The Effects of Intellectual Property Law in Writing Studies

This book documents the intellectual property experiences of writing studies scholars and challenges naturalized ways of responding to intellectual property concerns.

Analyzing results of a nationwide survey and semi-structured interviews to examine ways decisions about intellectual property (IP) during academic knowledge-making are mediated by histories of enculturation, ethical lenses, and IP sponsors, the book:

- Identifies and illustrates a range of ethical stances that academics might adopt in regard to IP and the range of human, institutional, and technological sponsors that can mediate IP decisions
- Provides evidence that IP affects all of the processes of academic knowledge-making, not just the final product
- Offers heuristic questions that academics can and should ask throughout their teaching, research, and editing to make proactive IP decisions

The book is an essential read for academics working in writing studies and the humanities as well as those interested in IP. This text could also be used in graduate student training in writing studies and related disciplines.

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The Effects of Intellectual Property Law in Writing Studies
Ethics, Sponsors, and Academic Knowledge-Making

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and James P. Purdy
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This project grew out of a conversation at the Conference on College Composition and Communication (CCCC) that followed from our participation in the CCCC Intellectual Property Caucus. We are grateful to the members of the Caucus for their insights, questions, and provocations—and especially their ongoing investment in empowering populations affected by IP decisions. This book endeavors to be part of that mission.

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The Pervasiveness of Intellectual Property Issues in Academic Life

In *Invention, Copyright, and Digital Writing*, intellectual property scholar Martine Courant Rife reflects on her interviews with seven Web designers, each of whom articulates a different account of how copyright law applies to their work. In response to these differences, Rife argues, Misunderstanding and confusion are productive. Misunderstanding is more than just “being wrong.” [. . .] Copyright law in all its complexities, and as an interjector in the composing process, likewise begs for misunderstanding and confusion. And to overcome this, participants create stories of the law. Among the interviewees, the proximate law is their story of the law and not really the actual law; it is a story of the law that makes sense to the writer.

Our book is about such stories of copyright law, including the “[m]isunderstanding and confusion” that emerge surrounding the law, as well as about the influence of intellectual property on academic work in writing studies more generally. By intellectual property (IP), we mean the creations that people can protect with copyrights, patents, trademarks, and trade secrets/proprietary knowledge. In this book, we document reflections of writing studies practitioners about the ways in which IP issues have influenced their work. These reflections illustrate the enculturated practices surrounding IP that have become normalized and show the range of moments in which IP shapes the teaching, research,
and editorial work of writing studies professionals—rhetorical moments that recur over and over across colleges and universities. Readers might recognize themselves, their students, their colleagues, or a “friend of a friend” in the following vignettes that represent these moments:

- **Vignette #1:** An advanced graduate student has just received the publication contract for her first article. She treats it like a click-through license on a piece of software: She skims it, signs and dates the appropriate lines, and sends it back to the publisher.

- **Vignette #2:** A new faculty member requests copies of documents from a museum archive for a research project and is given a virtually incomprehensible licensing form in return. Noting the irony of having to agree to license materials taken from his own indigenous culture, but needing the materials to do research to achieve tenure, he signs it.

- **Vignette #3:** The campus librarians sponsor a new event to talk about open-access (OA) clauses in publication contracts, but they cannot recommend a source of funding for humanities scholars to accommodate the high fees publishers now charge to include such OA clauses.

- **Vignette #4:** A newly hired adjunct is given an employment contract to sign, a contract that includes work-for-hire claims over teaching materials, including materials for online courses.

- **Vignette #5:** An instructor receives a forwarded email from a student. The email is from an online source that claims a copyright violation because the student has posted a music clip to a website designed for the class. The student’s final project—a remixed visual essay analyzing a current political movement—has been removed by an outside entity.

- **Vignette #6:** A faculty member is considering whether to publish a textbook. On one hand, they need the financial boost (and CV line for promotion) that a successful textbook would provide. On the other hand, their materials were inspired by documents openly shared by colleagues in their program. They debate about their responsibilities to those who have developed materials before them.

As former chairs of the Conference on College Composition and Communication (CCCC) IP Caucus and members of the CCCC IP committee, we have heard such stories about how IP decisions affect the work of teacher-scholars in writing studies. By IP decisions we mean choices such as whether to publish an article with an OA journal, whether to pursue a research project based on whether a desired archive of materials is accessible, whether to ask students to publish their course projects on YouTube, whether to post articles to a course management site, and so forth. Fellow writing studies scholars Heidi A. McKee and James
E. Porter provide the following examples of IP decisions for Internet researchers: “whenever a researcher downloads an online journal article, or quotes excerpts from subjects’ writings, or captures screen shots of their web sites, or reproduces their avatar from Second Life or their game character from World of Warcraft” (Ethics 56). Stories about these IP decisions are what led to this project. We sought to gather and systematically document these stories through an anonymous nationwide survey and a series of retrospective interviews. When we were initially conceptualizing this research project, we expected horror stories similar to those we had already been told as CCCC representatives: For instance, one researcher shared that a university press refused to publish his print journal article until he removed the one-sentence epigraph. Another researcher explained that a museum archive withheld permissions to reproduce photographs because she planned to submit a copy of her publication to an OA archive. A third researcher reported he had collaborated with an agency to generate survey questions for a study, but he had not anticipated that agency officials would then deem the survey as their proprietary knowledge (i.e., owned by them). Yet another researcher related her saga of receiving permissions from an author to reproduce portions of his rough drafts, only to have the family estate revoke those permissions after he died. Not least, other faculty reported concerns about the Fair Use of instructional materials and the protection of students’ rights to engage in critical commentary on texts, multimedia, and cultural artifacts.

While we certainly received some similar stories of specific decisions and events, including, to return to Rife’s language, “stor[ies] of the law,” our survey and interviews yielded much more, including:

- Discussions of what practitioners might now do differently
- Histories of the evolution of IP (both in terms of changes in IP laws and in terms of changes in personal attitudes towards them)
- Desired past and future developments (i.e., should-have-beens and wished-fors)
- Commentaries on/stances toward IP (both the law and stories of the law)
- Advice about how to approach particular IP issues (e.g., copyright, Fair Use)

When we use the term reflection throughout this book, then, we seek to encompass this range. This range of responses speaks not only to the richness of our study participants’ experiences, but also to the varied ways in which IP has affected them and influences the broader work of teaching and researching writing.

We next offer one more vignette, with a real name and dates, that hints at this broad impact of and interest in IP issues: In 2015 Creative
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Commons creator and perhaps the world’s best known copyleft advocate, Lawrence Lessig, ran for president of the United States. Focused primarily on campaign finance and gerrymandering reforms, his platform also articulated an “Innovation Policy” that proposed to create two commissions to write new copyright and patent laws to accommodate new technologies and to reinstate more equitable access to innovations (Lessig “Innovation”). One might argue that it was Lessig’s well-known reputation as an IP scholar that scaffolded his presidential bid. We speculate that he might not have reached the fundraising goal that precipitated his run—one million US dollars by Labor Day 2015 from many individual donors (Lessig “Why I Want”; Merica) were it not for the popularity of his longtime and well-known challenges to prevailing thinking about copyright.

We end this opening section with this vignette because we find Lessig’s candidacy in the US presidential election striking. Lessig is an attorney, a scholar, and a university faculty member, not a politician. Even though his campaign lasted only two months (Lessig “Why I Dropped”; Weigel), Lessig’s successful bid to have a presence in the election speaks to the currency and urgency of IP issues today. These issues, we argue, are especially pressing for those who both create and teach about IP: members of college and university communities. Moreover, these issues are particularly pertinent to writing studies practitioners, who teach and research major foci of IP: written texts, multimodal compositions, digital webtexts, and multimedia productions. We echo Steve Westbrook’s assertion that “copyright law’s effects on composition has become a rather exigent matter in our professional lives” (“Introduction” 2). As a field, we have done much work to reflect on pedagogical and research methods, but we have done comparatively little work reflecting on how the IP infrastructure shapes our day-to-day lives as academics in writing studies. Given the larger turn toward metacognition in writing studies (and in higher education more broadly) (McClure and Purdy, Yancey), such reflection is long overdue.

Lessig aside, too few academics are conversant with—much less involved in creating—the IP legislation, policies, and practices that affect their teaching, research, and editing. We invite readers to engage in and influence these conversations about IP. However, we suggest doing so not by memorizing convoluted laws and precedents, but by analyzing reflections like those we share in this book, including stories that writing studies practitioners tell about their IP experiences. In this sense, our book answers Ben McCorkle’s call to “create scholarship [. . .] that increases the visibility of intellectual property issues in contexts other than legal discourse” (62). By reporting data from surveys and interviews of writing studies practitioners, as well as offering extended analyses of particular interviews, it also responds to Jessica Reyman’s affirmation that “it is only by talking to creators, composers, and authors who rely
on digital technologies that we can better understand the need to move beyond considering [the] seemingly universal rule of ‘do not steal’ to more context-contingent applications of norms” (“Property” 26). Ultimately, writing studies practitioners may (and perhaps should) influence IP law, but first they must understand what ethical lenses writing studies professionals bring to bear on IP situations, who the more proximate sponsors of IP knowledge are, and how IP issues shape our entire knowledge-creating enterprise.

The Need to Document IP’s Influence in Writing Studies

Lessig’s call for revamping IP, especially copyright, laws in the United States (Free, Future, Remix) encapsulates a theme that academics, including those in writing studies, have been hearing for some time: the need to simplify a set of legal concepts that has tremendous influence over the valued products of the information age. The last two decades have witnessed extensive and rapid changes to IP laws and policies in the United States. For those of us in academia, and writing studies in particular, the passage of the Digital Millennium Copyright Act (DMCA), legal cases over peer-to-peer file sharing, the lawsuit at Georgia State over library course reserves, and moves toward open-access (OA) publishing have been notable events. In addition to Lessig, IP scholars such as Heather Joseph, Peter Suber, and John Willinsky have likewise pointed out broad IP trends, such as the erosion of Fair Use and the public domain. They have noted the particular bind for academics, as creators of IP who must participate in a knowledge economy with limited resources, including insufficient knowledge of IP.

Intellectual work has been driving a complex global economy fueled by the online technologies, autonomous vehicles, and handheld devices of the computer industries as well as the texts, music, videos, and movies of the entertainment industries. Intellectual work likewise supports the vaccines, medications, and devices of the medical industries as well as the genetically modified organisms (GMOs), pesticides, and pinpoint machinery of the agricultural industries. Underlying many of these initiatives, of course, is the instruction of new minds, the research, and the intra- and inter-institutional collaborations provided by academia. All of these intellectual areas have to deal with a concept given governmental force some 300 years ago, the idea that products of intellectual labor can, and should, be considered property. Even more, they deal with the idea that intellectual products can, and should, be considered property of individual creators, even though those creators might be employees of large corporations or educational institutions. These assumptions about IP were developed in Anglo-American and Continental contexts, but they also influence, and sometimes dictate, relationships with countries across the world.
Given the range of intellectual work involved, and given 300 years to evolve, it is not surprising that IP laws, processes, and practices appear today to be extraordinarily complex—or, as IP experts in writing studies (e.g., Logie, Reyman, Rife) alongside Lessig have argued, broken. Repeatedly, stakeholders have called for simplified versions of IP to inform (and control) the general public, as when the entertainment industries commissioned public service announcements against peer-to-peer file sharing (see DeVoss and Porter 182–85), or when the US government in collaboration with academic service providers created the Copyright Clearance Center (see Armstrong). Particularly relevant for our project is that teachers and students are two populations especially targeted by messages emphasizing restrictions on sharing materials. For example, the Internet Scout Research Group released a special issue of its Internet Scout Report on March 18, 2016, that compiles, with annotations, instructional resources in two categories: US Copyright, and Intellectual Property and Licensing. The report was published in response to teachers faced with legislation across states echoing a 2006 California Bill (Assembly Bill 307), which mandated that schools receiving funding for technology must also follow and teach “appropriate and ethical use of information technology in the classroom.”8 As we have worked on this research project, we also have been asked—by interviewees, by colleagues, by reviewers—to provide an instructional answer to copyright issues: a handout, a flowchart, a website, something simple to give to academics, especially to undergraduate and graduate students.9

However, as the previous vignettes illustrate, writing studies professionals, and academics more generally, are faced with complex decisions about their own and others’ IP, and these complex decisions are not reducible to a flowchart or checklist, as much as we might understandably want them to be. Indeed, we would characterize IP decisions as, to borrow a term from design studies, “wicked problems.” The notion of wicked problems was advanced by design theorists Horst W.J. Rittel and Melvin M. Webber and subsequently taken up in writing studies. For instance, Richard Marback defines “wicked problems” as problems without a single, knowable solution that are ambiguous, contextual, and iterative and, therefore, must be solved over and over again (W399). Carrie S. Leverenz explains, “By eschewing easy or obvious solutions, wicked problems require us to think creatively about the problem as well as the solution” (7) (see also Purdy “What”). From this perspective, we would argue that the US Constitution, in presenting copyright as both “promoting the Progress of Science and useful Arts” and “securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (Article I, § 8, Clause 8), sets up IP as a wicked problem that requires negotiating and balancing competing interests.
The authors of the Constitution might have been more specific and directive, but they recognized the complexities of IP issues. These complexities are sometimes wrapped up in documents, such as contracts and licenses, that attempt to simplify decisions by articulating the responsibilities that different parties have in relation to IP. That effort to simplify, though, often leads to further Byzantine mazes, as stakeholders argue over their relative responsibilities and rights or are unsure what these responsibilities and rights are in the first place. Moreover, the rules and practices that seem to apply in one situation typically do not transfer to others; to deal with IP issues is to deal with a moving target. As many researchers, particularly writing studies IP scholars Jessica Reyman (*Rhetoric*) and Rife (*Invention*) have attested, this approach to IP, one that focuses on how end products are controlled, is neither simple nor has it been attuned to the needs of academics. Fair Use in the United States is one notable example that we discuss in the next chapter.

As academics, and particularly as scholars in writing studies, we must assume a different mindset for handling IP issues—whether these issues are our own, those of our students, or those of the institutions where we work. We argue that instead of a simple flowchart, we need ways of recognizing the different ethical models available to us, the proximate sponsors that so often attempt to define IP on our behalf, the multiple stakeholders involved, and the often tacit or unreported processes by which academics come to resolve IP conflicts. In short, we need critical reflections, including stories of lived experiences. Only through such reflections do we see how someone navigates the complexities of IP laws and practices, the needs of multiple stakeholders, and their own convictions. It is through reflections that we learn what we can and should (and cannot and should not) do. And it is through reflections that we can begin to formulate heuristics for thinking through IP issues that can be useful to other academics as they encounter and contemplate IP issues. With this book, we seek to offer such heuristics (see, in particular, the Conclusion). Instead of flowcharts, then, in this book we offer examples and systematic analysis of writing scholars thinking their way through complex, recurring rhetorical situations in which their intellectual work is mediated by IP law—or rather, by stories about the law.

We affirm that there is a great need to document practitioners’ reflections on their experiences with IP in writing studies. First, it is not enough to have “how to” guides. While they can be helpful, such guides often fail to recognize the contextual (i.e., “wicked”) nature of IP decisions. Learners must have examples to consider as they also navigate these waters. Some academics are fortunate enough to have colleagues to consult in person. As we have heard repeatedly, though, opportunities for professional development and consultation in IP are often scarce, particularly for the majority of writing specialists who teach as graduate students and adjuncts, and in community colleges. As a result, without
In Introduction documented reflections we lose opportunities to compare and contrast case studies of similar experiences, and we lose exemplars for those who are isolated.

A second reason that there is great need to document writing studies practitioners’ IP experiences is that colleges and universities have tended to foreground resources for a narrow (though important) range of IP issues: patent control in computing and the sciences; plagiarism in the classroom and among academics from non-Western cultures; the open-access response to cost increases in academic publication; and guidelines for avoiding legal challenges to online courses or library reserve materials. Conversations in hallways and at conferences, including those represented by our opening vignettes, suggest a need to address a much broader range of IP issues.

A third reason for documenting IP practitioners’ reflections is the normalization of IP practices. Certain decisions regarding IP become so commonplace as to become the uncritical norm; consequently, the role of IP in academic work risks erasure. To illustrate, we turn to our survey. An especially provocative version of this tendency to normalize appeared in responses from 19 (of 201) survey respondents who answered “no” when asked whether IP had influenced their research, teaching, or editing work. Three such respondents further elaborated as follows:

I choose to abide by guidelines to avoid problems.

(Question 20, Response 127)

I’ve undoubtedly more or less consciously tried to stay within IP boundaries in all of my work. Insofar as IP laws articulate well-established ethics and conventions I can’t say they have constrained the work I’ve done.

(Question 20, Response 81)

Not deeply, I don’t think. I tend to use copyrighted images in the PPTs [PowerPoints] that I create for in-class use, but seeing as I’m only using the PPTs for educational purposes and in class, and I’m citing the sources of the images (which are often ripped off anyway, I suspect), I don’t see it as a problem.

(Question 20, Response 90)

In each of these cases, the IP guidelines—in whatever manner participants defined them—are presented as inconsequential aspects of working as an academic. Yet, these “no, IP has not influenced me” answers are qualified by statements of the labor the respondents report doing to make certain that IP does not affect them deeply: They “choose to abide by guidelines,” “stay within IP boundaries,” and only use materials “for educational purposes” that are “often ripped off anyway.” Such
responses signal that respondents are aware that IP work involves labor, yet they do not classify this labor as the result of IP influences. That is, their decisions to “abide by guidelines” become so normalized that they do not see them as decisions at all.12

The processes that normalize IP limits, boundaries, laws, and conventions deserve attention. As we discuss in the next chapter, for instance, the “rules” that academics cite for pedagogical, scholarly, and editorial decisions can turn out to be myths that take on a life of their own, as in the case of the CONFU (Conference on Fair Use) Guidelines on Fair Use (Lehman). If nearly all academics within a community see using 10 percent of a text as the absolute maximum allowed under Fair Use, for example, in practice, so it becomes—with the danger that common practice will then be cited in court cases to define more restrictive boundaries on expression than were originally intended by IP law. As Dânielle Nicole DeVoss and Suzanne Webb put it, “If we, as instructors, as researchers, and as composers continue to translate lore into law, we risk chilling the work we can potentially do” (92). Steve Westbrook and James Ryan likewise affirm, “It is not the law itself that is key here but, rather, the cultural perception of legality or, more aptly, the threat of litigation” (101). Normalized practices based on “lore” and “cultural perception” become all the more powerful when they become entrenched within legal, informational, and technological infrastructures.

This book includes critical reflections of higher education faculty on these processes that normalize approaches to IP, concentrating on faculty in writing studies. We chose this focus not merely because writing studies is our disciplinary home but because we see writing studies faculty as especially affected by IP policies and because our discipline’s challenges with IP encapsulate challenges experienced by many of our colleagues across the university. Writing specialists engage in research methods shared by other disciplines, often combining close reading and rhetorical analysis of texts and archives (as do humanities scholars more broadly) with the use of surveys, interviews, and observations (as do social science scholars more broadly). All of these methods have IP implications.

In addition to engaging in research methods shared by colleagues across the university, writing studies professionals teach courses (e.g., first-year writing, technical writing, multimedia writing, digital writing) that ask students (and themselves) to think about source use and permissions as well as to engage in research regarding the circulation, delivery, reception, and use of texts and textual artifacts. All of these topics intersect directly with IP issues. Moreover, writing studies professionals, along with librarians, often have the role of explaining IP issues to colleagues across campus—through committee involvement and educational initiatives, such as faculty workshops and professional development. Thus, the reflections of writing studies professionals both highlight IP concerns in
ways that might not be visible to others within academia and reflect the larger concerns of higher education faculty more broadly.

IP Research in Writing Studies

Reflections about how IP issues have directly shaped academic work, however, are rarely documented formally in publications. To be sure, scholars in writing studies and English studies have articulated deep histories and thorough analyses of IP regulations as they have affected writing scholars, teachers, and students (DeVoss “Academia,” “English”; Herrington; Logie; Lowe “Brief”; Lunsford and West; Ratliff; Reyman \textit{Rhetoric}; Woodmansee and Jaszi \textit{Construction, “Law”}), as well as argued for the necessity of focusing on local, situated cases in considering the ethics of work in digital environments (McKee and Porter “Ethics of Digital,” \textit{Ethics of Internet}). A few (Westbrook \textit{Composition, “Visual”; Galin “Own”; Rife, Slattery, and DeVoss; Bazerman et al.}) have offered brief anecdotes of their own or their students’ encounters with IP challenges. However, these anecdotes have not been systematically documented and analyzed. These anecdotes, moreover, tend to focus on individual, episodic experiences, such as the unexpected discovery of a lack of open access (OA) to publications or permissions to use images. Such experiences are presented in disconnected, narrative silos. Our more systemic look at the IP experiences of writing studies practitioners, however, offers a fuller picture of the fundamental impact that IP concerns and regulations have on all aspects of constructing and disseminating knowledge in writing studies. Isolated anecdotes overlook how scholars must strategize not only for the short term, but also for the long term of their careers. Most of the published anecdotes, too, come from writing scholars whose research specializes in understanding IP. Several of these scholars are participants in our project, and we share their IP reflections at greater length. With this project, though, we seek not only to extend these scholars’ reflections on their experiences but also to situate them within a broader sampling of encounters with IP by writing studies professionals. Our participants, therefore, include mostly scholars who do not identify themselves as specialists in IP, so their reflections represent a wider range of voices talking about ways in which IP issues affect academics going about their daily work of writing, teaching, and editing.

Numerous writing studies scholars, of course, have published important studies on IP, particularly regarding applications of the Fair Use doctrine to teaching writing, especially with digital technologies (Conference on College Composition and Communication Caucus; DeVoss and Porter; Herrington; Logie; McKee; Rife “Fair,” “Why”; Shirk and Smith; Spigelman; Westbrook \textit{Composition, “Visual”}); remix compositions, again, especially, though not exclusively, with digital technologies (DeVoss and Webb; Dubisar and Palmeri; Edwards; Ridolfo and DeVoss); and OA
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considerations of and needs for writing students and faculty (Ballentine “In Defense,” “Writing”; Bazerman et al.; Edwards and Reyman; Lowe “Brief,” “Considerations,” “Copyright”; Lowe and Zemliansky; Ratliff, “Resolution 5”). The field’s prominent journals have published special issues on topics surrounding IP, including two special issues of Computers and Composition, one in 1998 on Intellectual Property (Gurak and Johnson-Eilola) and one in 2010 on Copyright, Culture, Creativity, and the Commons (Rife et al.); a 1998 special issue of Kairos on Copyright, Plagiarism, and Intellectual Property (Amore et al.), with a follow-up special issue on Ownership, Authorship, and Copyright published in Fall 2019 (Lunsford, Logie, and Herrington); a 2010 special issue of Technical Communication Quarterly on Technical Communication and the Law (Reyman and Schuster); and a 2013 special issue of College English on Western Cultures of Intellectual Property (Kennedy and Howard). Given the volume of publications on IP in writing studies, a thorough review of this work is beyond the scope of this book. Our study, however, responds to four main gaps in the existing writing studies scholarship.

First, apart from Rife’s study, which helped to inspire this work, there are to our knowledge no empirical studies of the influences of IP in writing studies. In publications from her study (Invention, “Copyright”), Rife reports survey and interview data regarding how technical writing students and professional writers perceived and understood the influence of US copyright law on their creation of Web content. This important study begins to make the argument that copyright issues affect more than the product of digital writing; they affect process, particularly invention. In reporting results of this study in Invention, Copyright, and Digital Writing, Rife calls for follow-up investigation of these effects (150–54).

Our study answers Rife’s call. We take up and expand this call in three important ways. First, our study focuses on IP issues beyond just copyright law to approach IP more broadly, including other IP laws, policies, and practices. While copyright was still a main focus of those we surveyed and interviewed, participants in our study also reflected on patents, trademarks, trade secrets/proprietary knowledge, and even plagiarism, as well as copyright. Second, we asked participants to report the effects of IP on their teaching, research, and editorial work—that is, all aspects of their academic lives—not just digital writing or writing for the Internet, the focus of Rife’s study. Third, our study includes any scholar who identified with the discipline of writing studies, whereas Rife focused on only one group within writing studies, members of the subfield of technical and professional communication.

A second way our study seeks to complement existing work on IP in writing studies is by focusing on the lived experience of academics.13 Existing research approaches IP through the lens of the entertainment industry. Such research is helpful, even crucial, of course. As Reyman affirms in The Rhetoric of Intellectual Property, IP laws tend to privilege the
entertainment industry first; attention to education comes later. But we see value in making higher education activities focal. Indeed, they have too long been disregarded in conversations about IP. In their larger study of the ethics of Internet research, Heidi A. McKee and James E. Porter begin to address IP issues faced by writing studies scholars who do research. They offer one example situation in their chapter of *The Ethics of Internet Research: A Rhetorical, Case-Based Process* on regulatory ethics (56–61). We find great value in their approach of offering example cases, and in this book we share examples representing a wider range of the IP decisions encountered by academics. In other words, we expand our focus beyond just Internet research to address other kinds of research, as well as teaching and editing activities.

A third way our study complements existing scholarship in writing studies is through attention to process. With a few notable exceptions, existing IP research in writing studies focuses mostly on textual products, not processes. Some of this work *talks* about process, but its objects of analysis remain finished products (e.g., laws, student writing, writing curricula). Moreover, existing research in writing studies that does focus on process almost exclusively deals with issues of remix (e.g., DeVoss and Webb; Dubisar and Palmeri). This work contributes significantly to our understanding of ways in which remix practices challenge and complicate conceptions of textual ownership and authorship. As our interview and survey participants make clear, however, there are many more areas of IP’s influence to be explored.

Fourth, existing IP research in writing studies focuses on plagiarism more than on legal licensing, contracts, work-for-hire, and other IP issues that affect academics (in writing studies and more broadly). This body of scholarship, like scholarship on remix, crucially informs and enriches our understanding of textual ownership and authorship. Given writing studies’ disciplinary foci, the prevalence of this lens for understanding IP makes sense. Indeed, as the special issues of journals highlighted previously illustrate, significant work in writing studies has addressed IP in terms of plagiarism, and several of our study participants shared stories about, experiences with, and commentaries on plagiarism in discussing IP, particularly regarding ways in which they teach students to cite sources and avoid plagiarism. We think it is important, however, to extend the conversation about IP beyond plagiarism. Attention to plagiarism is necessary but not sufficient.

Given these four gaps, there are two areas in particular where writing studies scholars can and should advise colleges and universities about IP. These possibilities for intervention helped motivate our study and, through sharing the reflections we gathered, we hope to begin to offer this advice and intervention with this book. The first area is the particular focus of this study: the day-to-day lived impact of IP on individual academics. Our nationwide survey and interviews affirm that IP
Introduction

concerns play a significant role in determining teaching and research trajectories for faculty at all levels, including contingent faculty and graduate students. For instance, cost burdens (e.g., paying licensing or permissions fees) have shifted to individual academics. Scholars—from PhD students writing dissertations to established faculty seeking promotion—face difficult choices between paying high out-of-pocket costs or simply abandoning a particular image, quotation, video clip, or even a whole project.

Moreover, burdens of proof for Fair Use of IP have shifted to individual academics as well. For example, writers accused of copyright violations (particularly in digital venues) must often demonstrate their innocence to have materials restored. This guilty-until-proven-innocent approach allows for trolling (i.e., deliberately attacking others anonymously online), as opposing agencies use copyright claims to carry out censorship. We found through our survey and interviews that colleges and universities do not always provide legal protection, advice, or support for faculty or students accused of such violations—or, if they do, individual academics are unsure how to access it. Given this shift in the environment of higher education to individual responsibility, we feel it is important to study and document how individual academics are navigating these situations—and to provide example cases for reference.

The second area where writing studies scholars can and should offer advice to institutions of higher education is regarding the shift away from copyright ownership to licensing. Writing studies scholars have addressed the value of, advocated for, and critiqued use of Creative Commons licenses (e.g., Basgier; Galin and Latchaw; Lowe “Considerations”; Zimmerman) and analyzed the (troubling) rhetoric of click-through licenses (e.g., Stedman). In this way, writing studies scholars, along with Lessig and other IP scholars, have done much to inform our understanding of possibilities for and challenges of licensing. Licenses have become so important in discussions of IP because they control access to university library materials and research data and can serve as a move away from Fair Use. For example, in many cases, libraries no longer own physical copies of journals but have licensed the right to allow certain members of the university or college to access digital copies of those journals. Similarly, OA is often controlled through licensing, because authors are asked to pay for the right to place materials into OA repositories. Likewise, control of multimedia—images, music clips, and video clips—has grown increasingly restrictive, sometimes by universities and colleges themselves. As several high-profile cases (e.g., Georgia State,14 DMCA15) have shown, the shift to licensing is involving universities in legal disputes. This shift places an additional responsibility (even burden) on academics; thus, discussions of licensing need to be included as a part of professional development for writing studies faculty and students of all levels. This book offers a start in that direction.
What we found from our study is that many participants indicated that they had not thought about IP issues before—that it is only in retrospect that they considered the influences of IP on their academic work. As one survey respondent put it, “I’ve not given it [IP] much thought. Until now . . .” (Question 20, Response 154). We see part of the need for this project, then, as helping writing studies practitioners (and academics more broadly) be mindful up front of the shaping force of IP—that is, before they make decisions. Thus, rather than be reactive, scholars can be proactive in considering IP.

Personal Stakes

Before we share the reflections of our study participants, we believe it is important to share our own reflections, as several personal experiences have led us to this project. We each have experienced the effects of the changing landscape of IP. For instance, when editing a special issue of a prominent scholarly journal, Karen was surprised when a twenty-second clip of a two-hour movie was challenged as not being under Fair Use; the argument was that there was not sufficient commentary on the clip. Likewise, Jim was told by the editors of another prominent scholarly journal that a short epigraph for his article could not be included without authorial permission; because time did not allow for securing such permission prior to the publication deadline, the epigraph had to be removed. Moreover, as part of a faculty writing group, Karen was asked questions in response to drafts of this project that show popular misunderstanding of Fair Use and a fear of the presence of copyright trolls. Similarly, one of Jim’s research assistants for this project requested that he help run a workshop on IP issues for graduate students because they felt largely unsure of how to address copyright issues—or even what IP knowledge they needed (and will need) as students, teachers, and researchers.

We each also have served on committees for which IP concerns have been central. For instance, we both have participated in the Intellectual Property Caucus in Composition Studies (commonly referred to as the CCCC-IP)—with Karen serving as junior chair and senior chair in 2009 and 2010, respectively, and Jim serving as junior chair and senior chair in 2015 and 2016, respectively. From its inception in 1994 through June 2016, the CCCC-IP served as the public counterpart of the Conference on College Composition and Communication’s closed Committee on Intellectual Property, and the senior chair of the CCCC-IP served as an ex-officio member of this committee. In June 2016 the Committee on Intellectual Property was not reconstituted; therefore, as of the time of this writing, the CCCC-IP’s role has changed and expanded to take on responsibilities of this committee. CCCC-IP has held annual meetings open to any member of the Conference on College Composition and Communication (CCCC). At meetings CCCC-IP participants work to
create action plans; develop lobbying strategies; mentor junior scholars and graduate students; produce documents for political, professional, and pedagogical use; and (formerly) advise the Committee on Intellectual Property of desired actions and items to be brought to the larger CCCC and/or NCTE (National Council of Teachers of English) organizations. As members and officers in an organization with this charge, we heard stories like those represented in the vignettes opening Chapter 1, stories of concern, frustration, and uncertainty.

Two other committee affiliations have informed our work on and interest in this research. In March 2015, Karen chaired the CCCC Task Force called upon to update and revise the *CCCC Guidelines for the Ethical Conduct of Research in Composition Studies*, a document that addresses ethical issues in classroom, online, archival, and other empirical research. Jim was also a member of his institution’s Institutional Review Board (IRB) from 2012 to 2017. Though not directly charged with considering IP policy or legislation, both committees dealt with ethical research practices and human subjects rights, concerns that intersect with IP issues. Thus, our interest in this project comes directly from our own professional work. It comes from not only an abstract sense of the importance of the topic of IP for academics, but also a tangible felt need of the influence of IP on our own campuses and in our own academic pursuits in writing studies.

In addition to our individual and committee experiences, our research (both individually and collaboratively) led us to this project. For instance, Karen published on the California Open-Access initiative in the *IP Annual*, a publication of the CCCC-IP (Lunsford). Jim published several articles in peer-reviewed journals on plagiarism-detection technologies, with particular attention to their (mis)treatment of students’ IP (Purdy “Anxiety,” “Calling”). This book is a part of our larger study investigating the influences of IP on academics’ research, teaching, and editorial work.

In sum, we have personal and professional stakes in the influences of IP on postsecondary education.

Our Project: Documenting and Analyzing IP Reflections in Writing Studies

Therefore, for this book we sought out reflections and documented the stories writing studies scholars tell. We did so in two ways, a survey and interviews, both approved by our institutions’ IRBs. First, we conducted a nationwide, anonymous, online survey, distributed via Survey Monkey, during January to October 2015, with a mix of twenty multiple choice and free response questions (see Appendix A for a copy of this survey). This mix of questions allowed for quantitative and qualitative analysis. Participants could elect to skip any questions they did not wish
to answer or those that were not relevant. Questions were aligned with IP issues we had identified through a pilot study as potentially impacting scholars: permission costs (Questions 1–9), challenges to using others’ and protecting one’s own IP (Questions 10–15), intersections of IP and IRBs (question 16), knowledge of IP (question 17), and intersections of IP and teaching (Questions 17–19). The final question (Question 20) asked participants, “As you reflect on your career, in what ways have intellectual property concerns shaped your teaching, research-writing practices, and/or your editorial decisions?” We recruited scholars who identified themselves as associated with writing studies by advertising through multiple channels: 1) discussion boards/email lists dedicated to writing studies; 2) Facebook posts and tweets; and 3) announcements at the 2015 CCCC and Computers and Writing conferences. In addition, we emailed the editors of journals in writing studies to invite their participation.

This survey was completed (in part or in whole) by 393 teachers-scholars who identified themselves as associated with the discipline of writing studies. Participants were, therefore, self-selected, and the results reflect a population likely interested in IP. Perhaps based on their self-selection to participate, open-ended responses reflect a variety of fields that participants considered as falling under the category of “writing studies,” including composition, technical communication, professional communication, multimodal composition, and creative writing. Thus, while this range may not be strictly representative of writing studies as defined at most US colleges and universities, it reflects views across related humanities disciplines and, consequently, is useful for our project. To maintain confidentiality, we did not request demographic information; however, some participants volunteered such information in their open-ended responses. Open-ended responses indicate a range of career experience, from graduate students through professors emeriti, and so offer insight into the effects of IP for the full span of academic careers. The majority of respondents appear to have been located in the United States, although some participants identified themselves as from Argentina, Brazil, Canada, and Iceland. Because different questions had different numbers of respondents, we use response numbers in this book to identify quotes from the survey; thus, response numbers across questions do not necessarily refer to the same person.

Second, we conducted semi-structured interviews with twenty-eight writing studies scholars of varying seniority at various institutions. We asked them questions about the ways in which IP (defined broadly) has affected their research, teaching, and/or editing, including their past experiences and future prognostications (see Appendix B for the interview questions and transcription conventions). These 45–90 minute interviews were recorded via Skype, telephone, or in-person video and audio recording. Participants consented to the use of their real names.
While our request to use real names was grounded in practical concerns (we wanted to use video and sound clips in publications and presentations), it was also crucial in allowing us to give participants ownership over their stories and to emphasize the ways in which particular people have been influenced by and grapple with IP in their professional work.

Equally as important, in this project we sought to document the experiences of members of writing studies who have been touched by IP concerns. Academics’ encounters with IP have brought productive initiatives for disseminating research and teaching materials through open source and OA venues as well as alternatives to strict copyright ownership (e.g., Creative Commons). Too often, however, our needs as academics have been disregarded by entertainment and other industries because we have lacked a strong voice in national IP discussions. Too often, our needs as individual scholars have been subsumed under the claims of an academic institution because we lacked data to support our arguments. To redress these problems, we offer here data on the range of media/texts and the range of academic processes affected by IP.

In addition to documenting these reflections, we analyzed them. Along with reviewing the quantitative responses in the survey data, we coded answers to free response questions to identify trends. Likewise, we transcribed the interview recordings and, once participants had the opportunity to approve those transcriptions, coded these individual transcriptions as a group to determine themes. More specifically, we coded the explanatory comments respondents provided for the first nine questions of the survey regarding the financial costs of securing IP permissions. Doing so allowed us to discover that many participants reported low or no costs paid for IP permissions because they decided not to include desired materials, and thus did not pay for them. We also coded Questions 10 and 11 for the reasons why respondents chose not to include desired materials in publications or course materials. Doing so allowed us to discover that cost, time, hassle/effort, permission denial, and orphan works were the main reasons. In analyzing our participants’ interview transcripts, we were struck by the variety of ethical lenses participants used in making IP decisions and the sponsors, particularly gatekeepers, that participants identified, implicitly and explicitly, as mediating their application of these lenses. In turn, for Questions 12–20 in the survey, we coded open-ended responses for the ethical lenses and sponsors that emerged from the interviews.

Another theme that emerged from the survey responses is that IP issues impacted not just end products, but the entire knowledge-making process. Thus, we also coded responses to the final, open-ended question of the survey (Question 20) regarding ways in which participants described the impact of IP on work over their career. To arrive at this emergent coding scheme, we first separately coded the 201 responses to this question and then compared our individual coding, negotiating
to agree on all codes. Doing so allowed us to determine that respondents indicated IP influenced five parts of the knowledge-making cycle: 1) choosing topics to study and teach; 2) collecting data and materials; 3) negotiating procedures and products for publication; 4) disseminating and storing texts; and 5) employing materials and technologies in face-to-face and digital classes. Chapters 3, 4, and 5 identify and discuss these ethical lenses, sponsors, and knowledge-making processes, respectively.

To provide context for our participants’ reflections in their survey and interview responses, Chapter 2, “Histories of Intellectual Property in Academia,” centers on the question, What histories and legislation set the parameters for an IP decision? This chapter offers a brief history of IP, particularly copyright, and the academy. This chapter reinforces that there are, in fact, multiple histories of IP. In particular, Anglo-American and Continental approaches to IP have evolved to privilege different figures in the rhetorical triangle. The Anglo-American system favors the audience, while the Continental system favors the author (though, as we affirm, the Anglo-American system has come increasingly to favor the author). By discussing two significant facets of US IP law, Fair Use and the Bayh-Dole Act, Chapter 2, “Histories of Intellectual Property in Academia,” chronicles how time has allowed certain choices about IP to become routinized among postsecondary institutions. The chapter situates our analysis of these aspects of law, as well as the 2001 boycott of scientific journals, within larger conversations of IP in critical university studies in order to acknowledge broader cultural and economic trends that have changed and challenged the role of IP in institutions of higher education. As a result of these trends, and as our study participants attest, IP legislation and its varied interpretations may exert unacknowledged influence over choices that writing studies professionals make in regard to their teaching, research, and editing. This chapter helps to illustrate that the complex, sometimes invisible histories of IP legislation likewise suggest why IP procedures often come across as intimidating, a comment we repeatedly heard from participants in our nationwide survey, in our interviews, and in our work with members of CCCC. Faced with this complexity, academics can learn ways in which to respond to IP situations through critical reflection.

Chapter 3, “Ethical Lenses Academics Bring to Intellectual Property Decisions,” provides such reflections from our study participants that show them to approach IP issues through a range of ethical lenses (not limited to legal or Western views). It seeks to answer the question, What values guide writing studies practitioners’ IP decisions? We found participants apply a range of ethical lenses and sustain multiple, even contradictory, ethical lenses simultaneously. These approaches emerge from participants’ understandings of themselves as academics in writing studies. Drawing on McKee and Porter’s work on ethical approaches to research in writing studies, which emphasizes the
value of looking beyond laws to case-based reflections in making (and understanding) complex decisions, this chapter shares ways in which participants recounted experiences that show them using different sophisticated lenses to provide models for how to understand and/or negotiate IP issues, to offer alternative views that writing studies practitioners need to consider in challenging existing entrenched perspectives, and to highlight policy debates occurring in the discipline of writing studies and in academia more broadly. For instance, one of the participants offers a Native American perspective on IP that approaches IP as collectively rather than individually owned, another offers an industry perspective that establishes academic work as entrepreneurial, and another provides a classical rhetoric perspective that situates IP decisions as based in considerations of ethos. In this chapter we provide data from our study showing writing studies practitioners view IP as part of business practice, IP as part of economic systems, IP as fundamental to democracy, IP as protecting individual expertise, IP as part of ethical systems, IP as collective development of a culture, and IP as about disciplinary relationships. Ultimately, this chapter argues that it is crucial for writing studies scholars to recognize this range of ethical lens options, in order to consider alternatives for the complex teaching, research, and editorial situations they encounter, as well as to recognize the lenses that prevail in current US legislation, in order to understand the perspectives privileged in the law.

Our survey and interviews reveal that these ethical lenses are instantiated and enacted through sponsors. These sponsors are the subject of Chapter 4, “Sponsors that Mediate Academic Intellectual Property Decisions,” which addresses the question, Who and what offer guidance about IP decisions, and what advice do they offer? We use the term sponsor, following Deborah Brandt’s term literacy sponsor, because we argue IP knowledge is a type of literacy. As our survey and interviews show, academics’ IP decisions routinely are shaped by sponsors, including gatekeepers, who provide both accurate and misapplied information. Such sponsors have significant, but often invisible, influence, and this chapter seeks to make such sponsors more visible. By analyzing survey responses, this chapter illustrates that these sponsors can be human (e.g., editors, department chairs, interview participants themselves), institutional (Fair Use guidelines, publishers, cost), and technological (e.g., YouTube, content management systems, Google). The chapter then provides two extended examples taken from our interviews that demonstrate the influences of IP sponsors. We first analyze a trend that characterized the majority of our interviews, attention to the changing conditions of—and roles of sponsors in mediating—archival research. We close by offering an extended example of the interview of one participant, Cruz Medina, whose reflections illustrate a subtle, cumulative change in IP practices based on the interventions of various IP sponsors.
Taken together, participants’ reflections in Chapter 4 offer data about the multiple forces that shape what writing studies practitioners learn about IP and that direct what decisions they make (or think they can make) regarding IP. In this chapter we argue that knowing these sponsors can make practitioners more mindful of decision points as well as ways in which they can and should be sponsors. Moreover, these reflections document misinformation, where gatekeepers misguide through inaccurate advice or directives, and show instances of missed opportunities for faculty to pursue teaching and scholarship as well as for universities to intervene on behalf of their faculty and students.

Our study shows that survey and interview participants bring ethical lenses to bear on and sponsors influence work at different parts throughout the academic knowledge-making cycle, not just at the end with textual products. These different parts are the focus of Chapter 5, “Effects of Intellectual Property on the Academic Knowledge-Making Cycle,” which explores the question, When are IP decisions made in academic knowledge-making? Our study participants revealed that elements of the knowledge-making cycle affected by IP include choosing topics and texts to research and teach, collecting data and evidence, negotiating procedures and products for publications, disseminating texts, and using materials in face-to-face and online classes. Through first analyzing survey responses, this chapter both recounts ways in which study participants changed what they did for their research and teaching because of IP encounters as well as identifies ways in which study participants changed what and where they published based on IP encounters. The chapter then offers more extended analyses of interviews from two study participants, Damián Baca and Cheryl E. Ball, to reinforce that IP concerns influence the full knowledge-making cycle in systemic, pervasive, and sometimes in more insidious ways. Taken together, participants’ reflections in Chapter 5 offer data about the multiple instances and places where writing studies practitioners at all levels are blocked from or enabled in doing their work because of IP.

The final chapter of the book offers a concluding reflection and call to action. In this chapter, we address the challenges of increased focus on IP in writing studies and identify ways in which this book helps writing studies practitioners meet those challenges. We then, based on analysis of findings from our survey responses and interviews, offer heuristic questions to guide writing studies professionals in making IP decisions that influence their teaching, research, and editorial work. We organize these questions by the foci of our chapters: ethical lenses, sponsors, and steps of academic knowledge-making. Each set of heuristics is followed by a hypothetical scenario, drawn from vignettes we offer in Chapter 1, that walks readers through applying these questions to IP decisions they may face. Next, we consider three future trajectories of IP—nonhuman agents, artificial intelligence and bots, and licensing—that will inevitably
affect writing studies practitioners in their future teaching, research, and editing. Finally, we close the book with two reflections: We tell our own IP story connected with writing this book, reviewing our own IP choices. Then, to echo the story of Lessig’s run for president that we offer in this introductory chapter, we return to a story that connects IP, particularly copyright, and the presidential office of the United States, the proposed Register of Copyrights Selection and Accountability Act, which assigns the president, rather than the librarian of Congress, the authority to appoint the register of copyrights.

But first, to better understand these and our study participants’ reflections, we look back at the history—or, rather, the histories—of the academy’s complex relationship with IP.

References

1. Charles Bazerman defines writing studies as “the study of writing—its production, its circulation, its uses, its role in the development of individuals and societies, and its learning by individuals, social collectives, and historically emergent cultures. [. . .] Inquiry into the skills, practices, objects and consequences of reading and writing” (32).

2. When we reference professionals from writing studies, we assume—and wish to highlight—that they are “teacher-scholars” by default. That is, because of the discipline’s historical grounding in and emphasis on pedagogy, practitioners both teach and research. Both roles are integral. Thus, both roles should be understood for writing studies professionals even when we use the terms scholar or practitioner.

3. We use they as a singular pronoun to avoid binary gendering (with a recognition that some non-binary individuals are using other pronouns). We intend this pronoun to be inclusive.

4. In Chapter 2, we define and discuss the Fair Use exemption to copyright law (Section 107 of the US Copyright Act of 1976).

5. Lessig’s fundraising efforts reflected his platform to reform campaign financing laws so that corporate entities or a few big donors would not wield so much influence over the federal government.

6. Lessig’s ideas about reforming copyright are perhaps most famously developed in Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity.


8. The enacted language of the Bill called on schools “to educate pupils and teachers on the appropriate and ethical use of information technology in the classroom, Internet safety, the manner in which to avoid committing plagiarism, the concept, purpose, and significance of a copyright so that pupils are equipped with the skills necessary to distinguish lawful from unlawful online downloading, and the implications of illegal peer-to-peer network file sharing” (California, AB 307 ¶3). The regulation was incorporated into California’s Education Code in 2006, amended again in 2007, and repealed in 2017.

9. In this way, our experience reflects that of McKee and Porter, who note that in their work on Institutional Review Boards they encountered “reviewers and researchers who when reviewing Internet research projects desperately [sought] some clear-cut, absolute answers to thorny questions” (Ethics 151).
10. At the end of his *Law and Literature* article “Fair Use and Education: The Way Forward,” legal scholar Peter Jaszi makes a similar claim and call for teachers to tell their stories, in his case stories about how teachers’ work with copyrighted material is necessarily transformative (45).

11. Jody Millward et al. found that “[t]wo-year colleges teach an estimated 50% of all college-level composition and an estimated 70% of all developmental composition courses” (8). These instructors typically are expected to invest in professional development through research and/or the development of instructional materials.

12. Notably, we also found language pointing to similar labor among survey respondents who answered, “yes, IP has influenced me.” Among the interviewees, we received extended reflections by participants who both challenged and abided by IP guidelines, and we analyze some of these responses in later chapters of this book.

13. Certainly, we are not the first to survey or interview academics about their research-writing practices. For instance, Ithaka S+R has conducted surveys of US and UK faculty regarding their work (Housewright et al. *Ithaka S+R | Jisc*; Housewright et al. *Ithaka S+R U.S.*; Wolff et al.). Jennifer Rowley et al. also used surveys to gauge UK academics’ attitudes toward and participation in OA publishing. Yet these surveys only indirectly touch on IP issues—in particular, faculty members’ use of OA materials. Such surveys do not yet address how IP issues directly affect research and teaching activities. That is one reason why we conducted our own survey.

14. In *Cambridge University Press et al. v. Patton*, also known as the “Georgia State” case, several academic publishers, including Cambridge, claimed that the Georgia State University Libraries illegally posted digital copies of texts on reserve. Georgia State claimed doing so constituted Fair Use. The case rulings and appeals have highlighted the murkiness of applications of the Fair Use exemption. We discuss this case further in Chapter 2.

15. The DMCA, or Digital Millennium Copyright Act, is the 1998 US copyright law that criminalizes use of technologies to intentionally circumvent copyright protections and increases penalties for infringing copyright on the Internet.

16. We developed the survey through a pilot study during November–December 2014 in which we invited ten experienced scholars to test 20 questions; seven respondents were able to provide comments. We used their feedback to refine the survey for general release, but we do not include their responses in the survey results and totals we discuss in this book.

17. One such choice is the precedent that faculty at research universities typically are granted copyright ownership of their intellectual works by the institution’s hiring contract, even though such agreements may become tenuous (Rooksby “Copyright” 199–204, 220). Time has also allowed conceptions and misconceptions of IP to become entangled, as when teachers, students, and other composers must consider the extent to which digital copying intersects with plagiarism (Rife “Why”). Even when IP procedures are rendered more visible, as when peer-to-peer file sharing visibly challenged the procedures of traditional publishers and music distributors (DeVoss and Porter; Logie; Reyman), IP protocols have many facets that must be learned, and academics do not always have the resources at hand for learning them.

18. See Appendix B for the interview questions and transcription conventions; see Appendix C for the position titles and affiliations of interview participants from at the time of their interviews.
1. Heidi A. McKee and James E. Porter indicate in their 2009 *The Ethics of Internet Research: A Rhetorical, Case-Based Process* that they see “a very broad” “global human rights perspective” on IP emerging, largely from Article 27 of the Universal Declaration of Human Rights, which they present as “something like an international principle regarding intellectual property,” together with the Berne Convention and the Trade-Related Aspects of Intellectual Property Rights Agreement (52, 66). Yet it is what they identify as the shared feature of these documents—a “view of intellectual property that affords moral rights to the author stronger than those recognized in US copyright law” (69)—that suggests we have yet to see such a consensus position emerge. In other words, the Universal Declaration of Human Rights, the Berne Convention, and the Trade-Related Aspects of Intellectual Property Rights Agreement counterpose US copyright law on the idea of moral rights.

2. In our nationwide survey, we received responses taking a range of perspectives: a desire to protect one’s own work alongside a desire to employ others’ work alongside a desire for more flexibility in acknowledging collaborative work.

3. Our history in this chapter does not include non-Western views because US universities are modeled on European universities, especially German ones, and the Anglo IP tradition became embedded in US law. In later chapters, we discuss the non-Western views brought up by the writing studies scholars we interviewed.

4. Adi Kamdar et al., for example, note that in a single case, “a secretive troll called MPHJ sent over 13,000 letters to small businesses demanding payment” for a spurious patent claim to “‘scan to email’ technology” (23). Mitch Stoltz, referring to Matthew Sag’s research, likewise argues, Copyright trolling is a widespread problem. Although one notorious outfit known as Prenda Law ceased its lawsuit campaign in January 2013 and was later sanctioned for fraud, copyright troll suits (identified in one study as copyright suits against multiple John Doe defendants) were nearly one-third of all the copyright suits filed in the US in 2013. In Illinois, Indiana, and Wisconsin, these suits were over half the copyright suits filed in that year (8, emphasis in the original).

5. See Appendix B for the interview questions and transcription conventions; see Appendix C for the position titles and affiliations of interview participants from the at the time of their interviews.

6. Kinko’s was founded by Paul Orfalea at the University of California, Santa Barbara in 1970; the lawsuit against Kinko’s on the basis of copyright infringement would come in 1991 (Crews “Law” 641). Tim Berners Lee’s proposal for the World Wide Web overlay on the Internet is dated to March 1989 (Greenemeier).

7. Two respondents to our nationwide survey reported having paid between $20,001–$25,000 via a publisher or deducted royalties to secure permissions to include materials in a scholarly publication. For textbooks, two respondents indicated that grants had paid career totals of over $50,001 for such permissions expenses, and two more respondents indicated that the publisher and/or royalties had covered totals over $50,001.

8. CONFU’s “Final Report to the Commissioner on the Conclusion of the Conference of Fair Use” explains the charge of CONFU as “to bring together copyright owner and user interests to discuss fair use issues and, if appropriate and feasible, to develop guidelines for fair uses of copyrighted works by librarians and educators” (Lehman 2). The report suggests that the failure
to decide on such guidelines may have been more the result of lack of consensus about the guidelines’ content and less the belief that such guidelines were not “appropriate and feasible.”

9. Indeed, several library and higher education organizations publicly opposed most or all of the CONFU “guidelines.” These organizations include the American Association of State Colleges and Universities (AASCU), American Council on Education (ACE), American Historical Society (AHS), American Library Association (ALA), Association of American Universities (AAU), and Association of Research Libraries (ARL), among others (Crews “Law” 610).

10. Some organizations, however, publicly supported parts of the CONFU guidelines. These groups include the Association of American Publishers (AAP), Association of American University Presses, Inc. (AAUP), Broadcast Music, Inc. (BMI), and Motion Picture Association of America (MPAA), among others (Crews “Law” 610).

11. Moreover, many of the IP scholars we cite in this book, as well as the writing studies faculty we surveyed and interviewed, might challenge the conclusion that “fair use [is] alive and well in the digital age” (18).


13. The initial ruling in the Georgia State case found only four or five cases of infringement in the more than 74 charges brought (there seems to be some disagreement about the number: Jaszi indicates four [33–34]; Keller and Vats indicate five [175]). Therefore, this ruling was seen by some as a victory for educational Fair Use; however, the appeal was viewed less so. In his discussion of the appeal for the CCCC IP Annual, Galin explains the judgment of the appeal this way: “In essence, the higher court agreed with the overall logic of the decision (with some important qualifications) but not the method for determining fair use. For the time being, the injunctive relief that the lower court established and the award of litigation costs to the Defendants have been vacated” (“Keep” 21). Keller and Vats similarly characterize the appeal as less positive for educational institutions: “Judge Vinson’s derisiveness toward the notion of educational exceptionalism leaps off the page” (177–79). Jaszi defines “educational exceptionalism” as “the notion that teaching and learning are so special, and so highly favored in copyright policy and fair use law, that it ought to be possible to get courts to cut education some special slack, beyond that which they extend to uses of third-party copyright material by filmmakers or musicians or publishers” (36). For Galin (“Keep”), as well as Keller and Vats, then, the appeal ruling threatens the notion that educational institutions should receive special consideration in making Fair Use judgments.

14. We discuss in Chapter 4 the role of literacy sponsors in mediating academic IP decisions.

15. That faculty keep the copyright on their work until they sign it over to journals or universities is a “gentleman’s agreement” holdover from the pre-Bayh-Dole Act approach to IP. As new technologies, for instance, course management systems and video conferencing technologies that facilitate online teaching, have come along, the post-Bayh-Dole Act approach has increasingly taken hold (e.g., in university IP agreements that stipulate their ownership of patents and in faculty contracts that stipulate work-for-hire arrangements where universities own course materials used for online teaching).
16. CITI training for Institutional Review Board (IRB) members, in its module on conflicts of interest, quotes David C. Mowery and Arvids A. Ziedonis to note explicitly that “In the past few decades, advances in technology coupled with a change in federal law that allows universities to retain title to intellectual property developed using federal funds, have resulted in significant improvements in commercialization of technologies developed in academia.” That is, since the Bayh-Dole Act, universities have been able to monetize new technologies developed and used by their faculty, which, for CITI training purposes, can result in conflicts of interest that must be considered when IRBs decide whether to approve research protocols.

17. For instance, publishing giant Elsevier was boycotted in 2011 in response to its support of SOPA (the Stop Online Piracy Act). Similarly, the University of California threatened to boycott the Nature Publishing Group in 2012.

18. This history of consolidation is eloquently summarized in the copyright notice of The Nature Publishing Group. As of this writing, the footer of the Nature journal pages, such as its current homepage, www.nature.com/nature/index.html, reads, “© 2017 Macmillan Publishers Limited, part of Springer Nature. All rights reserved. Partner of AGORA, HINARI, OARE, INASP, ORCID, CrossRef, COUNTER and COPE.”

19. It should be remembered that Harold Varmus was the director of one of the NIH agencies at the time, the National Cancer Institute.

20. Roger C. Schonfeld, director of Libraries, Scholarly Communication, and Museums for Ithaka S+R, defines a read-and-publish deal as one that “bundles together access to a publisher’s subscription content with the ability to publish openly through its journals without paying individual APCs [article processing charges],” or publication fees. In other words, a read-and-publish agreement combines access to subscription content behind paywalls with immediate OA to journal articles.

1. See Appendix B for the interview questions and transcription conventions; see Appendix C for the position titles and affiliations of interview participants from at the time of their interviews.

2. The Office for Human Research Protections flowchart has since been revised (and somewhat simplified) from the version McKee and Porter (Ethics) discuss, but we believe their larger point still holds.

3. Our participants, as writing studies scholars and rhetoricians, were well aware that they were telling stories to us as an invested audience, and their responses were undoubtedly shaped by this fact. Some participants even explicitly commented on this situation with answer prefaces like “you’re more expert in this than I am” and “you might do this in another way.” This awareness also led some participants to express desire for us to share the correct way to handle IP situations based on our study.

4. In the chapter we do not provide raw counts of instances of ethical lens use. We found that quantitative approach not to make sense since, in many cases, we would be double or triple counting. For our purposes, we found it more helpful to provide examples of ways in which writing studies practitioners discussed and applied these lenses.

5. Certainly this literature mentions IP and copyright, but IP issues and decisions are not its primarily focus.

6. “4Cs” is an abbreviation for the Conference on College Composition and Communication, the annual flagship academic conference for writing studies professionals.

7. We address further in Chapter 5 what we learned about how much writing studies practitioners report paying for copyright permissions.
8. See https://wac.colostate.edu for more information on the WAC Clearinghouse.

9. Such profit is more likely to come from other forms of IP, such as patents, trademarks, or proprietary knowledge (see Newfield Great; Rooksby Branding). Furthermore, such profit is more likely in STEM fields outside writing studies, first-year writing textbook publishing notwithstanding.

10. The Internet Archive (https://archive.org/) is a free digital library of books, film, software, and, through its Wayback Machine, previous versions of websites.

11. The case Amidon referenced, Lenz v. Universal Music Corporation, was resolved in 2018, after a more than ten-year legal battle. The case centered around a 29-second video Stephanie Lenz posted to YouTube of her then toddler son dancing to Prince’s “Let’s Go Crazy.” Universal Music Corporation claimed that the video was a copyright violation under the Digital Millennium Copyright Act (DMCA) and demanded that YouTube remove it. YouTube did. In turn, the Electronic Frontier Foundation sued Universal on behalf of Lenz, arguing that the video was clearly an example of Fair Use, which Universal did not take into account. The US Court of Appeals for the Ninth Circuit ruled that copyright holders must consider Fair Use in seeking to protect copyright under the DMCA. In 2017 the Supreme Court declined to hear the case, upholding this ruling. Lenz and Universal settled out of court in 2018, with Universal agreeing to a more “fair” process of issuing takedown notices (“Lenz”; Farivar; McSherry).

12. The Trans-Pacific Partnership was a trade agreement between twelve nations, including the United States, that was signed on February 4, 2016. It sought to decrease tariffs and non-tariff impediments to trade among the member countries. However, it was not ratified so did not take effect. US President Donald Trump withdrew the US from participation in January 2017.

13. We take up Baca’s account at length in Chapter 5.

1. Despite the 1982 case, which suggests CCC may be a for-profit company, in a 2005 article, Tracey Armstrong, the then-vice president of transactional services and now CEO and president (since 2007) of CCC, identifies CCC as a nonprofit.

2. We included all of these references (professor, teacher, instructor, etc.) in a single category because respondents referred to educators using all of these terms.

3. As we note in Chapter 1, we use they as an inclusive pronoun (rather than using he, she, or ze).

4. See Chapter 2 for where we identify the four factors stipulated in Section 107 of the Copyright Act of 1976 to be used in determining whether a use of copyrighted material constitutes Fair Use.

5. We removed specific cultural references in this response to protect the identity of this respondent.

6. Jamendo (www.jamendo.com/) is a website that provides free music streaming and downloads licensed for reuse.

7. See Chapter 1 for discussion of the DMCA, or Digital Millennium Copyright Act.

8. In Authors Guild, Inc. v. Google the Second Circuit court found that Google’s digitization of entire books, garnered from libraries without permission or payment, for the Google Books project was transformative and thereby constitutes Fair Use.

9. See Appendix B for the interview questions and transcription conventions; see Appendix C for the position titles and affiliations of interview participants from at the time of their interviews.
10. Other writing studies scholars offer similar recommendations for (re)use of IP, especially the IP of indigenous populations: Jennifer Sano-Franchini, Robyn Tasaka, and Lehua Ledbetter call for a “reflexive approach to remix” (238–42), and Kristin L. Arola and Adam Arola call for an “ethics of assemblage” (204ff.). For an anthropological perspective on ways in which the concerns of indigenous populations complicate, oppose, and are unaccounted for in Western notions of IP, see also Haidy Geismar’s *Treasured Possessions*.

11. In this way, Kennedy’s reflection provides an interesting counterpoint to John Willinsky’s admonition in *The Access Principle* that scholars publish OA because they gain, and are subsequently rewarded with tenure and promotion for, scholarly “research reputation” (6).

12. At the time of these interviews, an edited book about the DALN was in press with the Computers and Composition Digital Press (CCDP), founded by Cynthia L. Selfe and Gail E. Hawisher. CCDP provides a publishing platform for longform, multimedia scholarly texts. As they mentioned in their interviews, both Hugh Burns (an advisory board member) and Patrick W. Berry (an editor) were aware of the DALN in part because of their associations with CCDP.

13. CCCC is the abbreviation for the Conference on College Composition and Communication, the major annual conference for writing studies professionals.

14. While Getty images are “royalty free,” users must pay to download and use them (“Plans and Pricing”). Westbrook and Ryan contend that Getty Images follows the now “widespread” practice among art museums and organizations of incorrectly claiming to own copyright over reproductions of public domain images (99).

1. For each question, we report the number of respondents who completed that question, as not all respondents completed all twenty questions. Question 20 was completed by 201 respondents, but two of the responses were uncodable.

2. See Appendix B for the interview questions and transcription conventions; see Appendix C for the position titles and affiliations of interview participants from at the time of their interviews.

3. As we note in earlier chapters, we use they as a singular inclusive pronoun.

4. This percentage is identical to the percentage in Rife’s study, where 6 percent of her participants likewise reported receiving takedown notices (*Invention* 42).

5. See Chapter 4 for analysis of Cruz Medina’s reflections on the evolving IP policies of YouTube and YouTube’s role as an IP sponsor.

6. See Chapter 3 for discussion of the *Lenz v. Universal Music Corporation* case Ball referenced.

1. CCCC, NCTE, and RSA are the Conference on College Composition and Communication, the National Council of Teachers of English, and the Rhetoric Society of America, respectively, the major professional organizations with which writing studies professionals are affiliated.

2. As we note in earlier chapters, we use they as an inclusive singular pronoun.

3. There are other inconsistencies in the coverage of this case. For example, the Associated Press reports that “Slater and PETA announced in September that they had reached a settlement under which Slater agreed to donate 25 percent of any future revenue from the images to charities dedicated to protecting crested macaques in Indonesia,” whereas Slater’s own website declares, “As of July 2017, I will be donating 10% of your purchase [of photographs of the macaques] towards a monkey conservation project in Sulawesi.”

“About.” *FSU Card Archive*. fsucardarchive.org/about.


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