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Introduction to the Special Issue on Western Cultures of Intellectual Property

Krista Kennedy and Rebecca Moore Howard

As a profession, we must educate ourselves about the whole business of copyright. As users of books, it is very much our business, in fact. Under the present law, we have been guaranteed by the courts certain fair and necessary uses of copyrighted materials in our classrooms and scholarly pursuits [. . .] Our first responsibility, therefore, is to inform ourselves about the issues involved in the proposed revision of the law.

—Richard Corbin (presidential address at 55th
NCTE Annual Convention, Boston, 1965)

Richard Corbin’s call is notable not just for its urgency but for its prescience, delivered as it was just a few years before Roland Barthes heralded the death of the author, the first computer network went live, and the World Intellectual Property Organization convened. Dànielle Nicole DeVoss uncovered this remarkable quotation as she prepared her article for this special issue. As DeVoss notes in “Intellectual Property in *College English*—and English Studies,” the “proposed revision” Corbin referred to then became the 1976 revision of 17 U.S.C. §106, which delineates exclusive rights in copyrighted works. Corbin argued nearly a half-century ago that “the interests of teachers of English and of English scholars are more deeply and seriously threatened [by copyright legislation] than are those of any other discipline” (qtd. 537). In the decades since that address, scholarship on intellectual property (IP) and authorship studies, two separate yet inseparable interdisciplinary discourses, has informed the pages of journals and monographs in every subfield of English studies.

Rather than overview the status quo of that scholarship, this special issue of *College English* brings together well-established scholars of intellectual property as they present fresh work to the field. Their essays offer wide-ranging, provocative explorations of intellectual property as a cultural artifact during the twentieth century. In all cases, the authors situate issues of intellectual property or authorship

within not just an era, but a place or space: the mid-twentieth-century international art community, the campus of a major private research university in the first decade of the twenty-first century, the current social media landscape, and seventy-five years of intellectual property discussions in this very journal. Thus, following Rosemary Coombe, we describe this collection as addressing *cultures* of intellectual property, and, in particular, Western cultures. This is not to exclude international and transnational cultures of intellectual property; the works of scholars such as Boatema Boateng, who investigates the cultural complexities of the “ownership” of Kente cloth, are vital to scholars of intellectual property everywhere. In this issue, though, we focus on Western cultures of intellectual property as a way of showing just how much is at stake in many venues of what may seem a very contained frame. We also wish to demonstrate the range of open—and emerging—questions within that contained frame.

As we editors and contributors developed the shape and focus of this special issue, we returned again and again to questions of *context*, pondering the ways in which the confluence of cultures, eras, mediums, and technologies drive shifting understandings of the ways intellectual work can or should be owned. Related questions concerning the labor of authors and the natural rights this labor might accord them have resulted in vigorous debate in Western cultures, not just since the advent of the Internet, but since the days of ancient Greece (Behme; Long) and Rome (Logie, “I Have”), as well as seventeenth- and eighteenth-century England (Kennedy; Rose; St. Clair). Much like the all-too-familiar shifts in the cultural value of professorial labor during the intervening centuries, understandings of what this creature we call an Author might be, the agency accorded her, and the value of a writer’s sweat have also shifted. The idea that writers might be entitled to own their own texts by dint of the labor invested is a relatively new idea, one that diverged from models of organic, totalizing ownership by communities, religious organizations, patrons, and publishers. These negotiations continue today, with slightly different factors in play: most recently, many cultures have struggled with rebalancing understandings of the value of knowledge work within the context of the information age.

Much of the intellectual property work in English studies has proceeded from an interest in the cultural construction of authorship. Many readers of this special issue of *CE* will already be familiar with Michel Foucault’s and Barthes’s rejoinders to Romantic notions of an autonomous, unified, controlling Author. Their key works have circulated in English studies for decades, fueled by post-structural skepticism about the nature of text and textual production. In the early 1990s, for example, Susan Stewart traced the relationship between originality and ownership; Marilyn Randall, the impossibility of sustaining a belief in originality in the face of post-modern representations of subjectivity; and Françoise Meltzer, the consequences of

the Romantic Author for female writers such as Colette. Perhaps best known from the early 1990s is the work of Martha Woodmansee, often collaborating with legal scholar Peter Jaszi. Woodmansee's core interest, evidenced in *The Author, Art, and the Market*, is in the underlying operation of economic capital in notions of authorship in eighteenth-century literature and aesthetics. With Jaszi, Woodmansee also coedited an important collection, *The Construction of Authorship*. That collection brought together a wide range of analyses addressing legal, theoretical, and cultural issues in authorship, and it continues to be cited widely in contemporary scholarship. Woodmansee and Jaszi also collaborated on an article published in *CE*. As with their other works, "The Law of Texts" articulated and organized a discourse that has since occupied an ever-more-central place in English studies: the tension between fair use and proprietors' rights. Woodmansee and Jaszi ground their analysis in both the established terms of authorship studies and the emerging urgency of legal issues. They describe new laws that extend the term of copyright and decrease the amount of texts available in the public domain, skewing the balance in favor of proprietors. "Our object here," they say, "is to alert readers to this development and call attention to its source in the general subjection of intellectual property law to a Romantic aesthetic that is no longer current in literary and composition studies" (773). Their most recent collection, coauthored with Mario Biagioli, highlights cultural perspectives on intersections of material production with intellectual property law and policy.

Technology shifts and their central role in these changes have drawn intensive attention, sometimes to the extent that technologies are themselves accorded agency by some scholars. Differing perspectives abound, and the chosen terminology marks the conversation not just with ethos and emphasis, but with the mores of our era and culture. Scholars from diverse fields agree that technology is not a neutral cultural force driving human history, but rather a situated, integrated part of human life (Pacey; Heilbroner; Licklider and Taylor; Smith). These assumptions inform many conversations about technologies of literacy and are perhaps best evidenced in the debate between Elizabeth Eisenstein, author of a landmark two-volume study of the printing press, and Adrian Johns, who presents strong opposition to Eisenstein's positioning of the press as an agent of change. In this special issue, Jessica Reyman's study of user data in social media demonstrates ways in which the notion of an agentive technology can rob Internet users of privacy and even authorial rights.

Our contemporary experience of dramatic changes in the production and circulation of written text is co-occurring with lively debates among scholars, jurists, educators, and journalists about the nature of authorship, publication, intellectual property, and text itself. Much of this discourse is occurring outside English studies, particularly in the rich field of legal studies (Boyle; Burk; Cohen; Litman; Patry). The arguments of attorney Lawrence Lessig circulate widely in the academy, as Lessig

argues against the ever-tightening corporate-and-government control of intellectual properties, from popular music to literature. As Lessig, Siva Vaidhyanathan, and other scholars have argued, prior intellectual property doctrine based on physical property law is not completely transferable to digital spaces. The Internet, Lessig asserts, should “force us to rethink the conditions under which the law of copyright automatically applies, because it is clear that the current reach of copyright was never contemplated, much less chosen, by the legislators who enacted copyright law” (140). Instead of reimagining the laws to comport with the new technologies, these scholars argue, governments backed by corporate interests strive to sustain print-based principles in a digital world and limit applications of fair use doctrine. Patricia Aufderheide and Jaszi’s recent book *Reclaiming Fair Use* maps recent challenges to fair use doctrine as well as best practices for using and preserving these essential rights.

Copyright subcultures are also influencing the dominant discourse on intellectual property. Creative Commons, the alternative copyright licensing system developed by the Berkman Center for Internet and Society at Harvard, is now more than a decade old. Internet communities and subcultures devoted to open-source and open-access philosophies have matured in the past few years. Additionally, the loose piratical communities that began decades ago on Usenet have now coalesced further in communities such as Pirate Bay and Bibliotik. The tensions between sharing and piracy, open and closed information, have resulted in a growing body of literature on the commons (Benkler; Biagioli, Jaszi, and Woodmansee; Boyle; Hyde) and piracy as a cultural artifact and practice (Biagioli, Jaszi, and Woodmansee; Johns, *Piracy*; Logie, *Peers, Piracy and Persuasion*; Reyman). Conversations concerning open-source software applications (DiBona, Ockman, and Stone, *Open Sources*; DiBona, Stone, and Cooper, *Open Sources 2.0*; Raymond; Weber) and open-access publishing (Fitzpatrick; Willinsky) have also focused on the ramifications of sharing information and technologies both inside the academy and in the larger information economy.

This special issue of *CE* is indebted to this and much more work in authorship and intellectual property. The rich scholarship of English studies in the subfields of authorship and IP cannot be done justice here, but the examples just provided will, we hope, suggest some of that range and provide some context for the articles in this special issue.

One of the distinctive contributions made by English studies to the scholarship of intellectual property is a more thoughtful, even-handed examination of the relationship between students and IP. In this issue, Andrea Lunsford, Jenn Fishman, and Warren Liew offer the perspectives of students themselves about issues of IP, and they show how students’ notions of IP may develop over their college careers, and beyond. Their article, which offers new data from the Stanford Study of Writing, draws on student interviews in order to contextualize the historical marginalization of student writing. Students, the authors note, may themselves have internalized and

naturalized this marginalization, attributing little or no value to their own writing. Yet when asked about the relation of IP to their writing, “even students who initially insisted they were not informed about IP had something to say” (474). Intellectual property matters to every writer—even those who have been taught that their writing has no value. Lunsford, Fishman, and Liew conclude their article with recommendations for classroom instruction. Those recommendations are framed within what we might describe as an update to Corbin’s 1965 call for scholarly attention to intellectual property: These researchers call for a student-centered, inquiry-based pedagogy of IP (which we would contrast with the top-down admonitions against infringing on others’ property that are usually the beginning and end of IP conversations between faculty and students). “Devising assignments that bring students to early awareness of IP economies can, we believe, better prepare them for the complex negotiations they face both in school and out” (489).

John Logie turns our attention to the theoretical foundations of intellectual property studies. Arguing for careful attention to cultural context, he takes up a midcentury moment in the history of authorship and IP. Logie’s analysis of the circumstances of the publication of Roland Barthes’s familiar essay “The Death of the Author” entails a significant recontextualization of, and thus a new understanding of, that piece. Logie’s article, “1967: The Birth of ‘The Death of the Author,’” puts Barthes’s ideas on authorship in tension with the contemporary expansion of copyright. Although Barthes’s essay does indeed treat the status of the Author, it is a 1967 essay (rather than the oft-attributed 1968), and it was first published in the United States, in English, as an antifoundationalist artistic manifesto in *Aspen*, the “magazine in a box,” rather than as the journal article that it became when it was republished in French in 1968. The difference, Logie argues, is substantial: taken in the context of its initial publication, “The Death” is less political and more about multimedia than readers of Barthes’s essay collection *Image-Music-Text* might otherwise realize. The familiar contextualization of “The Death” in the May 1968 Parisian student uprisings is, Logie explains, simply wrong. Our most basic understandings of Western authorship and intellectual property, drawn from foundational documents, shift when we consider the cultural context in which this foundational document was published—and *for which it was written*. “The Death” is not a freestanding essay for which Barthes “found” a publisher; it is an essay invited for and published in a multimedia art collection, a ’60s “happening.” Its attention to the work of Stéphane Mallarmé may derive as much from the focus of *Aspen* 5+6, which was dedicated to Mallarmé, as from Barthes’s own interests. “The challenge we now face,” says Logie, “is one of unteaching ‘The Death of the Author’ as a literary essay and of re-teaching it as a participant in a collection of artistic manifestos and provocations” (510).

Reyman offers a surprising, unfamiliar perspective on intellectual property when she explores the unintentional compositions that participants in social media services

create: the data they contribute to these services that is then mined for commercial purposes. “User Data on the Social Web: Authorship, Agency, and Appropriation” pushes us toward a new conception of authorship, as Reyman acknowledges that even in our unintentional authoring as we push the “Like” button on Facebook or upload pictures from our vacation, we are exerting agency in the creation of a new, albeit often invisible, text. She explains, “User data [. . .] is not merely a technology by-product to be bought and sold; rather, it forms a dynamic, discursive narrative about the paths we have taken as users, the technologies we have used, how we have composed in such spaces, and with whom we have participated” (516). User data is, however, a form of authorship over which users have little control and of which they may have little awareness and no ownership, notwithstanding their demonstrated agency in creating the data.

Reyman undertakes a case study of Facebook’s terms of service and the successive protests to its increasing incursions into users’ privacy. Social media actually leaves users only the binary choice of complying or exiting, given that reading all terms-of-service policies for all sites visited would consume seventy-six of each user’s workdays annually. The solution, Reyman says, is not to avoid Internet use or to try to withhold personal information, but to “reconceptualize user data as dynamic, living texts rather than as technology by-products to be bought and sold” (523). If we cease to allow the currently prevailing distinction between “user content” and “user data,” we can assert IP rights over all our online activities. This prospect is muddled by copyright law’s coverage of expression but not facts; isn’t user data a “fact”? Reyman’s reply argues for an inextricable relationship between user content and user data; the two cannot be logically divided. Terms-of-service documents cast Internet users in a passive role, with technology the active agent as it mines user data and deploys it for commercial purposes. Readers of *CE* will no doubt hear echoes of the calls for a balance between users’ rights and authors’ rights when Reyman declares, “The practices of generating, aggregating, and interpreting user data could be understood as collaborative, authorial acts of technological and human agency. With a balancing of users’ and technology companies’ rights over user data, the social and participatory web could be nourished as a space that provides access to tools for participation and production, and also recognizes the value of human agency required for rich, meaningful social networks” (528). Her essay concludes with recommendations for ways in which users could participate in the development of such rights.

DeVoss concludes this issue by providing a historical perspective on our field’s attention to intellectual property. She offers a very particular sort of review essay: “Intellectual Property in *College English*—and English Studies” reviews how IP has been discussed in and elided from the pages of *CE* from its 1939 first issue through the present. DeVoss’s result is enlightening and sometimes startling. Readers of this issue of *CE* may be interested to know that even in 1943, before the Recording

Industry Association of America (RIAA) and before “The Death of the Author,” the journal was publishing nuanced analyses of literary piracy; in 1962 instructors were sensitive to the cost of textbooks and the issue of fair use; and in 1966 scholars feared the death of the book. DeVoss identifies Corbin’s 1965 NCTE address, published the next year in *CE*, as a central document in the history of intellectual property scholarship in English studies, because he charted NCTE’s participation in the development of the 1976 US Copyright Law and urged English scholars to inform themselves about and involve themselves in intellectual property issues. Post-1994, DeVoss finds that IP scholarship in *CE* “emerged as itself a core topic and core focus of research, scholarship, and debate” (540), with Woodmansee and Jaszi’s 1995 “The Law of Texts” a “landmark article” (541). DeVoss also identifies six threads of IP scholarship in *CE* that ably capture the work published elsewhere in English studies. She concludes her article—and, appropriately, this issue—by synthesizing recommendations for scholars and teachers from the essays she has surveyed. It is our hope, as editors of this set of articles, that readers will be challenged to consider the ways in which the complexities of intellectual property thread through all the work we do in the field of English studies.

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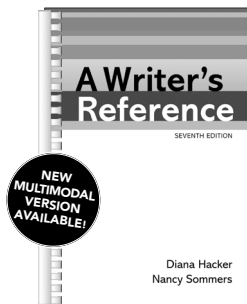
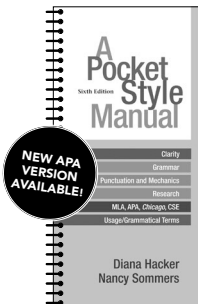
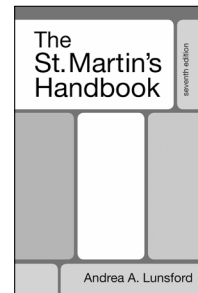
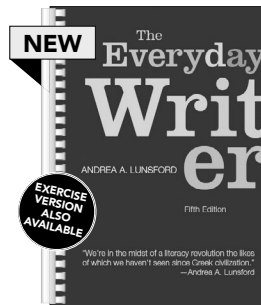
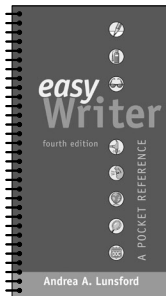
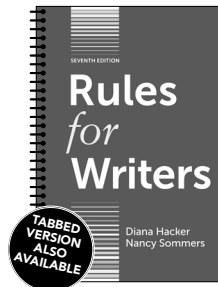
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