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**Reading poetry and its paratexts model users' rights:
Mary Dalton's *Hooking*, cento poetics, and copyright law**

[DRAFT]

In 2013, Newfoundland poet Mary Dalton's fifth book of poems was published by Véhicule Press. The book is titled *Hooking* and it is a collection of thirty-eight centos (poems composed of lines from other poems). The poems occupy about fifty pages (11-62), and the list of Dalton's sources occupies about thirty more (67-95). The Source Lists name hundreds of poets and poems. Some poets' names recur, but very few poems are cited more than once each.¹ Every line in each cento is from a different poem, because of Dalton's specific procedure here, which she explains as follows: "Each of the centos in this collection," she writes, "is made of lines which occur at the same point in the linear structure of the poems they are excised from" (67). Some cultural context for Dalton's procedure appears in the book's title and cover, which shows a rug-hooking tool: "hooking" refers to "a traditional Newfoundland craft...hooked rug[-making from] strips of fabric cut from old clothes" (back cover). Like its textile counterpart, the text draws together diverse and disparate materials—from historical and contemporary writers, from works written in English and translated into English—in sets and juxtapositions that harbour surprising juxtapositions and unexpected harmonies (as well as occasional dissonances).

Composed wholly of judiciously selected and sequenced lines from other poems, *Hooking* shows (if maybe only more self-consciously than other poetry books) how writing is necessarily a kind of reading; this book of centos also illustrates Canadian poetry's fraught relationship to copyright law. As Northrop Frye observes in *Anatomy of Criticism*, "copyright pretend[s] that every work of art is an invention distinctive enough to be patented. ... Poetry can only be made out of other poems; novels out of other novels. All this was much clearer before the assimilation of literature to private enterprise concealed so many of the facts of criticism" (96-7). As Laura J. Murray and Samuel E. Trosow note of Frye's position, in their *Citizen's Guide to Canadian Copyright*, it is a criticism of "copyright law's originality requirement [that] implies an overly individualistic, Romantic idea of authorship" (43). Frye's criticism also recognizes the significant age difference between poetry's ancient traditions and copyright law's modern ones; the sub-genre of the cento itself hearkens at least back to Roman antiquity, if not earlier (see Okáčová). The present study discusses Dalton's work in the contexts of copyright law and cento poetics in order to argue that reading the citational paratext in poetry publications (the front or end matter that acknowledges permissions or cites sources) makes certain works—especially cento works like Dalton's—legible as models of *de facto* fair dealing; the point of such an argument is to productively trouble widespread assumptions and legal language about fair dealing, and to promote a more widespread and robust exercise of fair dealing in the service of cultural production and expressive freedom.

If you are wondering what "fair dealing" means, at this point let's review some basics of copyright law and some particulars of Canadian copyright. The purpose² of copyright law is to treat original intellectual and artistic works as a kind of property vested by both private and public interests. The private interest is that of the author, creator, or another designated "rights-holder," whom copyright affords a kind of limited monopoly on whether and how their work may be reproduced and distributed, in order to optimize the return they can get on their work; the public interest arises in the limitations on this monopoly, limitations that allow the work to be used by

others as a resource for the development of future works (Galín 10). Copyright protects original expressions that have been given fixed material form. That is, copyright does not protect ideas or facts, only material works—literary, dramatic, musical, and artistic products, performances, recordings, and broadcast signals. Copyright only protects works that demonstrate “originality” beyond a minimal, necessarily vague threshold: a work must be more than a copy, but it need not be novel or unique (Murray and Trosow 42). And while copyright protects only original expressions given fixed material form, its protection requires no formalities: registration is possible, but it is not required—protection takes effect automatically, as soon as a work is produced, and lasts whether or not the interest is actively defended (36-7).

But copyright doesn’t last indefinitely, which brings us to several aspects of copyright law that limit the private interests of the rights-holder on behalf of the public interest in intellectual and artistic works. First, copyright lasts for only a specified length of time, or “term”: in Canada, a work is copyrighted from the moment of its material production until fifty years after the year in which its author dies. After a work’s copyright expires, the work joins the public domain, which the World Intellectual Property Organization (WIPO) defined in 1980 as “the realm of all works which can be exploited by everybody without any authorization, mostly because of the expiration of the term of protection” (qtd. in Nair, “Towards” 8). The public domain is widely understood as the total corpus of works whose copyright terms have expired. “Think of copyright term as a moving wall between today’s creators and a shared heritage,” write Trosow and Murray: “the constant renewal of the public domain ensures that creators have a growing mass of resources with which they can work freely—in both senses of the word” (49). Sonnet L’Abbe’s *Sonnet’s Shakespeare* and Sina Queyras’ *My Ariel* exemplify the public domain’s use in Canadian poetry now: L’Abbe’s and Queyras’ books transformatively rework Shakespeare and Sylvia Plath, respectively.

However, the WIPO definition’s inclusion of “mostly” means that the public domain includes more than works whose copyrights have lapsed—it also “includes copyright-protected material that, by virtue of law, may be used without seeking authorization or making payment” (Nair 9; see also Craig 80). That is, “when copyright-protected material is used in accordance with statutory exceptions ... the work becomes part of the public domain” (8).³ The “statutory exceptions” allowing unauthorized use of works are known as *fair dealing* (or *fair use*, in some jurisdictions like the USA). Fair dealing is a users’ right in copyright law that provides for certain circumstances in which one may use or reproduce a copyrighted work without needing the rights-holder’s permission to do so: for instance, the quotation or sharing of excerpts from a work for purposes of criticism, study, or parody (73). Through landmark legal rulings (e.g. *Théberge* in 2002, *CCH* in 2004) and amendments made in 2012 to Canadian copyright law, fair dealing has become ensconced as a users’ right; however, it remains more commonly understood as a legal defence against infringement allegations. And third, an emergent counter-discourse of Indigenous cultural property now contests copyright law’s premises in Eurocentric discourses of property and its “imposition of colonial regimes” (Nicholas 219). As explained by Gregory Younging, “Indigenous style recognizes Traditional Knowledge and Oral Traditions as Indigenous cultural property, owned by Indigenous Peoples and over which Indigenous Peoples exert control. This recognition has bearing on permission and copyright, and applies even when non-Indigenous laws do not require it” (100).⁴ Illustrating two of these checks on copyright’s overreach, Indigenous poet Jordan Abel’s *Injun* is a book of found poetry and erasure poetry composed—cento-like—from dozens of old Western pulp fictions. *Injun* enacts a poetic kind of decolonization, appropriating, recontextualizing, and criticizing a popular discourse particularly loaded with pernicious colonial violence.

Copyright, then, may be a “pretence” that art is invention, as Frye says—but it is a pretence with teeth. Few kinds of work are as jealously protected by rights-holders as poems and song lyrics, which publishers routinely discourage authors from quoting or excerpting because of the labour and

expense of securing permission (especially for excerpts to be used as epigraphs, permission for which costs more). Poetry critic David Orr suggestively sketches the confusing grey area between paying for permission and exercising fair use: “A critic who wants to quote a poem in a book has to face a permissions regime that ranges from unpredictable to plain crazy... The difficulty is not so much that the copyright system is restrictive (although it can be), but that no one has any idea exactly how much of a poem can be quoted without payment. Under the “fair use” doctrine, quotation is permitted for criticism and comment, so you’d think this is where a poetry critic could hang his hat. But how much use is fair use? If you ask publishers, the answer varies—a lot. Some think a quarter of a short poem is appropriate, some think almost an entire poem can be acceptable in the right circumstances, and many others believe you should quote only three or four lines” (§3-5). Orr recognizes that major literary and cultural organizations (e.g. the Poetry Foundation and the Center for Social Media Policy) outline and advocate for the exercise of fair use in the production of new poetry. But he also suggests the entrenched system these initiatives have yet to effectively counter; he notes that publishers typically want to “play it safe” and advise authors to quote very sparingly, if at all.

In Canada, these stakes have been raised by the present renegotiation of NAFTA (whose copyright term extension will cripple the public domain; see McCutcheon, “The TPP”) and by the lobbying and misinformation campaigns of book-business intermediaries like Access Copyright (a collecting society) and the Writers’ Union of Canada, which have mobilized publishers and authors to attack fair dealing, in the process antagonizing the very education sector that is a major supporter and promoter of Canadian writers and publishers (see Doctorow). In public forums, publishers, their intermediaries, and lobbyists tend only to speak of users’ rights as some kind of technical loophole now widely abused to legitimize theft (Geist ¶4). Yet a close reading of Canadian poetry books’ citational paratext (i.e. their front and end matter, like the copyright page whose statements hold not just intertextual information but legal consequence)⁵ suggests that Canadian poets and poetry publishers themselves make extensive unauthorized use of copyrighted works—use that models fair dealing on a *de facto* basis—even while they publicly clamour for the withdrawal of users’ rights not just from teaching practice but from legal statute.

The strictly text-based critical copyright studies methodology I propose starts from two key premises. The first premise is that—contrary to widespread assumptions that fair dealing applies only to non-commercial or educational uses—fair dealing can and does apply to commercial cultural production and publishing (as does the public domain, for instance in the durable trade in new editions of old works). Fair dealing emerged in early 20th-century legislation expressly to regulate commercial endeavours like book reviews and literary criticism (Nair, Interview).⁶ Fair dealing’s American counterpart fair use is more prominent in commercial endeavours, partly because fair use law allows for uses beyond those stated in statute, and partly because free speech rights figure more prominently in legal decisions on copyright dispute cases (see Reynolds, Amani). And Canada’s current copyright law does not state that fair dealing must be categorically non-commercial: the law allows fair dealing for several purposes that are commercial, like reviewing and news reporting (Copyright Modernization Act, sec. 29), while specifying certain fair dealing purposes that must be non-commercial, like “user-generated content” (sec. 29.21). Especially relevant to cento poetics are two purposes for fair dealing that are allowed but not required to be non-commercial: criticism and parody. Cento poetry is well understood to partake of both criticism⁷ and parody: the judicious selection and sequencing of specific lines and excerpts not only demonstrates the “skill and judgment” that Canadian law requires for originality (i.e. in rendering a new work copyrightable; see Murray and Trosow 42), these processes also involve, pivotally, criticism and parody of their source texts (keep in mind that “criticism” need not be negative, and “parody” need not mean lampoon, but can also mean homage, tribute, and more; see Hutcheon’s *Theory of Parody*).

Despite legislative history and language that apply fair dealing to commercial endeavours, in Canada the widespread perception of fair dealing as a legal defence, the disinformation about fair dealing as dubious copying activity by teachers and students, and the prevalence of clearance-culture assumptions that quotation always requires permission, taken together, mean that fair dealing does not figure prominently (if at all) in publishers’ guidelines and policies. Furthermore, it would be impracticable and inappropriate to conduct human subject-based research (i.e. interviewing authors and publishers) to ascertain whether authors and publishers intentionally exercise users’ rights. Statements from creators on fair dealing in publishing could incur substantial legal risk or liability.⁸ And for authors or publishers to make positive statements about fair dealing’s affordances for publishing would compromise the united front of opposition to users’ rights that Access Copyright and the Writers’ Union of Canada have mobilized many authors and most publishers to support. In Eli McLaren’s analysis of Canadian poets’ positions on remuneration and copyright, several poets are quoted as supporting fair dealing’s role in producing new work—and one is quoted on the adverse impact of permissions requirements on their own use of quotations (22)—but these poets remain anonymous, and with good reason. Thus, the significant legal consequences of copyright enforcement mean that human subject research on users’ rights requires the condition of participants’ anonymity or else raises significant red flags for research ethics review. But a methodology based strictly on reading published textual evidence eliminates the risk of implicating individual authors and publishers.

The second premise concerns how a book cites its sources; it holds, first, that, in published literary works (in this case, Canadian poetry books), citational paratext which takes the form of “used with permission of” language (usually found on the copyright page) signifies that permission to reprint the cited text(s) in the book has been formally sought and paid for (in a word, licensed); and, second, that citational paratext which takes the form of a Notes section or other kind of bibliography (usually as end matter) constitutes evidence of the *de facto* exercise of fair dealing (unlicensed but legally permitted use)—whether or not its rights holder defends it, intends it, or strategizes it as such. If copyright applies automatically, then its user provisions should too; notes and similar bibliographic paratext can be read as models of fair dealing in cultural production. The close reading methodology I propose here posits that citational paratext other than permissions legal language in literary works constitutes evidence of model fair dealing—of fair dealing’s *de facto* exercise—even for commercial purposes, like the publication of Canadian poetry books.

Furthermore, to describe poetry publishing as commercial endeavour is arguably true in only a technical sense. Canadian poetry is widely known in publishing to represent loss not profit (McLaren 14), and the permissions industry sketched by Orr suggests that permissions for excerpts from copyrighted poems can run up a prohibitive cost, especially in a book like *Hooking*, which uses lines from hundreds of poems, including several by globally recognized poets. Permissions for a book like Dalton’s could conceivably cost a total of tens or hundreds of thousands of dollars, and that’s an untenable cost for an unprofitable genre like poetry and for the small presses that publish it. Dalton’s publisher Véhicule, like most Canadian poetry presses, depends on state support (e.g. from the Canada Council for the Arts) to subsidize its publications. With Canadian poetry books’ small print runs (usually just in the hundreds), paid permissions for quotations would exacerbate the loss a poetry book already poses, and could create absurd, alienating situations wherein a third-party rights holder stands to make more money from a new poetry book’s permissions fee than either its author or publisher stands to make from sales of the book.

My own personal Canadian poetry library, comprising forty-eight single-authored⁹ books of poems published since the late '60s, provides a representative if anecdotal sample of Canadian poetry’s different citational paratextual practices, including several that model fair dealing. Seven books include permissions language: Dionne Brand’s *Inventory* (103), Di Brandt’s *Glitter and Fall* (iv),

Leonard Cohen’s *Stranger Music*, which, like his novel *The Favourite Game* (5), includes permissions language for Cohen’s own poetry, as Dennis Lee’s *Alligator Pie* likewise does for Lee’s own (4), Reinekke Lengelle’s *Blossom & Balsam* (iv), Michael Lithgow’s *Waking In the Tree House* (57), and Michael Ondaatje’s *The Collected Works of Billy the Kid* (3). Twenty-five other books (Abel’s, Avison, Bök, two by Brand, Brandt’s *Now You Care*, Bruck, Clarke, Cohen’s *Selected Poems*, the Dalton book under discussion here, Dempster, Doda, Elmslie, Heroux, Kulyk-Keefer, Kroetsch, McCutcheon, McIlwraith, Midgley, Munro, Queyras, Senior, Souaid, Spalding, Steadman, and Vermette 107) include citational notes or bibliographies as end matter—as do the aforementioned Brand (103), Brandt (75-85), and Ondaatje (3): these latter three are the only volumes in my collection that include both permissions language and notes. And two books that use quotations as epigraphs include neither permissions nor notes (see Brandt, *Questions* n.p. and Paré 3).

The aforementioned Abel book, *Injun*, is one of only two in my library that explicitly mentions the public domain in its end matter, which includes a “Sources” list and a “Process” section explaining how *Injun* was constructed entirely from a source text comprised of 91 public domain western novels” (83). The other is Dean Steadman’s *Après Satie For Two and Four Hands*, which reprints a score and sketch by Satie and cites it with reference to its public domain status (117). The end matter in only one book (mine, for the record) explicitly mentions fair use (McCutcheon 77), but Christopher Doda’s *Glutton for Punishment*, a book of glosas that all take as their epigraphs lyrics from rock songs, includes no permissions and scant notes—but ironically refers explicitly to fair dealing in one of its poems (76). And exemplary paratext brackets Sina Queyras’ 2017 *My Ariel*, a pastiche of erasures, centos, and other found poetry drawn from Plath, who entered Canada’s public domain in 2014. Queyras complements her book’s extensive notes and bibliography (155-58) with language unusual for the copyright page: “Please note: these poems offer an engagement with the life and work of Sylvia Plath and Ted Hughes; they do not claim to be the truth of their lives, only the truth of my own engagement” (4). Queyras’ disclaimer—pointedly *not* a permissions clause—tacitly asserts the poet’s rights to the public domain and to transformative *reworking*, while also asserting her source authors’ (and by extension the poet’s own) moral rights. Although anecdotal, this sample library suggests that notes are more of a citational norm than permissions; given the unpredictable but typically high cost of permissions, it makes economic sense for Canadian poetry presses to opt instead for notes and a use of quotations and excerpts that models a *de facto* exercise of fair dealing.

Dalton’s book includes no permissions language, but instead provides an extensive and detailed bibliography of its sources. The poem “Ravel” (33) serves as a representative sample of the whole work. This cento consists of fifteen lines, organized into five tercets. “Ravel” uses the seventh line of each of its fifteen source poems. This procedure thus prevents any cento from using more than one line from a source poem (the amount used from a given work is a key factor in weighing fair dealing); and the Source Lists section specifies which line number every cento uses. Five lines are excerpted from poems that are now in the Canadian public domain, since their authors died before 1970. The remaining ten lines are drawn from contemporary, copyrighted works. The poem’s voice uses the second-person to address (and implicate) the reader (or perhaps to speak to oneself) as the poem’s subject: “... It is almost / time to claim your face” (33). In light of the legal and cultural contexts that intermediaries have exploited to polarize creators against consumers, one line here stands out, rich with irony: “see the victim’s face become their own” (33). The position of victimhood in Canada’s copyright debate has been claimed on behalf of authors by intermediaries; yet in this poem and in this book, the author—the purported “victim” of users’ rights supposed to incite theft of literary intellectual property—stands to become victimized instead by the potential retraction of users’ rights demanded by the publishing lobby. Just as changing copyright’s term will

wreak havoc on numerous publications that depend on the public domain, so would a scaling-back of fair dealing wreak havoc on publications that demonstrably exercise it.

So it is in the inescapably modern context of intellectual property that a book like Dalton’s *Hooking* both evokes traditional folk craft and builds on ancient poetic form. It might go without saying that the cento form and tradition long predate the Romantic construction of authorship on which copyright law depends; what might bear repeating, in this context, is this detail from the 2004 Supreme Court case that helped establish fair dealing as a users’ right: “It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair” (*CCH* ¶55). Dalton’s work belongs to a longer literary history in which the publication of centos complicates received notions of “originality” and presents both contradictions and affordances for copyright law and authors.¹⁰ The reading and contextualization of *Hooking* offered here seeks to illustrate a critical copyright studies methodology for gauging the applicability of users’ rights and copyright limitations not just to practices of consuming culture but also for processes of producing culture and creative expression—like publishing, at once a creative and a commercial endeavour. In short, my reading here argues that, no less than users or readers do, authors need fair dealing too.

Notes

1. Exceptions include Langston Hughes’ “Theme for English B” (77-8), Elizabeth Bishop’s “In the Waiting Room” (67, 79), Leonard Cohen’s “You Have the Lovers” (79, 83), and Lavinia Greenlaw’s “Reading Akhmatova in Winter” (84, 87).
2. Interestingly, Canadian copyright law articulates *no* purpose, although a sense of purpose may be inferred from the law’s definition of copyright per se as “the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever” (Canada, *Copyright*, sec. 3 [1]).
3. The Supreme Court of Canada’s judges articulated fair dealing’s relation to the public domain in a 2002 case, *Théberge v. Galerie d’Art du Petit Champlain*. In their decision, they wrote that “the exceptions to copyright infringement enumerated in ss. 29 to 32.2 ... seek to protect the public domain in traditional ways such as fair dealing” (*Théberge* ¶32).
4. Murray and Trosow flag the cultural and legal differences arising in Indigenous cultural property’s community-grounded concern with reputation—“not the author’s, but rather that of the ... culture, or nation. And indeed, many Indigenous people emphasize that the ‘author’ of a specific expression is a tradition-bearer, not an originator. ... Thus, while alienability is foundational to Western ideas of property and intellectual property ... Indigenous ownership, as many explain it, is based on ideas of custodianship, community, and responsibility” (231-2). Compare their further elaboration of Frye’s criticism of copyright: of “readers’ tendency to exalt an author’s contribution over the rich tradition from which it sprang” (43).
5. I owe much thinking on the analysis and significance of paratext generally to Meera Nair; see, for example, “V.S. Naipaul and Copyright” at her blog *Fair Duty*.
6. In book reviews in British periodicals in the 19th century, the generous or excessive excerpting of new books under discussion could directly compete with the books themselves, sometimes deliberately so, in order to thwart sales of a book the reviewer disapproved of. For instance, William Hazlitt’s controversial *Liber Amoris* sold very poorly, “due in part to reviews like that of Shackell’s *Register*, which virtually ‘pirated the text in eighteen closely printed columns of selections’ and thus ‘made it hardly necessary to lay down money to read it’ (Jones, *Hazlitt*, 338)” (see McCutcheon, “Liber” 441).
7. For a discussion of how appropriation-based art forms like the cento constitute acts of criticism, see McCutcheon, “The DJ as critic,” 106-11.
8. For instance, liability of the kind now being fought in *Access Copyright v. York University*, wherein Access alleges York has not been dealing fairly with copyrighted materials in teaching; the case is likely to be appealed all the way up to the Supreme Court (Knopf, paras. 16-20).
9. “Single-authored” here can encompass collective authorship—the phrase means only to distinguish individual books of poems, not anthologies, collections, or other editions edited by parties other than the poems’ authors.
10. See David Shields’ book-length prose cento *Reality Hunger*, a manifesto for quotation and collage as transformative, creative acts; and see especially his Appendix, a list of cited sources (209-21)—which he invites the reader literally to cut out with scissors (209).

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