Contextualizing Copyright:

Fostering Students' Understanding of Their Rights and Responsibilities as Content Creators

by Molly Keener

*I*ntersections between scholarly communication and information literacy are increasingly being explored by librarians, both on campuses and in conversations with colleagues.[1] Traditional information literacy instruction topics are related to the core issues in scholarly communication, although often instruction librarians and scholarly communication librarians address these issues from different directions. An over-arching theme to these issues is one of openness: who can access what, from where, for how long, to what end.

As a scholarly communication librarian at a mid-size liberal arts university that in the past two decades has strengthened its research profile, I view faculty as my primary constituency. Nevertheless, through our credit-bearing library instruction program, and close ties to the Graduate School in support of our Electronic Theses and Dissertations program, I frequently interact with students. Through guest lectures and targeted support, I have opportunities to instruct students on copyright, author rights, open access, and the scholarly publishing system. In so doing, I help them understand their roles as creators and contributors to the knowledge ecosystem.

Content Creators

The Z. Smith Reynolds Library at Wake Forest University offers sections of a 1.5 credit-hour information literacy course (LIB 100) to undergraduate students at the 100 and 200 levels. When first launched, the library's instruction program was structured such that the majority of librarians taught or co-taught at least one section of LIB 100 each academic year. As demand for LIB 100 increased, the instruction program was realigned under three lead instructors responsible for teaching

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10–12 sections each semester, with each section lasting a half-semester.

As the scholarly communication librarian, I routinely guest lecture on copyright and intellectual property, a core component of our LIB 100 course content. Initially, my lectures on copyright and intellectual property were just that: lectures, with slides, about the history and development of copyright in the United States, and explanations of how copyright and intellectual property are issues that extend beyond academic settings. I also addressed plagiarism, as the Dean of the College specifically requested integration of plagiarism instruction in LIB 100 courses.

To make the copyright guest lectures more engaging, and to test students' baseline knowledge of copyright and intellectual property, I incorporated real-time polling software questions into my lecture slides. Students would use "clickers" to submit their answers. Colleagues had been using clickers in our instruction

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program in other ways, so the technology was available and often familiar to students. Using clickers increased student engagement during lectures, and provided moments of levity when students would audibly bemoan their incorrect answers.[2]

Following the successful integration of clicker questions, a colleague on our instruction team, Joy Gambill, approached me with the idea of further increasing student engagement by dispensing with a lecture altogether in favor of requiring the students to answer real-world copyright scenario questions, using the lecture slides as a "textbook." This coincided with revision of our LIB 100 course objectives, which include goals for distinguishing free and reliable resources, the ethical issues of plagiarism, the process of scholarship and publication, and defining intellectual property.[3] To that end, helping students understand their rights and responsibilities as content creators and contributors, particularly in the public sphere online, increasingly became the focus of my lectures. It is well and good for students to know the basics of what types of works copyright protects, and why copyright protection is granted, but without the context of how this applies *to them*, there is a risk of missed opportunity for helping them understand that "free" and "open" have different contextual definitions with respect to intellectual property.

As experimentation with varied instructional techniques within our LIB 100 program have been welcomed, my colleague and I collaborated to develop 10 copyright and intellectual property scenarios for use in instruction.[4] At the beginning of my class visits, students are put into pairs or small groups, assigned one to two scenarios, and provided a link to my lecture slides, which include notes, to use as their "textbook." After 10–15 minutes of work time, the class reconvenes, and each scenario is read to the class and students give their answers. I assure students at the beginning that their grade for the day is based on participation, not accuracy, as invariably several of the groups will have arrived at incorrect answers. I also tell students that if, during the course of our conversation about the scenario answers, they elect to alter their original answer, to be sure to share both the original and the revised answer, with justification.

The scenarios are meant to guide students' understanding of intellectual property beyond the structures of research and the academy. Most students are unaware that they own copyrights, or that simply because a photograph is free to access online does not mean that it is free to be reused. As classes work through the

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scenarios, our discussion affords opportunities to impart basic knowledge about copyright and intellectual property—types of works protected, rights granted to creators, what fair use is, that the public domain has legal definition—as well as opportunities for students to ask intellectual property-related questions.

Many student questions are related to news reports of lawsuits over, or allegations of, infringing activities. Although prior to this class they may not have been able to articulate their awareness of issues of openness related to intellectual property, they are in fact aware of such issues. Recent semesters' questions have included the former Taco Bell interns' claim of inventing the Doritos taco, and the Beyoncé choreography infringement.[5] I am also able to reference interesting news stories that underscore the misunderstanding of intellectual property, notably trademark, referencing the Tuscaloosa baker, and novel cover art, controversies.[6]

The goal of the scenario exercises is not to significantly challenge the students, or put them on the spot for sharing incorrect information before their peers, but rather to generate thoughtful conversation in the class. As such, the questions are not exceedingly difficult or lengthy. They are also ordered to build understanding of copyright as we work through them. The first two scenarios address how copyright happens, and what copyright entails:

> Josh has written a research paper for his organizational psychology class. Does he have copyright to his paper? If so, when did his paper fall under copyright?

> Sarah wrote a very interesting novel titled *Behind Closed Stacks*. She was thrilled when the publisher agreed to print 5,000 copies, but sales did not take off. A couple of years after her book was published, she went to a film festival to see an independent film with the same title as her book. She was shocked to see the exact story from her book being shown on the screen. Is this legal? Why or why not?

From these scenarios, we discuss the principles that must be met before the types of works eligible for copyright, which is covered in a later scenario, can be copyrighted: originality, creativity, and fixed, tangible expression. We also discuss that copyright, although it sounds singular, is actually a bundle of rights. Students readily grasp that making a movie based on someone else's book should not be done without permission,

although before this class they may not have known that it was because doing so is a right protected under copyright. This scenario also provides an opportunity to discuss what copyright does not protect: facts, data, ideas, titles, logos and branding, methods, and useful articles. Skeptical that titles can be duplicated, students are nevertheless usually able to provide examples when prompted. A recent duplicate title example that I reference if they are stumped is the 2013 publications of two works of fiction within two months: *Life After Life* by Kate Atkinson, and *Life After Life* by Jill McCorkle.[7] Furthermore, this scenario frequently leads to questions about fan fiction, and the ethical and legal implications of appropriation of authors' copyrighted characters and worlds for fan-created works beyond the canon.

One scenario addresses a family vacation photograph posted online that was later appropriated for use on a website, which leads to discussions of free to access versus free to reuse, and how the public web is not the equivalent of the public domain. I am able to introduce students to Creative Commons licenses, and tell them how to limit image searches online to only search for images licensed for reuse.[8] We also discuss that the copyright owner of a photograph is the photographer, not the subject—even if taken using the subject's own camera or cell phone. Frequently, the way we operate in our culture of sharing, where we commonly post photographs taken by others to various social media websites without once thinking that we might need permission to do so, is technically out-of-step with what our copyright law stipulates.

Another scenario about downloading and distributing digital music files prompts debate, and almost outright argument, about the ethics and legality of sharing such files. Arguing that the risk is minimal and the copying so easy, students attempt to persuade me that they are justified in sharing. My counterargument is to provide a slightly revised scenario for their consideration, shifting the sharing of copied music to a photocopy or scanned file of an entire book. That slight shift, while not perfectly analogous, is sufficient to reorient their thinking of music files as individually copyrighted works. It should be noted that the introduction of DRM-free digital music files, and the failure of most of us to read terms of service agreements, complicate a straightforward discussion about sharing. Conversation on this scenario is further complicated because students usually are unaware that they do not own digital music and e-book files in the same way that they own CDs and print books, and therefore, they do not realize that the first sale doctrine does not apply to our digital content, hence the absence of online marketplaces for used MP3s and ebooks.[9] This is one scenario where I acknowledge that I am on the edge of my own copyright experience, as I am not asked about digital music file

sharing in the normal course of scholarly communication support. Nevertheless, I believe it is critical to include this scenario in my instruction, despite my own less-than-perfect knowledge, to raise students' awareness that the legal principles applied to physical items do not always apply to digital equivalents.

My favorite scenario frequently leads students into doing unnecessary math to determine their answer, and stages discussion about the length of copyright term, the public domain, and fair use:

> You are taking a Victorian literature class, and for your final project, you decide to create a comic based on Charles Dickens's *Great Expectations*. Is this legal? Why or why not?

Many students justify their "yes, this is legal" answer by noting that copyright lasts for the lifetime of the author plus 70 years (life plus 70), and that Dickens has been deceased for well over 70 years, therefore his novel is no longer under copyright. While the answer is correct, the justification is incorrect, as the length of copyright term was not life plus 70 when Dickens was originally publishing, and his works are in the public domain. Beyond discussing what drove the length of copyright term from 14 years to life plus 70 for non-work for hire or anonymous copyrights, I am also able to explain why the public domain is, in essence, frozen at 1923, and how changes to copyright law throughout the 20th century contributed to the orphan works problem.[10] I also propose an alternate scenario, exchanging Dickens for a contemporary author, whose works are copyrighted, leading into a discussion about fair use, and also about the need to attribute the work to avoid plagiarism.

Using real-world scenarios in my copyright and intellectual property guest lectures introduces an element of chance to my instruction that, at times, has been challenging. I have had the son of an intellectual property lawyer in a class who posed questions about most discussion points, albeit in a friendly manner. I have had another student ask why the proposed Stop Online Piracy Act was deemed terrible, wondering why it would be bad to be proactive about stopping online piracy.[11] I have had business students whose perspectives on copyright favor strong corporate benefit. And, as Wake Forest increases our international undergraduate population, I have students who are from countries where intellectual property infringement and plagiarism are sometimes tolerated under different cultural norms than those of the United States. The flexibility required to teach in this manner holds me accountable to maintaining current awareness of copyright and intellectual property law as it is interpreted by the courts and discussed by lawmakers, and requires that I enter the classroom ready to engage with the unknown.

Disciplinary Differences

In addition to our LIB 100 course, we also offer 200 level research methods courses by broad discipline. Usually taught every one to two academic years, these courses provide opportunities for undergraduates to hone their research skills through exposure to field-specific library resources and completion of research projects. The library offers courses for students majoring in disciplines within the humanities, business and accounting, social sciences, and sciences, as well as one on the history of the book.

When asked to guest lecture in 200-level courses, I am often teaching students who are likely to pursue graduate studies in their disciplines. As such, these guest lectures afford me the opportunity to bring core scholarly communication topics into class discussions in concrete terms, providing information to students who will one day be scholars. Introducing them to the scholarly publishing cycle, the economics that influence publishing and libraries, the role of peer review, authorship ethics, open access, and impact metrics not only helps them be more astute users of scholarship, but also provides insight that they can incorporate into their developing scholarly identities.

In our course for science majors, I am teaching students majoring in biology, chemistry, physics, or health and exercise science, as well as pre-medicine students, regardless of major. Commonly, these fields are the ones where open access publishing and archiving is firmly established, and more broadly accepted as legitimate. The confluence of assorted fields in a single classroom affords opportunities to discuss how open access is supported in some fields primarily through archiving (e.g., high-energy physics and arXiv.org), while in others there has been broader support for publishing. We also have opportunity to discuss the role that grant funding agencies are playing in advancing public access, particularly to taxpayer-funded research, such as the National Institutes of Health Public Access Policy, and how public access and open access are interrelated but not synonymous.[12] Increasingly, I am addressing open data, and helping students understand that data cannot be copyrighted but it can be owned, and how that differentiation plays a role in data policies from funders and publishers.[13]

In our social sciences course, classroom discussion commonly focuses on the misperceptions that exist between different fields within the social sciences, depending on whether fields are driven primarily by journal versus monograph publishing. As an open access advocate, I have the opportunity to explain to skeptical students what open access is—and what it is not. The ability to help students understand the scholarly communication system and their role and rights in it as scholars is critical for their future contributions.

Fostering Author Awareness

My primary interaction with graduate students comes at the end of their time at Wake Forest. I manage the library's Electronic Theses and Dissertations (ETD) collection, and work closely with the Graduate School, as I am the person to whom students are directed when they have questions about publishing, copyrighting, or embargoing ETDs. By the time I work with graduate students, I am primarily working with individuals whose scholarly identities have already started to be established, especially as many have published at least once during graduate school. Nevertheless, it is frequently the case that students do not understand their rights as authors, or why they cannot automatically include previously published materials that they authored in their ETDs without first determining if they have rights to do so. The "I wrote it, it's mine" misperception is common, and an advantageous learning opportunity.

To support our graduate students, I offer ETD preparation workshops each semester. In addition to overviewing the submission process, we discuss the need to ensure that any inclusion of others' copyrighted works—including their own previously published works, when the publisher controls copyright—has either cleared fair use assessment or permission seeking. Discussions of self-plagiarism and authorship ethics commonly arise in these workshops. Perhaps the most fruitful aspect of these workshops is the opportunity to explain how copyright vests in the United States, and how as the full copyright owners in their works, the choice they make for their embargo terms is theirs alone, and that how they plan to use their work after graduating is a factor in selecting term length. And because our ETD collection is housed in our institutional repository, there is a natural segue to discussing open access, and that open archiving is a form of open access.

Beyond ETD support, I am occasionally invited to guest lecture in course seminars. I have taught students about the National Institutes of Health Public Access Policy, and how as future NIH grant recipients, they will need to plan for compliance at the outset of their

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award process. I have also lectured on authorship ethics, which invariably lead to lively conversations with students posing many "what if…" scenarios. Graduate students do not always receive explicit instruction on all the myriad issues of being an author, notably on their rights and responsibilities as copyright owners, as their faculty mentors may also not fully understand their rights.

Conclusion

Librarian-led instruction for undergraduate and graduate students often focuses on the discovery and dissemination aspects of the scholarship lifecycle, but usually not on students' roles as content creators in that cycle. However, information literacy opportunities can be capitalized upon to discuss the full cycle, including access issues that introduce students to basics of copyright ownership and author rights. Instruction sessions also can be used to introduce students to Creative Commons licenses, open access publishing and archiving, research funder requirements for public access to articles and data, and economic changes in the scholarly publishing system that create real and artificial roadblocks to information dissemination.

Although only a small percentage of our students will find themselves in research fields in the future, all of us are content creators and users. We are generating intellectual property continuously throughout personal and professional interactions, often without understanding the implications of being rights holders. It is critical that librarians aid our students' understanding of intellectual property, and their associated rights and responsibilities. And for those students who will enter the academy, formal and informal instruction opportunities with future faculty while they are still students should be capitalized, as we are investing in our future scholarly communication constituents.

Notes

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