the current conversation in intellectual property has stemmed from conversations in language studies, including rhetoric, that challenge the subject: “chief among the forces urging reconsideration of the ideological, political, and material bases of traditional intellectual property have been the discourses of poststructuralist theory, which have for the past three decades called attention to precisely the point that knowledge is a cultural production, one that can never be attributed to a stable, knowable, singular agent” (391). Other factors include scientific advances and challenges from technology. In their 1996 manuscript “Intellectual Property and Composition Studies,” Lunsford and West call for more composition theorists to involve themselves in intellectual property discussions, stemming from the 1994 creation of the CCCC Caucus on Intellectual Property and Composition Studies (CCCC-IP) and as a reaction to the “Copyright Awareness Campaign” which would teach even children to guard their own intellectual property with the same fervor with which they would guard their toys (383). Since

that call, composition theorists have answered with fervor, focusing on plagiarism issues and the singular author problems of collaborative writing in a copyright environment.

The 2005 collection *Writing New Media* offers both practical and theoretical answers for the dilemma of how to use new media composition in the classroom in a way that produces benefit rather than remorse by increasing understanding of the author-function in that situation. In this collection, Johndan Johnson-Eilola says, “In our postmodernist or social constructionist cultures . . . we in rhet/comp understand ideas as forming in contexts, in social situations. It's difficult or even impossible to find completely original ideas. So, the argument goes, what right should any single person have over an idea?” (203). Although we fight for our personal work to be published as academics, we each build on the work of others.

Standing in the Shadow of Giants: Plagiarists, Authors, Collaborators by Rebecca Moore Howard argues for a pedagogy that acknowledges the way most academics do their work: by using the fair use guidelines to patch together an argument built off previously constructed work. In another manuscript, “The Literary Production of Power: Citation Practices among Authors and Students,” Howard brings power dynamics into the punishment of plagiarism saying, “whether a plagiarist is punished or celebrated depends in large part upon the writer's extrinsic *ethos*, and the punishment or celebration affirms the pre-existing hierarchical status of the writer” (par. 3). She further discusses how, as advanced academic writers submitting to academic journals, academics are often encouraged to assert their own authorial voice more while younger, more inexperienced authors are encouraged to heavily cite (I, myself, have even provided the advice to students “Better safe than sorry” when they've asked if they should cite information). She claims this power differential serves a purpose: “the pedagogical obsession with citation becomes a pedagogical obsession with denying students the **possibility of**

authorship. And thus not only the act of plagiarism but also the act of citation affirms the student's lowly authorial status and accomplishes the student's exclusion from academic subjecthood" (par. 6, emphasis hers). Howard, therefore, equates academic citation and student authorship with subjectivity, and our current pedagogical practices perpetuate the idea that subjecthood, as she calls it, is to be striven for and will be kept from them if they do not abide by our rules.

Similar to Howard and Bartholomae, in Kelly Ritter's 2005 essay "The Economics of Authorship: Online Paper Mills, Student Writers, and First-Year Composition" that many students intentionally plagiarize by using online paper mills because they are not invested in the economy of academic authorship. While we often see students who buy papers online as simply cheaters while students who might "unintentionally" plagiarize as more complicated cases where students could possibly be brought into the academic fold with some better training, Ritter argues that the intentional plagiarists also offer insight into the greater issue: "there are compelling reasons that an examination of the consumer-driven discourse of online paper mills should be integrated into our research on student authorship, in the context of how it competes for, and often wins, our students' attention" (602). Her text explores the ways authorship is often viewed by first-year students (and beyond) as uncomplicated; writing is seen as an "economic rather than an intellectual act" (603). Indeed, this reinforces/is reinforced by the public-at-large's view of uncomplicated authorship that is economic in nature and, therefore, should be strictly protected by copyright law. In the end, Ritter argues that composition classrooms can be sites where we reject the notion of authorship as economic. She warns, however, that "those who do not *want* to learn how authorship builds and validates a writer's identity will find ways *not* to listen" (625).

In 2008's *Plagiarism, the Internet, and Student Learning: Improving Academic Integrity*, Wendy Sutherland-Smith argues for a more nuanced view of authorship through plagiarism beyond “that is clearly someone else's intellectual property” and “that is clearly the student's intellectual property.” In her text, she uses a framework she calls a plagiarism continuum, which envelops legal, literary, composition studies, and cross-cultural notions of authorship. She offers what she calls technological solutions, procedural solutions, and holistic solutions. She points out that although we often focus on the author as the central character of plagiarism, the reader plays an equal important role: “Teachers' responses to plagiarism are manifestations of their roles as interpreters of textual meaning” (16). In this light, Sutherland-Smith also argues that *intention* of the author has become the focus of many plagiarism discussions; she calls intention the agreed key element because if plagiarism is a “quasi-criminal offense”, then we must know the intention just as in a murder trial the intention of the murderer defines the crime as 1st degree or 2nd, for example (20). Throughout her text, she illuminates the ways we liken plagiarism to criminal activity when it is, in fact, an academic activity at best or an immoral one at worst. In this, she says that the word or concept of plagiarism is “derived from the Latin term for plundering. In fact, the idea that kidnapping the words of others, as a child is kidnapped from a parent, is appropriate to explain the way in which plagiarism is defined” (137). Further, she claims that “the role of Western legal discourse has been the primary tool used to fashion plagiarism policies in our institutions” and that these policies “have guided our practices as teachers” (55). In the end, she argues that we should not view plagiarism so much as stealing as “a form of fraud” (47).

Sutherland-Smith also introduces the idea that we perceive an increase in plagiarism as a result of the availability of information on the internet, but she cites research that shows that the

case is really that “the Internet has provided a space for those students already plagiarizing to increase their plagiaristic activities” (102). Likewise, Rebecca Moore Howard's 2007 article “Understanding 'Internet Plagiarism'” suggests that we only sense an increase in plagiarism with the internet because we fear its uncontrolled boundaries. She says, “teachers subscribe to plagiarism-detection services instead of connecting with their students through authentic pedagogy” (12). In her interaction with teachers who assign written tasks, she finds that not only do instructors believe the Internet provides the “opportunity to plagiarize” but that the students may not understand or analyze the texts they copy, which is also a counter-productive to the goals composition theorists have for our students (105). Surprisingly, however, her research showed that students who found information on the Internet were actually more likely than students who did not use the Internet for their academic studies to be able to explain what plagiarism was. Students who use the Internet were actually *more* likely to cite than those who did not. Her study found, as many compositionists know anecdotally, that the assumption that just because we talk about plagiarism in class does not mean that students actually understand what it is and how to avoid it is completely wrong (121). However, “with better understandings of plagiarism, students will be able to utilize Internet information more effectively and appropriately” (119). She outlines the major issues raised by teachers: that the students aren't prepared, that students and teachers have differing definitions, that detecting plagiarism is “time-consuming,” that the guidelines for reporting it are unclear, and that the “curriculum guidelines . . . discourage assessment options that can deter plagiarism” (182). She also outlines the most common ways teachers attempt to reduce plagiarism in their students including different types of assignments, showing them your own citations, and building assessment skills, adding a practical dimension to her discussion.

In Amy England's 2008 essay "The Dynamic Nature of Common Knowledge," she argues that one of the reasons students find the concept of plagiarism so confusing is that the nature of common knowledge is often misunderstood. We tell students that if something is "common knowledge" it need not be cited, but clearly defining common knowledge is quite difficult. In a recent article in *The New York Times*, "Plagiarism Lines Blur for Students in Digital Age", Trip Gabriel reports that a University of Maryland student who was caught copying and pasting from Wikipedia "thought its entries—unsigned and collectively written—did not need to be credited since they counted, essentially, as common knowledge" (par. 3), which shows a confusion between what is common knowledge and what is a form of collective wisdom, still requiring attribution. Amit Ray and Erhardt Graeff point out in "Reviewing the Author-Function in the Age of Wikipedia" that, while in composition questioning authorship is accepted, in the public eye singular authorship is still the most commonly seen as an individual act and is often unquestioned. Wikis, however, blur the line between reader and writer into a singular "user" function. In this, wikis give us the opportunity to discuss the strengths and weaknesses of collaborative writing as they are "continually negotiated and articulated through a community of users" (40).

England argues for a "more dynamic definition of common knowledge" and pedagogical approaches to teach plagiarism. She points out that if we base our definition of common knowledge on the availability of the information, that is often compromised because of the thousands of sources that might hold the same information on the net; our threshold for duplication on this point has been raised. We also often assume, for example, that common knowledge is static amongst us all, but it might also apply to a community of people. For example, I recently presented to a group of students the sentence "The Kentucky Derby is one of

the most well-known horse races in the world” as common knowledge. Surprisingly to me, some students did not know what the Kentucky Derby is, most likely due to a background from a lower socio-economic status that would not have been exposed to the Kentucky Derby, even on TV or in conversation. It was a lesson well learned for me. Common knowledge is very difficult to define when, in a multicultural, polyvalent world, our life experiences are so different.

Likewise, Laura J. Murray's 2008 essay “Plagiarism and Copyright Infringement: The Costs of Confusion” argues that we're not quite sure how to define plagiarism. Murray argues that we seem to have this “widespread hunch” that “plagiarism is a matter of ethics, and copyright is a matter of law”; that is incorrect, however, because both involve ethics and some form of law and punishment (176). In this text, she attempts to more clearly define plagiarism in a comparison to copyright law. Copyright is a “crime against the individual” while plagiarism is a “crime against the group.” In other words, copyright infractions might break the law, but plagiarism hurts our feelings because it breaks a tacit academic agreement to give credit where credit is due as we build our knowledge bases. She argues that we must insist on identifying the differences between the two and that we can help that endeavor by making our own practices known: “citation is the currency of our research” (176). She says, “By explaining to students and university administrators that unauthorized, cited use of others' work is essential to our mode of knowledge production, university writing teachers can contribute to a larger citizens' movement to design and clarify nonproperty economies of knowledge” (176).

Like Sutherland-Smith and Murray, Margaret Price argues that approaching the way we define and fence in aspects of plagiarism affect students' understanding. Her 2002 essay “Beyond 'Gotcha!': Situating Plagiarism in Policy and Pedagogy” acknowledges that “complicating factors in defining plagiarism range from critiques of the idea of author, to calls

for more attention to collaborative work, to arguments that the concept of plagiarism may change or lose its meaning across cultures” (89). She argues that at least one of the reasons many find difficulty in clearing up this confusion is because they insist on seeing plagiarism as “fixed and absolute” rather than shifting to meet the rhetorical context of each situation, culture, or historical moment (89). Speaking directly to composition theorists and laying some onus upon us, she says “Although not all composition scholars identify as adherents to a poststructuralist point of view, many, including myself, do to some extent. And yet, when it comes to plagiarism it seems that all of us rely upon a fairly unified notion of self” (94). She explores and analyzes several institutions' plagiarism policies and suggests that in order to alleviate this we should emphasize the contextual aspects that shape the particular situation for the student and ask students to participate in the conversation.

The rejection of the “unified notion of self” comes up often in composition discussions focused on plagiarism or the student writer. Bruce Horner's “Students, Authorship, and the Work of Composition” (1997) discusses how even the term “student writer” insinuates a power differential between Author and student writer. Indeed, he points out that work in composition theory has previously shown that “the Author/student writer binary has maintained the institutionally marginal position of Composition in relation to literary study in particular as well as to the academy in general” (505). As he argues, the academy is well-invested in perpetuating the idea of the singular subject Author because it is “linked to the removal of writing from the social material world, redefining it from a socially located activity to an aestheticized, idealized art object,” which not just anyone can create, analyze, criticize, etc (508).

More recently, Amy Robillard reconfirms the power differential between student-authors and author-authors in the 2006 essay “Students and Authors in Composition Scholarship.” In

this text, she claims that we often perpetuate the idea of students as children in need of our help in order to keep ourselves in a position of authority and that we bring them “into publication (but not into authorship) for someone else's purposes—for *teacher's* purposes” (42). To do this, we paint narratives of students negatively, we refer to them by first name only in our publications rather than last names as we would “real” authors, we construct students as passive rather than active, and we negatively compare students to professional writers. In doing this, “how can students *not* come up lacking?” (53). She argues that in these acts, we also “[reproduce] the entire field of Composition Studies . . . as substandard, of low status” (46-7). In order to reject this substandard status, Horner argues, succinctly and basically, that we need to treat students as authors rather than student writers, although he warns:

Pedagogies aiming to teach students to achieve “authority” through adopting strategies found in already authorized texts sidestep the social relations inherent in the authorizing of those texts while attempting to assimilate students to conventional textual representations of authority. . . Pedagogies encouraging students to break from such conventions, while avoiding this assimilationist move, nonetheless risk a similar reification of authorship, locating it in novel text-objects which students are then encouraged to produce. (519)

Collaborative pedagogies, then, and others such as contact zones or multiculturalism can merely uphold the old ideologies that so many of us reject by reifying texts and authorship rather than the “social and material practice” of writing (526).

Collaborative pedagogical theories do play a large part in setting up a precedented discussion for the breaking down of the idea that only singular authorship should be valued and rewarded. Candace Spigelman's 1998 essay “Habits of Mind: Historical Configurations of

Textual Ownership in Peer Writing Groups” argues that the way we view intellectual property issues are formed out of “habits of mind” (234). In this, the tension between singular authorship and collaborative authorship is embedded in the tension between competing world views (237). Because “few students bring to the composition classroom any familiarity with the history of copyright legislation,” the only insights they bring into the classroom are ones they have taken from their own experiences (frequently on the internet) or exposure to media representations of intellectual property such as the Napster debacle. These may represent views of intellectual property at odds with each other: one that links and share and remixes frequently throughout the day and another that paints sharing and remixing as criminal activity. Therefore, she suggests a “discourse of intellectual labor in peer writing groups” that would place the students as actors in the conversation rather than observers (241).

In that same year, Kathleen Blake Yancey and Michael Spooner's “A Single Good Mind: Collaboration, Cooperation, and the Writing Self” interrogates the meaning of collaborative through a conversational text. They echo John B. Smith's delineation between collaboration and cooperation, which distinguishes collaboration as the work of more than one person integrated toward one goal as if it came from “a single good mind” and cooperation as group work wherein the group members “carry out their individual tasks in accord with some larger plan” (Smith qtd. in Yancey and Spooner 50). Through their conversation, they attempt to clarify some of the confusing elements frequently discussed in collaborative pedagogy texts, including collaboration and cooperation; common and commune; authorship and identity. They suggest that “we might have to invent new genres” in order to enact the ideas so many espouse, which I would argue has been accomplished in the last twelve years through the popularity of wikis, blogs, and other technologies that support a type of writing beyond the individual. In this way, they also seek to

enact movement beyond the theory by saying, “Multiplicity, transaction, community, intertextuality mean nothing if they stop at the end of the page” (61).

Echoing that sentiment, Rafael Heller asks us to define “immediate goals as modest and near” in order to give the collaborative pedagogy discussion some grounding and weight in the 2003 essay “Questionable Categories and the Case for Collaborative Writing.” In this text, Heller constructively criticizes collaborative pedagogy theorists asking, “could it be that exhortations to teach and to practice collaborative writing make very little difference at all?” Heller argues that the critique of the singular author is not enough to replace it; critique alone does not provide “a coherent and consistent foundation upon which to teach” (303). Heller ignores the previously discussed delineation between collaboration and cooperation and uses the interchangeably and simultaneously searches for the “subject of collaboration”; whether intentionally or unintentionally, this neglect of nuance somewhat spits in the face of those working to unplug the idea of the singular subject from authorship, not to look for a way to replace it with a collaborative subject, necessarily. This syntactic choice may be an intentional jab to show that the subject cannot be escaped from, but the lack of illumination on the choice makes it unsettling. Further, I disagree with the point that if we bring intellectual property law into the classroom that we also have to bring “institutional climates, job markets, student loan options, and the complexities of human motivation” (314). While these topics might come up and be useful, they are not inherently connected to writing as authorship is; therefore, I find that argument weak. However, Heller's points that lofty goals for replacing the singular Subject in one semester with our students is unlikely at best and disastrous at worst is well-taken.

Therefore, I will attempt in the discussion following to ground the theories I have previously

discussed in a practical, and “modest,” description for ways teachers of writing (in any discipline but particularly focused at composition) can enact a commons pedagogy.

Commons Pedagogy Defined

In order to effectively argue for a commons pedagogy, I must first define it and distinguish it from other approaches. I contend that a commons pedagogy applies classroom practices that actively and tacitly expose students to concepts of authorship beyond the singular, Romantic author-god genius and a free-for-all culture that would encourage students to be involved in the discussion, developing their own definitions of authorship and intellectual property as opposed to merely receiving that information as if it were static and unchanging. Concerns have been raised in the past that composition as a field does not have a solid topic of study because a text could be about so very many different things. This is probably why we so often argue to avoid composition classes being viewed as a place to impart some skill upon our students (*shudder*). I stand firmly upon the assertion that composition does have a topic: authorship. No other topic or concern is more central to every composition situation than that of authorship. A commons pedagogy, therefore, focuses on authorship above all else. While any number of topics from multicultural studies to art to fly fishing might be used to give immediate interest and purpose to a task, the ultimate context revolves around the students' and instructor's exploration of who, what, how, why, and where an author(ship) is. Because the idea of authorship is so enmeshed with discussions of plagiarism and collaboration, they are essentially part of this definition.

Plagiarism

Changing our conception of the pedagogy of plagiarism is essential to this discussion for presenting a concept of who the academic author *is not* (as is often the case with plagiarism discussions) bears important repercussions for the perception of who that author *is*. I do not suggest more lenient plagiarism policies but rather a more thoughtful approach to teaching students how to avoid plagiarism. Often when presenting plagiarism to classes, instructors merely give students a list of things not to do, which indicates that plagiarism is a matter of static definition: **this** is what plagiarism **is**. And, as Price points out, we often expect students to merely read a handout on plagiarism, understand it immediately, and then apply it to their writing practices. Then, we punish them when they infringe upon these rules that they may not understand as we expect them to. Certainly, there are some deviant and malicious students that go out looking for papers to buy knowing they are committing an act that could wreak potential disaster on their academic careers and not caring. I would argue that those students are the exception, though, and there is no pedagogical strategy that will stop a deviant from being a deviant or laziness from begetting laziness. However, we must understand that for some students the pressure to make a good grade in a class far exceeds the pressure to succeed in the course by engaging in the activities set forth by an instructor who is, ostensibly, an expert in that field. In fact, the more “expert” the instructor is perceived to be, the more nervous or fearful the student may become to reveal his inadequacies, tempting him to find something worthy to show the professor (almost as someone might sacrifice an offering to an idol-god/author-god). While we often react to plagiarism with “Does this student really think I’m so stupid that I wouldn’t catch this?”, the student might, in fact, experience the exact opposite—that he is the one with inadequacies.

A dilemma does occur, then, in our neglect of students who could reach a more complicated understanding of themselves as authors with a more positive and *active* incorporation of plagiarism and authorship into composition classroom pedagogy. (Even in saying “themselves” I am faced with the contradiction of the complication of the individual “self” in authorship in the face of students who require individual assessment and grading in the classroom.) Price rightfully claims that “a significant obstacle to resolving this dilemma is our desire to avoid complications, to present plagiarism as something fixed and absolute” when in fact “plagiarism is a dynamic and locally mediated idea, not an unmoving, absolutely knowable rule” (101, 89). Many of us in composition or, in fact, the vast majority of individuals who have come through a graduate program in English as a Graduate Teaching Assistant, have had the experience of teaching first-year composition and being required to present the university or college's plagiarism policy. In most of those cases, these first-year composition instructors are given little to no guidance in how to incorporate plagiarism discussions into their classes and are certainly not encouraged to incorporate authorship discussion into the plan and pedagogy of their classroom in order to (a) decrease plagiarism and (b) decrease the obsession with “gotcha!” plagiarism tactics and to replace it with more positive and productive discussions about authorship as negotiated idea and historical construct.

Further complications arise when we include instructors outside of language studies, who may find authorship even less complicated than those within. As Mike Rose discusses in “The Language of Exclusion: Writing Instruction at the University,” far too often, writing is seen in other disciplines as a focus on skills. He reports how writing in other disciplines is unproblematic and “more or less a transcription skill” (555). If writing is unproblematic, then authorship is equally unproblematic. But, as Rose presents, “Writing is not just a skill with which one can

present or analyze knowledge. It is essential to the very existence of certain kinds of knowledge” (555). Of course, this tradition of thinking good writing an easily taught and marketed skill can be traced back to the earliest days of composition in the university.

Berlin's seminal *Rhetoric and Reality* from 1987 tells us that much of writing instruction when English departments first began to take form at the end of the Nineteenth Century came from pressure to seem equally important and rigorous as the scientific disciplines and led to a practical orientation for teaching writing (21). Further, because English was to be the main language of the universities in America—focusing on American literature and building an American intellectual identity—writing instruction in English became important. As English departments continued to shape themselves, writing instruction was relegated to freshman year, and then pushed into high schools as a prerequisite: “In 1874, Eliot introduced a test of the student's ability to write in English as a part of the Harvard entrance requirement” (23). In the narrative all composition theorists are familiar with, Current-Traditional pedagogy focused on the object produced in the act of writing, enforcing the idea of writing as a skill that could be achieved. As a reaction, process pedagogy focused on the steps taken as the subject created the text. Since that shift, a Renaissance as Berlin calls it, composition theorists have been truly frightened to refer to our teaching as skills based.

In contemporary English departments, Price says, “Although not all composition scholars identify as adherents to a poststructuralist point of view, many, including myself, do to some extent. And yet, when it comes to plagiarism it seems that all of us rely upon a fairly unified notion of self” (94). Perhaps this reflects the ever-present problem of how we practically apply theory (much like the almost paralyzing theological question of “If God, why evil?” academics have “If post-structuralism, why write?”). Yet, it might also reflect the desire of many lower-

level English instructors to teach literature, in which the “authenticity” or “subjectivity” of the author's work has supposedly already been decided and is taken for granted, rather than composition where these difficult questions of authorship require constant attention. For graduate students and junior faculty, constant academic work and focus on one's own academic writing may work to overshadow what we were mere months ago (and, in many ways, still are): nervous, unsure, or overly confident students learning how to make it in the academic world who need guidance and advice to succeed within it and question it.

I, and I am sure many other first-year composition instructors, sympathize with Price's question: “How, I wonder, shall I go about teaching an accurate and usable definition of plagiarism, while also teaching the habits, value, and *values* of collaborative work?” (95). I suggest that this frustration is representative of the struggle between a strictly text-focused definition of composition and an action focused definition of composition. In a text-focused classroom, the created product (static noun) is the most important thing, whether it comes from a single bursting forth of genius or *the writing process*, for, as Lad Tobin points out, “even the most product-oriented teacher accepts the fact that writing occurs in a series of steps and stages” (7). In light of Tobin's insightful comment, I would argue, then, that process pedagogy and a product-oriented mindset are not mutually exclusive ideas. An instructor can require or encourage students to participate in *the writing process* as we have come to know it while still assessing the product only and leaving the social or collaborative aspects of composition unquestioned and unproblematic for herself as an instructor and the students. One step we can take to begin to problematize and question authorship in the classroom is to “explain that what we call plagiarism is located in a specific setting: *this* historical time, *this* academic community . . . we can invite students to add their own voices to that conversation” (Price 90). Indeed, just

the act of making plagiarism a discussion rather than a proclamation could make comprehension of these historically-embedded conventions easier for students.

Continuing down the track of positive action as opposed to negative re-action, another commons tactic that might help students avoid the punishment of plagiarism is merely to encourage them to see the use of sources differently. Rebecca Moore Howard says, “It might be more accurate to think of creativity, of fresh combinations made from existing sources, or fresh implications for existing materials” (Howard, “Plagiarisms, Authorship, and the Academic Death Penalty” 798). Just as Howard suggests that educators often use some elevated version of “patchwriting” in their own works when writing, educators also use various sources and ideas for pedagogical methods including course plans, syllabi, assignments, and lesson plans without giving credit to the person from whom the idea came. Price says “An author who fails to cite has committed a crime, both moral and legal; a teacher who fails to cite has merely been careless” (101). Howard argues in *Standing in the Shadows of Giants* and Margaret Price echoes in “Beyond 'Gotcha!'” that many inexperienced students are accused of plagiarism only because they patchwrite *poorly*. The process of these inexperienced students becoming familiar with and accustomed to the academic parameters of their discourse community can be a stressful one wherein the student may fake his / her knowledge and perceived authority on the subject in order to make herself feel less powerless (see David Bartholomae “Inventing the University”). Price echoes this sentiment saying “Unintentional plagiarism in the form of patchwriting may be almost inevitable for writers new to the customs and rules of academic writing, and it can be responded to as a pedagogical opportunity” (103). She further suggests giving students a sense of agency in their classrooms in reference to plagiarism:

if a class together arrives at a suggestion or clarification for the written policy that they think could or should be incorporated into the local program's statement, they ought to write a collaborative memo to their program saying so. This, too, would underscore students' roles as members of the academic community: individuals not just subject to obeying rules but also responsible for interpreting, upholding, and, perhaps, even helping develop them. (107)

Active participation is the key here. The students are actors (*auctores*, authors) and receptors in the process; they can create and participate in and be held accountable for the parameters they set. For many students, this will be the first interaction they may have with a complicated notion of authorship.

Collaborative Pedagogy

Collaborative pedagogies of the past have attempted to expose students to types of writing beyond the singular authorship with which most people are so familiar. But, as previously mentioned, the manifestations of these ideas sometimes perpetuate the same old ideologies, replacing the finished text as subject from the author-god or coming back to the individual after a brief stint interacting with others. Therefore, commons pedagogy seeks to differentiate itself from former collaborative ideals by embracing both individual and group in the ever-present negotiation represented in all rights reserved and no rights reserved copyright.

As previously mentioned, Lisa Ede and Andrea Lunsford's 1990 study *Singular Texts/Plural Authors: Perspectives on Collaborative Writing* suggests that although collaborative writing has been a catch-phrase for quite some time now, it often “still holds an implicit view of solitary, ordinary authorship” (108). They rightly point out that the very composition theorists

who are often associated with early manifestations of collaborative classroom tactics such as writing workshops and peer review—e.g. James Moffett, Donald Murray, Peter Elbow, and Ken Macrorie—also ironically “hold implicitly to traditional concepts of autonomous individualism, authorship, and authority for texts” (113). In this self-expressivist framework, collaboration comes in the form of peer reviewing and workshopping where an author shares his work with another and receives feedback during his process, leaving him in charge. Most notably, Elbow's *Writing Without Teachers* from 1976, although it encourages group work and has had tremendous effects on composition theory, also insists that writing originates from some sort of journey of self-discovery, leaving the author-text relationship fairly unproblematic.

The physical boundaries of getting collaborators together to work on a single project can often lead to frustration and often the bifurcation of duties amongst collaborators (i.e., you can do the research, I'll do the writing, and Drew can do the editing). Or, collaboration is corralled into the realm of a peer review system that binds students to a one dimensional notion of the social interaction between authors and texts. Candace Spigelman points out in “Habits of Mind: Historical Configurations of Textual Ownership in Peer Writing Groups” that students often see their “peers as assistants, not co-writers” (245). She notes through her qualitative research one student's outlook: “Like a solitary traveler, Andrew asked for directions; his peers gave him assistance and advice, but they 'just' helped out, confirming that his path was the right one” (245). So, even peer review in the classroom (although certainly a useful tool when done in a mindful, conscious way) still upholds the author-god / noun-text vision of composition that students have before coming into the classroom. Spigelman argues that “students' attitudes about authorship and intellectual property rights are, among other things, evidence of certain cultural 'habits of mind,' habits which are shaped throughout their lifetimes and which they bring to their

interpretations of the writing group experience” (234). In other words, peer review can just as easily reinforce the author-god stereotype as it can challenge it. It is a tool and, like any other tool, can be misused.

The difference between that type of collaboration and the collaboration that a some rights reserved mindset fosters is the potential release of individual authorship when appropriate.

Think of it this way: Traditional classroom group work or peer review espouses the idea that “This work is mine. I’m going to let you give input to help me out, but in the end it’s still mine.”

The some rights reserved ideology is: “I began this work, but now you can have it. I only take credit for my part in it.” Collaborative composition, for so long a copyright enigma—who’s the main author? whose name goes first? who gets credit for their academic tenure?—has the potential to become more widely accepted with Creative Commons copyright. This could be further delineated as the difference between cooperation and collaboration.

In *Collaborative Writing in Composition Studies*, Sheryl I. Fontaine and Susan M. Hunter take on the huge task of addressing the many practical problems that can arise in a collaborative classroom. One such task is the difference between cooperation and collaboration, previously delineated by Smith and Yancy and Spooner. What is often called collaborative writing in the classroom is actually cooperative writing, as they describe it: “Cooperative writing appears to require little change or adaptation on the part of individual writers who, once writing tasks have been defined among group members, actually write their parts alone, solo” (38). Fontaine and Hunter point readers to the Lunsford and Ede text *Singular Texts / Plural Authors* in which Lunsford and Ede describe such experiences as “hierarchical” for often one or two people lead the collaborative writing group by assigning tasks and then making sure everything is ready to turn in while everyone else completes their assigned goals separately and reports back to the

group and group leader (235); “that is, it is organized in a linear fashion, structured by the roles of each participant, and driven by the goal of accomplishing a particularly defined task” (Fontaine & Hunter 27).

Thus, what we often call collaborative writing or collaborative work through peer review is actually cooperative work and leaves the students with a hierarchical, academically hegemonic, or simply confusing view of authorship. A commons pedagogy done well, however, can illuminate the difference between collaborative and cooperative for students and allow for a discussion of the place of each in the classroom and outside of it. This discussion can, and should, involve the power dynamics of writing as a social activity:

The social constructionist premises on which early work in collaboration was based have been criticized for an inattention to the unequal distribution of power in any given community. . . . A Foucaudian approach to education, on the other hand, focuses on how power and difference are defined and distributed in community activities. For composition pedagogy, this can mean an attention to the relation between collaboration and hierarchy. (Howard, “Collaborative” 57)

A commons pedagogy would not equally distribute power—that is not its purpose or its outcome. What it does do is provide the opportunity to discuss the ways copyright legislation in the public sector and plagiarism policies in the academic sector perpetuate the power dynamic of the author-god and the student writer in contemporary authorship. Horner argues that “collaborative pedagogies mirror expressivist attempts to create a zone free of power relations within the classroom, but bolster such attempts with a sense of the inherently social construction of knowledge” (514). My suggestion for a commons pedagogy, however, focuses on the negotiations of power inherent in collectivity and sharing rather than its complete eradication. It

also should give students a place to enact commons authorship in an exploratory way as a part of their classroom experience for the purpose of challenging the author-god ideology that, as Spigelman's "Habits of Mind" shows, is long held before students ever reach the post-secondary classroom.

However, while many still cling to the idea of the author-god, the collaborative writing naturally fostered in internet environments can also lead students to a sometimes fallacious understanding of collaborative writing. For example, as mentioned before a student recently caught copying and pasting from Wikipedia incorrectly believed that he didn't need to cite because it was common knowledge. This example shows how easily some students can confuse common knowledge with the concept of collective wisdom or collaborative writing. Indeed, some students do not care for creating a unique identity anymore but would rather like to "[try] on different personas, which the Web enables with social networking" (Gabriel par. 20). As willing as some students are to use internet documents without citing them, many are also okay with what they put out there being used without them being cited (par. 21). Because they work within the economy of the internet, where rhetorical velocity moves the currency of links, likes, and copies, they find the transition into academic citations as difficult as those who rely on strict singular authorship to embrace a shared, commons mindset.

Commons Pedagogy Practiced

Actively using Creative Commons as a tool for enacting commons pedagogy brings together (but does not conflate) the ideology with the technology and the pedagogy. Creative Commons copyright can build awareness of authorial concepts for students as well as problematize it for those of us well into our relationship with academic discourse. Traditional

copyright laws, created for the analog world, were fairly automatic. Creative Commons allows authors to make their texts available or unavailable under their own terms. The invention of the computer and its subsequent incarnation as the personal computer available for use in the home, office, or school is, I argue, the single most important technological advancement since Guttenberg's printing press five centuries previous. And, beginning in about the mid-1980's rhetorical theorists began reacting to the drastic epistemic changes resulting from personal computer use. As Heim's *Electric Language* and Bolter's *Writing Space* explain, the speed with which computers allow us to compose, revise, and publish necessarily changes the author-text relationship. Creative Commons, then, allows authors a way to practically react to that acceleration. Teaching student authors the concept behind and application of Creative Commons provides an avenue for discussing the role of the author in the classroom, which may be beneficial in their recognition of themselves as authors beyond the structured classroom environment. Many authors of the current generation define themselves as authors who embrace outside influence and reject the concept of themselves as author-god. To these individuals, shared or distributed authority is the norm and Creative Commons is an avenue to reach it. Students will benefit from being introduced to the concept as it allows them to see vulnerability and flexibility in writing. They need not see themselves as failures if they cannot write the perfect paper on their own—knowledge, as Foucault demands, is created over time through the interaction and understanding of many texts. If, as instructors, we want to help them acclimate more easily into writers of academic discourse as well as understand themselves as authors generally, we should not penalize them for making use of and studying examples of academic discourse but rather encourage them to find academic pieces they can use to help make their own textual decisions. As long as this work is presented with the understanding that it has been built

on the intellectual property of others—as we all so often do—there's no dishonesty, cheating, or plagiarism. And, the students can see first-hand how knowledge is often created.

As I have discussed, ideology about what constitutes “author” and “authority” have changed due to the proliferation of post-modern theories alongside simultaneous technological advances. By teaching students concepts like intellectual property, plagiarism, copyright law, public domain, and even fair use, we can help to make student authors look “at” their compositions without the fear and apprehension they often have when we just expect them to know how to write an English composition (as author-gods, without plagiarizing, but realizing their place as student-writers, too). Using the vocabulary of Richard Lanham in *Economics of Attention*, to look “through” a text is to read it on the surface-level only, ie. it is what it is. To look “at” a text is to concentrate more deeply on its social, cultural, and economic constructions and ramifications. Many students look only through their texts: “I wrote it, and it says what I meant it to say.” To pay more careful attention to their authorship—to look “at” their texts—is an optimal goal because a more attentive author is, inevitably, a better author (defining “better” as more adept at recognizing one's rhetorical situation and adapting to it successfully). Students with “at” vision into their authorship will be more able to dialogue about it. We should “invite students into a dialogue about the subject, welcoming their perspectives on [the] complexities [of authorship]” (Price 106). Further, we must not only make students aware of these ideological changes and discuss them abstractly, but we *must* have them create texts with this awareness as well in order to give them the opportunity to enact a commons authorship.

The purpose of such assignments is certainly not to give slackers any undue credit but rather to challenge the students' preconceived understandings of what an author is and to give them some freedom from the anxieties of adjusting to academic writing with which we have

become comfortable. As Bartholomae's essay explains, students are thrown into a collegiate environment and attempt to master the various language usage of the different disciplines. We often fail them or discipline them not for a lack of intelligence or effort but simply for not being able to master the academic dialogue as an author-god. I argue that taking the pressure off their individual performance might allow them to understand themselves as authors in a different way and better understand the academic modes that we expect them to master while, potentially, changing those modes to a more contextually appropriate mode suited to our current historical situation.

Bruce Horner somewhat criticizes collaborative pedagogy for its inconsistency, saying it “mirror[s] expressivist attempts to create a zone free of power relations within the classroom, but bolster such attempts with a sense of the inherently social construction of knowledge. They aim to counter the academy's traditional relations of hierarchical authority by creating more democratic relations in the classroom” (514). A commons pedagogy suggests a focus on the negotiations of power, not necessarily on the creation of a power free zone. Power inconsistencies always exist in a university classroom: the teacher will give grades and the students must meet certain criteria in order to receive credit for the course; classroom pedagogies and structures will be documented for accreditation in order for the university or community college to continue advertising itself as accredited and attract students; tenure-track professors must still document their activities in order to be tenured. Commons pedagogy *will not stop this*. What it can do is create a dialogue between students and instructors about authorship that could make the composition classroom less intimidating to students. I am not going to suggest that commons pedagogy is what students need because it is the real world or that commons pedagogy in the composition classroom is going to be the straw that breaks hegemony's back. What I will

do is provide practical pedagogical suggestions for various types of composition classrooms (or, with minor remixes, any classroom that involves composition including history, political science, literature, various technology courses, or many other options) that incorporates commons ideology and provide the opportunity to have more meaningful dialogue about student authorship with the students. These suggestions are intended not to follow popular collaborative methods because a commons pedagogy is distinct from traditional collaboration in its express focus on authorship dialogue. Further, every moment of classroom interaction needn't be focused on the commons in order to achieve its goals. Incremental commons activities embedded alongside other goals can be successful in increasing student engagement with authorship.

The Basic

Assign an in-class composition in groups—it does not really matter what it is, in my opinion, because the purpose of the assignment lies in the discussion afterward. After the assignment is completed, discuss together as a class the difficulties of this kind of collaboration.

- Who is the author of the final text?
- How can that be expressed to receive “credit” for the assignment?
- Is the final product “better” than what they could do on their own?
- Poll the class about whether or not their interaction was cooperatively based or collaboratively based. Which is more difficult/requires more engagement from the students?

Remember that such assignments should not be focused on making the students “collaborate” or “cooperate” as often occurs in the classroom unquestioned and oft-hated by students but rather

on the active demystification of authorship for the students. This type of group writing is distinguishable from the more frequently used collaboration or peer review because, as Horner points out, “while peers can be useful resources for each other in their mutual efforts at learning, for example, they can be so only if they become the right sort of peers engaging in the right sort of 'conversation,' and this requires the direct or indirect 'structuring' of their conversations by the teacher” (515). The type of in-class composition I propose should involve very little instructor structure beyond a very simple prompt, perhaps to take a position on a controversial topic or evaluate a commercial or movie. The simpler the assignment, the more focus can be placed on challenging student ideas of the author. This is the most simple of my suggestions and would be most effective if not used alone. This assignment should merely lay the foundation for further engagement with the commons.

The Remix

For a more in-depth and engaged interaction with the commons, have each student write a small composition and go through the brief process of licensing it under Creative Commons Copyright (<http://www.creativecommons.org>). This will require student access to the internet, but even students who do not have personal computers have access to campus computers; the instructor could reserve a computer lab for this express purpose. This act in itself should hopefully engage the students as the text becomes more than just an assignment and they have reason to see themselves as authors rather than student writers. After the copyright has been applied, have students switch texts throughout the class and manipulate the originals to meet their own new needs. Again, interrogate students with questions such as: Who is the author? Who receives credit for the assignment, and how much? This activity should encompass more

than one session and could, in fact, infect a whole unit. The more time put into it, the more opportunity for the students to actively participate and engage with the concepts.

The Academic

As previously mentioned, commons writing can also provide a space for instructors to help students become more adept and comfortable with the new academic discourse communities they are entering as authors. In order to help them see how academic writing works, write an short academic paper demonstrating the types of discourse you would want them to use for an assignment (and use Creative Commons to copyright it with a license requiring Attribution). Have the students complete the assignment you began and discuss how they can make it their own while still maintaining accepted style and respecting what you started. Each student will remix your lit in a different way. Encourage, or require, the use of outside sources and research so the students see their textual interpretations in the larger arena of academia outside the classroom. This also opens the door for citation discussion in the classroom where you can emphasize to students that “citation is a convention, and conventions shift across time and locations” (Price 106). Presenting citations as a convention to be used for academic success rather than a rule to be followed “or else” in light of this larger work on intellectual property and copyright law opens doors for a new way to teach authorship in the classroom. One way to accomplish this is to make students aware of the ways citations work in that they are the “currency of [academic] research” (Murray 176). When plagiarism becomes a strictly copyright issue, it comes “at the cost of academic freedom for the student, who must now grovel for permission where she previously only had to footnote with grace” (179). In this way, the instructor will show how some rights reserved works having reserved some rights of the original

text for himself while leaving the right to remix in the commons to the students and also bringing the researched authors into the mix as well.

The Policy

This series of activities would be best enacted after having completed several discussions and/or assignments using commons pedagogy so that the students are at least familiar with the basic concepts involved. This suggestion also draws heavily from Price's suggestions in her work "Beyond Gotcha!" Supply the students with your institution's plagiarism policy, or require them to flex their research skills and find the policy themselves. Have students in smaller group or as a whole class interrogate the document:

- What are its biases?
- What values does it uphold?
- What values does it ignore?
- What parts of it could be updated?
- What parts seem reasonable?

Then have the students respectfully re-write the policy, if they feel any revisions are needed. This also offers them the opportunity to see how texts are flexible and do change overtime as necessary. Further, in addition to changing the policy, have them write a text analyzing it and explaining the choices they have made. Offer them real world ramifications for the choices they have made for revision. They could take the documents respectfully to the appropriate administrator, publish their work as an editorial in the school newspaper, or present the text to the school's SGA as a proposal for action on the part of student government. The students

become participators in their roles as authors, defining for themselves who and how an author is and why in the particular where of the academy.

The Director

For instructors comfortable with a more aggressive new media approach, one option I propose is to assign a short digital movie that requires students to search for images and music that the licensee has given permission for so that the students can see how they can collaborate with a person they've never even met and share authorship of the final creation (for easy searching for CC copyright materials, creativecommons.org and commons.wikimedia.org are great resources). Windows MovieMaker or Apple iMovie are both widely available and easy-to-use software systems. This does require access to the technology and the instructor's knowledge of the software, but—on most contemporary campuses—the technology should be readily available or could be made available by working in tandem with Information Technology staff. If the instructor is unfamiliar with the technology, a self or software-created tutorial and a practice run or several should make the instructor familiar enough to instruct the students. If not, again, I suggest making use of faculty and staff in other department such as the library or Information Technology. Someone is certainly familiar with the software and might make themselves available to provide instruction on use of the software.

Conclusions

While theorizing about authorship and its use in the professional world, compositionists are still in the business of teaching students. As Martine Courant Rife says, “While public figures such as Lawrence Lessig, Jessica Litman, and Siva Vaid Hayanathan argue that the law needs to

be changed, we have classes to teach” (145). Any of these suggestions must be approached slowly and syncretically, building on basic understandings to foster more complicated and nuanced ones. Our students are smart enough and capable enough to undertake such discussions. As Lessig repeats in *Remix*, according to Breitz, people “are usually—incorrectly in my opinion—conceived of as mere absorbers of culture rather than being recognized as having the potential to reflect culture creatively” (qtd. in Lessig 9).

The important thing to remember when emphasizing “some rights reserved” in a commons pedagogy is to avoid extremes on both sides. The commons is not about elevating individual capitalistic identity within a group or crushing it in favor of a socialist economic literary practice, as I am sure many might criticize. It is, however, about the “ongoing communication between instructor and student during this process of learning” (Price 103). Often, we hit on the topic of authors only briefly; far too often, this “hit” is in the form of a plagiarism policy lecture wherein students are expected to immediately recognize the value of such a policy and know how to use it. Price argues that “Far from being a one-day issue—the day the policy is handed out—plagiarism, attribution, and authorship should be ongoing topics through-out the semester, to be revisited from many different angles” (109). Department or university goals for composition can still be reached using a commons pedagogy; in fact, they may become more than just checkpoints with the increased consciousness of authorship because students may be able to articulate the need for such policies or question them intelligently. Rebecca Howard suggests in her essay “Plagiarisms” that as composition instructors, it is not our job to choose or push upon our students “sides in a theoretical debate but to acknowledge the dialectic that operates around the notion of authorship and to try to draft institutional policy that incorporates this dialectic” (Price 96). We should include students in this dialectic, and there is

no better way to prepare students for that than to challenge their ideas of authorship and have them become authors, with their all the complicated-ness that involves, in their own rights.

FINAL THOUGHTS

The prosperity of a more flexible copyright system must be important to us now because, without appropriate attention, we run the risk of becoming even more entrenched than ever in a reactive, binary argument that misrepresents the needs of today's authors, many of whom expect a certain level of sharing, of distributed authorship, and of new media rhetorical velocity. Particularly, we rhetoric and composition theorists should insert ourselves into this conversation because its ramifications may very well affect how we are *allowed* to conduct our classrooms and publish our research in the future. As Martine Courant Rife points out, “we are stakeholders on both sides of the issue, the copyright holders and those who need to use others' works in order to do writing and research” (152). Intellectual property is not a concept that should be left to policy-makers to decide when the very lifeblood of our field—surely, academia in general—is at stake. Perhaps this sounds dire or overly romanticized, but, as this discussion has shown, the tenor of the current conversation is often emotional and romanticized. We should support a seriously-implemented alternative that rejects reactive measures and ideological dogma that vilifies the opposition. A moderate stance is the best option for our current technological, intellectual, and legal climate.

The history of copyright law discussed in Chapter 2 shows that copyright has never been static. There was a time before it existed and its development has been marked with changes, improvements, and revisions. Therefore, copyright maximalists who wish to claim a connection to a tradition of strict adherence to a single, intellectual property authority either mislead themselves or have been misled. Post-structural language theories have been committed to

disconnecting the author from his text completely, to rejecting the stability of language. Therefore, to embrace a strict all rights reserved copyright framework is to reject the work of Derrida, Butler, Foucault, Ong, and Barthes. It is, furthermore, to willfully ignore the possibility that harm may actually be caused in a strict all rights reserved environment as copyrights are extended far beyond the lifetimes of the copyright holders and texts are kept out of the public domain and as lobbies for stricter protection make every day people using the internet as it has naturally evolved into criminals. Further, the stronger maximalist copyright movements become the easier it will be for them to whittle away at important copyright protections such as fair use—which is essential to our rights as academics to teach, to conduct research, and to critique—in the name of the protection of intellectual property.

Likewise, copyright minimalists who argue that all work should be in the public domain to be used by anyone at all times ignore the distinct possibility that while that may sound equitable in theory, it actually perpetuates a power dynamic that values those already in power and uses for its benefit those who have protected cultural documents and practices from exploitation for generations. While supporters of this mindset may argue that Creative Commons does not go far enough to negate the ideology of the author-god found in all rights reserved copyright protection, this dissertation has shown some rights reserved to be a powerful tool with potential to bridge the gap between the two groups. Many who support the public domain see themselves in a struggle against the all rights reserved crowd, fighting for ideological control over intellectual property. The problem is that many proponents on both sides have become too wrapped up in their own vitriolic rhetoric to see that other options may exist. This traditional either/or thinking is dangerous because it rejects the possibility of compromise or that other options or choices could be beneficial.

Surely, it is difficult for some to see that there are options outside of the norm; many people have confused Creative Commons with other movements that emphasize the public domain or no rights reserved. Very recently, the American Society of Composers, Authors and Publishers (ASCAP) released a statement claiming that Creative Commons was an opponent to them and that Creative Commons licenses sought to “undermine copyright” (Steuer par. 1). But, Creative Commons does not seek to undermine copyright. Creative Commons *is* copyright in a new format. Perhaps the ASCAP and others are intimidated by its growing popularity and fear a loss of the all rights reserved default they use to bring in profits and for many of their members to make a living. Perhaps this is just a knee-jerk reaction and with more time to fully understand some rights reserved's role in the future of copyright they will find it beneficial. I cannot speak with any certainty about whether their misrepresentation is truly ignorant or malicious. I can say with certainty that that kind of rhetoric is certain to bring more attention to Creative Commons, both good and bad. As rhetoric and composition theorists, I feel we have a duty to explore the history leading up to Creative Commons, to understand its potential ramifications, and to act in a responsible way to support its endeavors because the insertion of choice into the copyright system is beneficial to the system itself and to those who use it.

Choice is really the key to the successful implementation of some rights reserved as a widespread option for the layperson to apply to her work. An individual must be educated about the options available to her and must understand the ramifications of those options down the road. Then, and only then, can a responsible decision be made about what the appropriate level and type of copyright protection (if any at all) is best for the purposes of the text, the author, and the audience. From informal discussion, I have found that most people do not realize that whenever they create something in some tangible format (a document file, a blog post, a sketch

during a boring meeting) that creation automatically has an all rights reserved copyright applied to it. This default system upholds the all rights reserved/no rights reserved binary. Using the logic that the only other option might be the public domain further upholds the binary: either it is totally mine and no one else's or it is completely everybody's and never the twain shall meet. Some rights reserved challenges the system to see that a different path may lay ahead.

However, some legitimate criticisms have been made against the some rights reserved system that need to be addressed. Although the option for choice provided with some rights reserved is its main benefit, it also presents the potential for trouble in that some people may become confused by the different combinations of options available to them. As Richard Lanham discusses in *The Economics of Attention*, contemporary Western society is bombarded with more options than we know what to do with. Anybody who walks down the bread aisle at the local supermarket can attest to that. While we might believe these many choices to be beneficial, in actuality they provide overwhelming stimuli that render some frustrated or unable to be decisive. I contend, however, that some rights reserved licensing provides an option proportionate to the situational need that requires flexibility. Copyright everything or nothing is really no choice at all but rather a legal edict demanding that a person align himself with a single dogmatic position.

Others argue that, even if one wants to reject the binary dogma, the some rights reserved licenses are currently too confusing for people to use. A Creative Commons license cannot be repealed. Once it has been put in place, the creation falls under its framework. As the recent case filed against Creative Commons on behalf of the photographer who did not know that his work could be used commercially (*Virgin Mobile* case) shows, some people may only use Creative Commons because it is trendy when the way the copyright system works with Creative

Commons is not completely understood, leaving that person frustrated and looking for someone to blame when the license does not work the way they had hoped. Creative Commons provides users with as much information as necessary before choosing a license. Users must go through a series of steps providing information and options before the license is officially placed. In fact, because the all rights reserved default is automatically applied, Creative Commons users receive *more* information than they otherwise would. Therefore, Creative Commons users could no more claim a lack of information than with traditional copyrights. Further, I would argue, as some rights reserved becomes a more prominent option, hopefully receiving attention in public and private sectors, more people will gain an understanding of its workings and the appropriateness of its implementation under certain circumstances. Greater feedback from users in these circumstances also offers the Creative Commons team the opportunity to continue to improve its licenses.

Fear also exists that, like *GateHouse Media*, entities (whether individual or corporate) may use Creative Commons in a spirit of exploitation and misuse. *GateHouse Media* has been accused of applying a Creative Commons license to its works in an effort to actually make its copyright protection *stronger* by undercutting other companies' fair use of their materials by disallowing any manipulated works. To this criticism, I can only answer in a paraphrase of a favorite saying used by my partner: there's always a jerk. Creative Commons and/or the ideological space manifested in some rights reserved copyright cannot and should not be held accountable for the irresponsible or malicious actions of a few people. In this particular case, because Creative Commons works with the current system by adding breadth to it, fair use guidelines still applied, and the courts found that *GateHouse* could not use Creative Commons as a copyright sledgehammer. But, they did cause a big stink in the meantime. The potential

misuse by some should not outweigh the potential for good in many other cases for that merely perpetuates the negative parts of the system that some rights reserved intends to render impotent.

Another argument against the some rights reserved movement is that its proponents are merely looking to get something for free, to steal other people's intellectual property. I think this mis-understanding comes from equating some rights reserved with no rights reserved (although I do not believe that no rights reserved proponents want to “steal” anything from anyone, either). These people ignore the sharing aspect of some rights reserved in that the people who participate *willingly* share their work in a way that allows others to use it. They can also choose whether that work must be attributed back to them or not. The vast majority of people who use Creative Commons licensed work also contribute back to the Creative Commons by licensing their own work with a some rights reserved license. In fact, the option exists with the Creative Commons framework to legally require anyone who uses your work to pay it forward by also using the same type of license in whatever work might be created from what has been used, making Creative Commons a sustainable intellectual economy taking advantage of neither those offering their works nor using the works.

Also ignored in this particular argument is the fact that many creators who use Creative Commons feel that they may gain fame from the attribution. They hope that by providing something for free, people might become more interested in their work and be willing to pay for more. This works in other types of economies, as well, especially in today's post-scarcity economy where getting people to pay attention to your work can often be more important than what you create. In the food and beverage industry we see free beer samples by local breweries, pizza pockets at the huge warehouse stores, or even sesame chicken samples on a toothpick at the local mall food court. These businesses rely on the idea that if they give customers a taste of

a good product, the customers will be willing to pay for more. I recognize the trouble with making this comparison given how I have based most of my argument here on the idea that intellectual “property” is not the same as tangible property. But, other industries dealing in intellectual property also use this tactic: free music samples such as what iTunes provides with their free download of the week follows the same logic. Even in the music industry, the straw man for all things intellectual property-related since the Napster case, some of the biggest names in the business including the Beastie Boys, Nine Inch Nails, David Byrne, Radiohead, and even Snoop Dogg have begun to support Creative Commons. Perhaps they have the luxury to do so because they have already reaped some monetary rewards from their work, but their support provides evidence that the music economy can be flexible with the right support, and their support may broaden opportunities for those less rich and famous.

In the end, though, the most convincing piece of evidence in favor of some rights reserved is that the Commons demands a new vision for copyright. As the writing economy changed with the use of the printing press requiring copyright laws to keep publishers from publishing material that had not been licensed to them, we now have a technological writing economy flourishing on the internet that values sharing and distributed authorship. The Commons has grown so quickly because of the increased rhetorical velocity of contemporary internet interaction. Access to high-speed internet combined with the growing number of networking opportunities found on the web in the form of social networking sites, wikis, and blogs have provided an infrastructure with which users can enact the Commons. Because the physical infrastructure of wires, hardware, wireless networks, and smart phones has become almost ubiquitously available, the Commons is not a fringe movement. Almost everyone participates in one way or another, demanding this ideological transition. An expectation of

distributed authorship is upon us. Certainly, it may not be appropriate for every situation, but the need for its open recognition is growing as those who feel a loss of power or a loss of profit in its wake fight to strengthen all rights reserved copyright rather than make the entire copyright system more flexible to the needs of its users. This effects us in composition directly because it might impede our ability to use certain materials as pedagogical tools, to thoroughly conduct our research, or to facilitate student engagement with their own authorship.

This flexibility is also the very aspect of some rights reserved that brings it into coalition with cultural studies. Proponents of post-colonial ideologies such as talking back and signifying should also supports the some rights reserved copyright alternative because it values similar goals of breaking down the binaries that favor one powerful side over the other, it values our right to appropriate materials as a form of critique, and it further provides an avenue for creators to use distributed authorship techniques as a challenge to the author-god. While the authors I have discussed such as Anzaldúa, Gates, hooks, and Cisneros do not need some rights reserved copyright to validate their work, it could be a tool used to further those goals in a parallel trajectory. If we desire to challenge binaries of unequal power distribution such as white/black, man/woman, teacher/student, or subject/object, then we must also challenge the all rights reserved/no rights reserved binary to negate its power. Gloria Anzaldúa's work shows the possibility for a consciousness alternative that does not require a person to choose a singular identity but rather embraces all the different positionalities that one person might embody. She challenges her readers not to spend their time on opposite banks of the river shouting at one another but to push the boundaries of the system in which the tension is found in order to find alternatives to the system, possibly even outside the system.

I feel that the current copyright conversation has reached such an ideological stalemate. We are shouting across the river banks at one another. It would be unlikely to convince a copyright minimalist that words can be “owned” in any way; likewise, it would be unlikely to convince a copyright maximalist that the public good is more important than individual protection or corporate profit gain. However, the copyright maximalists are currently winning this match as copyright terms have recently been extended and lobbyists are constantly looking for ways to track and punish those people whom they see as on-line copyright criminals on-line. They are definitely the most powerful variable in the equation. Gained support for some rights reserved has the potential to quell some of that force by making creators actually think about themselves as authors and the author-function. While not everyone is going to support some rights reserved, even if they do develop a more nuanced understanding of authorship, many people have already discovered Creative Commons as a means to reject the all rights reserved framework and exert some volition in their choices as individuals, groups, or collectives.

Because some rights reserved has growing pertinence in contemporary intellectual property conversations, rhetoric and composition teachers must pay attention to its potential value for classrooms as well as for professional research projects and academic media. The current academic economy thrives off of singular author-godship and research citations as a means of gaining tenure. I argue that we should support the wider inclusion of collective work, new media work, or work being built out of the Commons as also worthy of respect in correlation with the more traditional projects. More broadly, though, we should support those projects that build our educational resources through the protection and/or broadening of fair use guidelines and the propagation of educational materials available to anyone who wants to use them. For example,

Connexions is a repository and collaborative platform of educational materials that breaks down larger collections, such as textbooks and courses, into basic building blocks known as modules. Each module has a corresponding web page, so educators can mix and match pages to create custom collections. All modules and collections are licensed CC BY so can they be edited, translated, and adapted as well. (“CC in Education”)

Not every educator will want to participate in Connexions or something similar by contributing to its materials or using the materials it provides, and that's fine. But many will. Especially for engaged educators seeking out alternative materials, Connexions is a resource that could provide support for pedagogical strategies never before available to them because of lack of access or prohibitive costs.

For us in rhetoric and composition, the existence of Creative Commons also provides pedagogical opportunities. As Charles Lowe's dissertation suggests, the addition of some rights reserved in the copyright framework indicates a new intellectual property model for the new media age, and it directly affects composition. The use of new media in the composition classroom has become old hat now. Now matter in what way technology is made useful, the proportion of composition instructors who strictly use paper formats is dwindling by the academic year. Yet, many instructors utilize the new media while holding to the old authorship ideology; the disconnect could be confusing for student, instructor, and administration. It is odd for us to continue behaving in the same old ways when outside of the university the author-function has changed in so many ways. As Chapter 4 describes, Commons authorship gains support all the time. Creators value the increased rhetorical velocity of our age, which provides the opportunity to share and be shared with, to write alone and write together, to learn something

and to create knowledge at speeds never before thought possible. Writers coming out of this new realm such as Cory Doctorow and David Shields support an updated vision of intellectual property that looks for ways to shirk the idea that the author-god omnipotently rules. They press this conversation into more illuminated places in the public's eye.

We, likewise, can play a role in illuminating the discussion for our students. I certainly would not espouse pressuring students to support some rights reserved without question, but students deserve to be respected as intelligent adults who can make wise decisions for themselves. Their acclimation into their roles as academic authors is stunted without a deep and broad view of who, what, how, where, and when an author might be. The Commons grows daily in the contemporary writing economy with our access to the new media infrastructure, so it is becoming more relevant all the time. Moreover, including Commons pedagogy in the classroom also meets other goals of composition classes such as focusing students toward the author-reader relationship, the functions of writing, the role of an author(ship), communal or collective kinds of writing, intellectual property, and (of course) plagiarism. I argue that composition classes are purposed toward writing and authorship as a practice and topic of study and that composition as a field should also be purposed toward writing and authorship as a practice and topic of study. Anything else is distracting at worst or merely a vehicle at best.

The tactics I have laid out for a Commons pedagogy are tools to use to broaden and deepen these goals. They do not insert new goals or focus. However, they might adjust or sharpen focus when it comes to the specific point of plagiarism. Plagiarism is seen by many of us and our colleagues in various disciplines as the bane of every professor's existence. I challenge us each, though, to examine how our own pedagogical practices might perpetuate ideologies that actually do nothing to alleviate the problems that cause plagiarism. Just like

preventing a cold germ from getting to your immune system is preferable to fighting off the cold once you have it, it should be our priority to provide guidance that prevents and/or complicates plagiarism rather than to focus solely on punishing it. Copyright infringement and plagiarism should not be conflated, but they are similar in that they deal with a perception of an encroachment on someone else's intellectual property and a perception of betrayal of the moral code of their respective economies. A more flexible view of the author-function in light of the growth of some rights reserved and its potential to cut through the intellectual property binary is pertinent to both. Therefore, just as many of us already encourage students to have audience awareness in their works, we should also encourage them to be aware of the intellectual property context surrounding their works.

We must also remind ourselves and others that intellectual property models are not static. Economic, ideological, technological, and political climates all affect peoples' views of authors and their creations in a particular time. Knowing this, our research and teaching agendas should emphasize the contextual nature of intellectual property and should shirk essentializing language that oversimplifies the situation. The current discussion about common knowledge, for example, shows how oversimplified definitions can cause confusion: defining common knowledge as knowledge that is common to everyone only leads many to think that what they know everyone must know. A more contextualized definition involving discourse communities or disciplines allows for a more complicated, yet more specific and easily understandable, definition. Likewise, to define intellectual property as anything you create neglects to include the complications that come from linking, remixing, collective wisdom, and distributed authorship. It also neglects the historical precedents that provide evidence that the author-function has been different with every

different authorial contingency. And, the contingencies that we are dealing with now will not be the same two generations from now.

In this light, we should support some rights reserved now knowing that it may become irrelevant in a hundred years or that it may lay the foundation for all new types of copyright laws that are stronger in their ability to appropriately protect their users and the public. In order to accomplish this, the goal for our copyright system should be revised from a protectionist stance which assumes that everyone besides the copyright holder is a potential criminal who plans to do some kind of harm by exploiting the holder's intellectual property. In a default all rights reserved system, this is the assumption. Original American copyright laws were intended to provide enough protection to motivate authors and creators and to foster the public good by helping build an intellectual American identity. As time has gone on, they have become more strict as powerful individuals and corporations have lobbied for longer copyright terms or more stringent copyright restrictions. Perhaps this is an American identity (I have neither the energy nor the time to conduct that cultural criticism at the moment), but it is not the identity we are destined to have nor that everybody wants. Instead, the system should balance protection with the public good.

In my opinion, this is best accomplished with a copyright system that still retains all rights reserved and no rights reserved as options but that rejects all rights reserved as the default in favor of a some rights reserved default that allows manipulation but requires attribution and contains the “share alike” element that would render potential commercial uses impotent. This use of others' work would resemble current fair use guidelines for academic writing, allowing everyone the option to use a creative commons in exploration of new ways of knowing. With all my talk of choice, it may seem counter-intuitive to suggest a default option that is forced upon

the public. A default, however, is necessary to keep the knowledge economy from being a free for all or from overwhelming a system with requests for official copyrights. The lack of a default would also put power completely in the government's hands: your right comes from the government allowing you to have it. This makes me uncomfortable. With this default in place, other options would have to be opted into using a registration system similar to the one Creative Commons uses now where licensees make choices about what goals they have for their creations including whether or not it is open for manipulation, whether it can be used for commercial purposes, or whether they want to be attributed for it.

Is this *the* perfect system? Of course not. But, as this dissertation has shown, the current binary copyright system no longer meets the needs of the contemporary writing economy with which composition theorists are necessarily tied. This contemporary shift, which includes the ubiquitous use of new media technology and networking, is gaining strength rather than ebbing. Therefore, the need for an updated copyright system is going to continue growing just as copyright maximalists are fighting to retain as much power as they can and copyright minimalists are crying foul. In this somewhat frantic space, a moderate choice provides solace and new opportunities for our ways of knowing. As these new opportunities of knowing present themselves, rhetoric and composition theorists must keep abreast and react logically and fairly to all parties involved. I foresee several ways that we can support some rights reserved as well as use it to our benefit as we continue to research and teach writing. As I see it, there are four major (and alliterative) ways to do this: the political, the personal, the professional, and the pedagogical. Each option requires active participation and each begins with merely being informed about the newest copyright laws being discussed. This does not mean that you have to scan C-SPAN every day to see if copyright comes up in the halls of Congress. Our professional

organizations (CCCC, NCTE, WPA, etc.) tend to keep a pretty good eye on legal matters that affect us, so merely popping in at intervals should be adequate.

Like any other political matter, the key to participation is making yourself informed and choosing to insist that your public representatives are sentient to the needs and wants of their constituents. It is not my place to tell anyone how to vote, but I do hope that we will all consider copyright legislation an important part of our legal framework. In this, we should also encourage our professional organizations to use what power or voice they may have to support endeavors that we find important to the future of our field, which I feel Creative Commons or other some rights reserved options are. Reading, submitting to, or serving academic journals who use Creative Commons licenses is a way to build the awareness of some rights reserved in our field and to show those outside our field what issues are important to us. Likewise, we can challenge academic presses that publish our work to also use Creative Commons licenses and challenge ourselves and our colleagues to use Creative Commons on our personal work such as blogs or podcasts. When we recognize authorship issues as important to our research and teaching, this care should be evident in the fruits of our labor.

As teachers, though, often the fruits of our labor lie in the hands of our students and their ability to internalize and then utilize those concepts we have been able to facilitate on their behalves. For these reasons, we should adopt a commons pedagogy in our composition classrooms as a means to foster a creative and flexible vision of the author for writers for whom the author seems simultaneously simplistic in theory yet frustratingly unattainable in practice. Further, for those of us (like me) who value the broad rhetorical skills of authors from various cultural backgrounds, a commons pedagogy that emphasizes some rights reserved furthers those values presented in multicultural texts. The tactics I have presented here are merely the

beginnings of possibilities that a commons pedagogy represents, and I genuinely believe there will be more practices such as this in the coming years because our authorial contingencies (as described in Chapter 3) demand it. Further, administrators such Writing Program Administrators or Writing Across the Curriculum Directors can encourage instructors to use similar tactics in their works. A commons pedagogy does not require a lot of time or effort, just a recognition that authorship today is not centered around an author-god and a respect for student learning in the contemporary technological environment.

In the coming years, I expect to continue researching the effects copyright law enacts in the academic and public views of the author-function. In particular, I plan to devise a qualitative research analysis involving student subjects which would enact some of the commons pedagogy tactics I have outlined here and seek out ways to assess student engagement with the topic through a series of writing analyses and personal interviews. I hypothesize that the use of commons pedagogy in the class will increase student engagement with the author as an idea, although I am cautious to guess to what extent such an increased engagement might be. This would lead to a second-level proposal involving the revision of the pedagogical tactics I have laid out in Chapter 6 here in reaction to the feedback from students and a continued effort at seeing such facilitations implemented in composition classrooms.

I also see myself in the future finding ways to correlate research into those rhetoric and composition publications that use Creative Commons with the field as a form of archival research. What is new today will be history tomorrow, so I would like to keep track of which journals and publishing houses are using a some rights reserved license, when they began using it, under what circumstances they began using, which type of some rights reserved license they use, and how they implement it into the business aspect of their publication endeavors. This type

of research would provide the field with a glimpse into the framework that allows Creative Commons to function and provide validity to it as a functioning option in the academic economy, perhaps even one of the most important changes to our academic economy in the past decade.

Because of the growing number of rhetoric and composition journals that have already quietly begun to use Creative Commons, the field has show some tacit support of the movement. Using it is not quite enough, though; we need to engage it. This does not mean that everyone must jump on the bandwagon. But, it represents a marked enough shift in language studies to warrant deep and broad intellectual inquiry. It is our responsibility to complete due diligence in inquiring about some rights reserved: its intentions, its uses, its promises, and its pitfalls. I hope my discussion here contributes to the growing interest in the borderlands ideological space of some rights reserved and spurs others to include it as part of their intellectual agenda. In this collective endeavor, may we share and share alike.

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