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Why Napster matters to writing: Filesharing as a new ethic of digital delivery[☆]

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Abstract

This article discusses the Napster phenomenon and its cultural significance, traces some of the threads of the current “copyright crisis,” and connects these cultural and legal dynamics to show how the current filesharing context of digital environments pertains to issues affecting writing teachers. The article (1) urges writing teachers to view the Napster moment—and the writing practice at the center of it, filesharing—in terms of the rhetorical and economic dynamics of digital publishing and in the context of public battles about copyright and intellectual property and (2) argues that digital filesharing forms the basis for an emergent ethic of digital delivery, an ethic that should lead composition teachers to rethink pedagogical approaches and to revise plagiarism policies to recognize the value of filesharing and to acknowledge Fair Use as an ethic for digital composition.

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We think that Napster matters, or should matter, to writing teachers. That’s not the same as saying that the technology necessarily and specifically matters—we need to draw that important distinction at the outset. Scholars in computers and writing have long recognized that the networked computer changes the fundamental rhetoric of communication, the writing process, writer–reader dynamics, the design of the page or screen, and so on.¹ And, to a great

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¹ For example, see Stephen Bernhardt (1993); Jay David Bolter (2001); Gail Hawisher and Cynthia Selfe (1991, 1999); Johndan Johnson-Eilola (1997); Michael Joyce (1995); James Kalmbach (1997); George Landow (1992,

extent, the field of Rhetoric/Composition recognizes the impact of computer technologies on writing. We certainly agree, but that is not what we are talking about.

We are talking about a more specific, network-based practice—filesharing—a practice having to do with the impact of the computer revolution on digital delivery and publishing that pertains to the fundamental reasons for textual creation and distribution—that is, why people write in the first place. We think that the entire field of Rhetoric/Composition, ourselves included, has been slow to understand the full impact of digital technology on how we teach and how we do scholarship. This is, in part, a result of the multifaceted, complex, and rapidly evolving technologies. It is just as much a result, however, of lingering print-anchored values and dated approaches to authorship and ownership.

One component of the larger technological complex in which we live and write is Napster. Napster is more than simply an economic problem for the recording and film industries, more than a matter of people wanting to share music for free (Borland, 2001; Carlson, 2003; Carnevale, 2003; Evangelista, 2003; Hamilton, 2003; “Recording Industry,” 2002; Thomas, 2003). It is more than something that students just happen to use “outside of class.” Rather, the Napster crisis represents a profound cultural shift. Napster matters because it signals a new “digital ethic” of text use and file distribution that runs counter to the usual expectations that have governed the sharing and use of print texts (Jesiek, 2003). Composition teachers need to understand that ethic, which is not just confined to music and movie files shared across peer-to-peer (P2P) networks. The attitudes and expectations students have learned in digital filesharing environments enter our classrooms, influence students’ production and understanding of print texts (not to mention electronic texts), and affect their conception of the rhetorical situation.²

From a rhetorical perspective, Napster represents a crisis in *delivery*, the often-neglected rhetorical canon. Napster has fundamentally changed the national landscape regarding the digital distribution—and thus the delivery—of documents. Napster should matter to writing teachers because it represents a paradigm shift: from an older view of writing as alphabetic text on paper, intended for print distribution, to an emergent and ill-understood view of writing as weaving digital media for distribution across networked spaces for various audiences engaged in different types of reading. Writing is no longer just alphabetic text—writing is also audio and video. And writing is also hypertext and the delivery of multimedia content via the Internet and the Web. And writing is chunks of tagged text and data floating within databases and underneath the Internet in P2P spaces. But the shift is not merely a shift in genre—that is,

1994); Richard Lanham (1993); James E. Porter (1998); Stuart Selber (1994, 2004); Cynthia L. Selfe (1989, 1999); Hawisher Selfe, Paul LeBlanc, and Charles Moran (1996); Cynthia L. Selfe and Susan Hilligoss (1994); and numerous others.

² Why do we see Napster as the significant moment in the history of writing technology? Why not the creation of ARPANET in the late 1960s? Or *Time* magazine declaring the computer the “Man of the Year” in 1983? Or the release of the Macintosh computer in 1984? Or the emergence of the World Wide Web (the proposal for which was written by Tim Berners Lee in 1990)? Or the launch of Mosaic, the first graphical Web browser, by NCSA in 1993? Or even the passage of the Digital Millennium Copyright Act in 1998? Napster is the key cultural moment for us because it has launched a grassroots movement—a populist movement that touches, influences, and implicates most of the students in our classrooms. Napster emerged and quite suddenly educated an entire generation of young people on the basics of intellectual property, teaching them that ownership is slippery, that what is “tangible” doesn’t have to be *physically* tangible, and that our society takes the idea of ownership seriously, although within a spectrum of culturally, historically, and politically motivated ways.

writing in the formalistic sense of verbal and visual components. There is also an economic shift, a shift in terms of the rules and ethics governing the sharing and distribution of writing, what rhetoric has traditionally called *delivery*. And so delivery is critical to our focus because the revolution is not just hypertext and it's not just the Internet and it's not just new media. There is a consequent revolution that has to do with the fundamental rhetoric and ethics of delivery and distribution—the very reasons why people write and share their writing in the first place.

In this article, we discuss the Napster phenomenon and its cultural significance, trace some of the threads of the current “copyright crisis,” and connect these cultural and legal dynamics to show how the current filesharing context of digital environments pertains to issues affecting writing teachers. Our main arguments are that (1) as writing teachers we need to see the Napster moment—and the writing practice at the center of it, filesharing—in terms of the rhetorical and economic dynamics of digital publishing, and especially in the context of public battles about copyright and intellectual property and (2) that digital filesharing forms the basis for a new ethic of digital delivery, an ethic that should lead us to reconsider our policies regarding plagiarism and that, in general, we should consider when developing digital composition pedagogies.

1. Background: Napster, post-Napster, and the emergence of filesharing culture

We situate this article in the techno-cultural time dating from 1999 to the present and extending into the future as well—a time in which (a) Napster first enabled the relatively easy uploading, downloading, and sharing of music files; and, subsequently, (b) the recording industry reacted to this phenomenon by labeling such sharing and distribution as “piracy” and “theft” and sued Napster, then sued individual music downloaders, and used lobbying and litigation to try to stop P2P filesharing. This extended event is still clearly in progress. We anticipate coming trends in digital distribution and digital ethics as lawsuits unfold as anti-RIAA (Recording Industry Association of America) communities grow larger and as a culture we continue to grapple with the evolving delivery systems and ethics related to the use of digital texts.

Napster was fairly short-lived in the grand scheme of things but relatively long-lived in the world of the Internet. *Remember, in 1960 there was no Internet, in 1990 there was no World Wide Web, and in 1994 the Web consisted of a few haphazard pages with obscure addresses, gray backgrounds, default-blue links, pixelated images, and no ability to transfer audio or video files.* In 1999, Shawn Fanning, a bored computer science student at Northeastern University, wrote the Napster code that enabled individuals to share music files across servers via the Internet. In June of 1999, Fanning launched a user test of the Napster software—supposedly so-named because “Napster” was Shawn’s moniker, bestowed upon him due to his “nappy” hair—by distributing the software to 30 of his friends, asking that they test the software but keep it to themselves. Within a week, 15,000 people had downloaded the software.

In late 1999, Shawn Fanning’s uncle, who recognized the power and potential of Napster, moved himself and Shawn to Silicon Valley, the heart of digital explosion, biotech growth, and the rise of the corporate World Wide Web in the mid-to-late 1990s. Shawn’s uncle felt safe

promoting Napster: Napster was protected by a loophole in the Digital Millennium Copyright Act (DMCA) that partially protected the creators of Napster.³

In December 1999, the Recording Industry Association of America (RIAA) filed its first lawsuit against Napster.⁴ The lawsuit put Napster on the U.S. cultural map and secured its fame in the digital, cultural, and political landscape. At the time of the lawsuit, Napster was only a few months old and still in beta version. It hadn't even been publicly released yet or made available for widespread distribution via the Web. Curiosity piqued by the lawsuit, hundreds of thousands of users headed online to download and sample the filesharing software.⁵

Napster died in July 2001—or at least it died as it was originally conceived, as a P2P sharing network—when a judge declared that the owners must prohibit the transmission of *any and all* copyright-protected files (*A&M Records, Inc. v. Napster, Inc.*, 2001; Borland, 2001). With no immediate measures in place to regulate the millions of files circulating on its networks on a daily basis, Napster had no choice but to shut down its servers. The U.S. Court of Appeals for the 9th Circuit weighed against Napster in this pivotal case in part because the record companies successfully argued that the owners and operators of Napster knew that the system was being used for copyright infringement. Hence the argument that Napster wasn't designed for infringing uses and that Napster couldn't or shouldn't be responsible for use if the system crumbled. The protection first granted by the infamous videotape recorder case eroded as the 9th Circuit found Napster's services to constitute “a basis for contributory liability. The court further found vicarious liability due to Napster's ability to ‘control’ and supervise use, failure to ‘purge’ infringing uses and financial benefit from infringing activity” (GartnerG2 and The Berkman Center, 2003, p. 23; see also Borland & Barnes, 2000; Landau, 2001).

³ Even though the DMCA dramatically revised copyright law in 1998, the loophole allowed for protection following *Sony Corporation v. Universal City Studios, Inc.*, a 1984 Supreme Court decision in which Universal City Studios sued Sony Corporation for producing and distributing a videotape recorder that allowed users to record copyright-protected television shows produced by Universal City. The Court ruled that the recording of shows by individuals for their own personal use fell squarely under Fair Use. Thus, a precedent was set (a precedent upheld in 2004 in the 9th U.S. Circuit Appeals ruling in *Metro-Goldwyn Mayer v. Grokster*): Manufacturers of certain products could not be held legally liable for the uses to which consumers put those products. Ergo, the individuals who *chose* to use Napster to share pirated music would be held at fault, not Napster's creators or manufacturers (Sullivan, 1999).

⁴ The fuel for the initial lawsuit against Napster-as-software-manufacturer was primarily those portions of the DCMA that were inescapable where Napster was concerned; the DMCA, in part, made it a crime to circumvent anti-piracy measures built into most commercial software, outlawed the manufacture, sale, or distribution of code-cracking devices used to illegally copy software, and limited Internet service providers from copyright infringement liability for simply transmitting information over the Internet.

⁵ In early 2000, at the same time that new users were getting their first taste of Napster, savvy open sourcers saw the copyright loophole begin to close and, thus, anticipated the doom of Napster. They hacked code to create baby Napsters, or alternative engines for filesharing. Interestingly, the premier code that allowed for the emergence of other Napster-like filesharing spaces was created through an unauthorized AOL Nullsoft project—a freelance project led by two AOL developers. Recognizing the threat of the filesharing source code to music labels and the RIAA and needing to protect its investors and partners, AOL yanked the code “hours” after it was made publicly available. Those few hours, however, provided enough time for the source code to disseminate and to open the door to a variety of Napster-like offspring, including Audiogalaxy, Imesh, GrokSter, Toadnode, Wipit, Blubster, CuteMX, Napigator, Morpheus, and others (Jones, 2000).

Investors did not want to walk away from Napster's legacy—an estimated 60–80 million people used Napster at its peak. Thus, in late 2003, Napster was revived as a for-fee service in Napster 2.0. Today, Napster 2.0 is partnered with Gateway, Imation, Microsoft, Roxio, Samsung, and Yahoo!, and, based on the description and press information available on the Napster 2.0 site (<<http://www.napster.com>>), the owners are now banking on Napster's history as “the world's most recognized brand in online music” (<http://www.napster.com/what_is_napster.html>). Although Napster lives on in its 2.0 version, its legacy as a free filesharing space has ended. Napster now has corporate sponsors and elaborate for-fee structures. We thus use the term “post-Napster” to symbolize the death of Napster as it was originally conceived: a space for free filesharing and for consumption not framed by costs and fees but by an ethic of open distribution and collaboration.⁶

The Napster controversy surfaced trends and tensions at play in our digital culture and across the diverse and robust networks that emerged and rapidly grew in the late 1990s and into the 2000s. First, there is widespread confusion as to what constitutes appropriate use of copyright-protected materials—what is owned in spaces where information is freely and openly shared, what is allowable within and across networks that allow entire movies (including those not yet released to theaters) to be downloaded in a matter of hours. Not surprisingly, there is also deep confusion as to what is “right” when using the words and works of another, what “counts” as writing when chunks of text—both text-as-code and text-as-content, not to mention myriad other creations, such as audio and video files—can be copied and digitally moved into a different context and a new document, and where the lines between one person's work and another's become electronically blurred through linking practices and by scripting and coding approaches. What is allowable “remixing?” What is Fair Use of digital audio and video? What is a copyright infringement? What is piracy? The quotations assembled in [appendix A](#) show the political binary regarding filesharing in the past few post-Napster years.

Napster is still clearly a moment-in-process, although *post-Napster* is an apt expression because Napster will never return to its roots. Two recent landmarks in post-Napster history worth discussing here are, first, the appropriation of music sharing by and for commercial means and, second, the new wave of lawsuits initiated by the RIAA against individual file sharers in late 2003 ([McKenna & Waldie, 2003](#)).

⁶ In 2004, as we were drafting this article, post-Napster developments were still unfolding as the media industry continued its rabid pursuit of music downloaders, using current law to discourage downloading and continuing its aggressive lobbying of the U.S. Congress to legislate harsher penalties for filesharing ([Borland, 2004](#); [Mennecke, 2004](#)). In spring of 2004, Congress was considering a new piece of legislation called the Pirate Act, a bipartisan effort to authorize the Justice Department to bring criminal charges against copyright violators (see [Foster, 2004](#); [Jardin, 2004](#)). In effect, then, the Justice Department could end up doing intellectual-property police work for the recording and film industries. At about the same time, the U.S. Senate Judiciary Committee was considering “The Induce Act” (S. 2560, “Inducing Infringements of Copyright Act”), a bill designed to make technology developers liable for technological innovations that could be used for copyright infringement (whether or not the devices have other legitimate uses). However, in a victory for supporters of P2P filesharing, in August 2004 the 9th U.S. Circuit Court of Appeals published its opinion in *Metro-Goldwyn Mayer (MGM) v. Grokster*, which upheld an earlier district court ruling that found peer-to-peer filesharing services like Morpheus and Grokster not liable for copyright infringements by their users ([Dean, 2004a](#); [Electronic Frontier Foundation, 2004a, 2004b](#)). As we revise this article in February 2005, the U.S. Supreme Court has agreed to hear *Metro-Goldwyn Mayer (MGM) v. Grokster* in March 2005; an opinion is expected in July 2005 ([Electronic Frontier Foundation, 2005](#)).

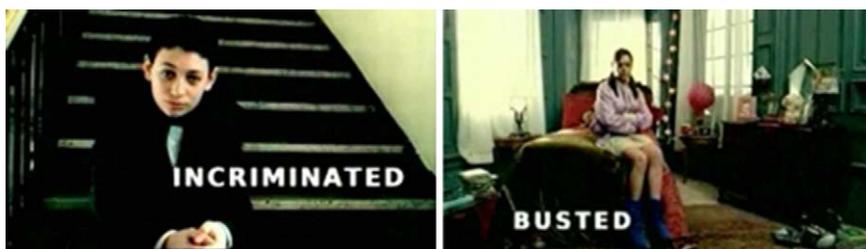


Fig. 1. Pepsi/iTunes ad: “I Fought the Law.”



Fig. 2. Pepsi/iTunes ad: “I Fought the Law.”

Although filesharing culture sometimes surfaced in fragments or veiled mentions within corporate culture (specifically advertising), filesharing wasn’t adopted as emblematic or popularly recognized as a lifestyle until a 2004 Super Bowl XXXVIII ad. The ad, a product of a collaboration between Pepsi and Apple iTunes, included a stirring rendition of “I Fought the Law,” sung by Green Day.⁷ The ad is narrated by one of the young people prosecuted by the RIAA (although “the law” is implicated in the ad, rather than the RIAA). In the ad, a series of images of young people are partnered with text that reads “incriminated,” “accused,” and “busted” (see Figure 1). The sullen looks on the kids’ faces contrast with the poppy riffs of the song. The sassy young woman narrator declares that she’s still going to download music off the Internet, and “there’s not a thing anyone can do about it.” The ad ends with smiling kids raising their bottles of Pepsi in apparent victory. The ad’s viewers are then encouraged to “drink down Pepsi” and “download music at iTunes. Legally” (see Figure 2).

The savvy copyleftists who have fought an ongoing and often underground battle with the RIAA, however, weren’t going to let this advertisement slip by without revision. A brilliant parody of the ad by James E. Saldana (and produced by IDC films) launches with Twisted

⁷ Green Day’s role in the ad is particularly ironic, as Green Day had a huge punk following in the early 1990s and was considered an emblem of independent music ethics and anti-big-record-company sentiments—until they abandoned punk label Lookout! Records and signed with Reprise, a Warner Bros. Company, in 1994.



Fig. 3. Images from the IDC film “We’re Not Gonna Take It.”

Sister’s rally cry from “We’re Not Gonna Take It.” Images of the same fresh-faced young people flash on the screen, with captions that have been revised to read “incriminated by an illegal monopoly,” “overcharged for music,” and “busted with your tax dollars” (see Figure 3).

The second post-Napster landmark is perhaps not truly a “landmark,” but rather yet another wave in the tide of lawsuits and legal actions. Napster was successfully shut down in 2001, but the baby Napsters were thriving, many of them offshore or otherwise untouchable in U.S. courts. Thus, the RIAA needed to redirect its legal efforts. The first wave of the RIAA lawsuits against filesharers was launched on September 8, 2003, and included 261 lawsuits (McKenna & Waldie, 2003; Rose, 2003). The second wave of lawsuits began to hit near Christmas 2003 (Borland, 2004; Dean, 2003; Legrand, 2004; Mennecke, 2004). The most recent wave of lawsuits, launched in early 2004, named 532 IP addresses.⁸

Close to the time the third wave of lawsuits hit, a large-scale survey performed by Peter Hart Research was released: 63% of those surveyed reported recognizing that it was illegal to “make music from the computer available for others to download for free over the Internet” (Borland, 2004). However, the survey also found that 28% of *students* surveyed believed that downloading and sharing music were legal. The same week the third wave of lawsuits was launched, almost two million copies of the popular filesharing tool KaZaa were downloaded. As the Electronic Frontier Foundation has noted, “with 60 million Americans using filesharing software, more lawsuits are simply not the answer,” and as the RIAA has conceded, more education is needed regarding laws, uses of music, and sharing of files (“Let the Music Play”).⁹

⁸ These are “John Doe” lawsuits—the RIAA bringing cases against IP addresses, not against people. Discovering the identities of those sued comes *after* the suit is launched, when an Internet Service Provider can be interrogated regarding the source of the IP address, and thus the identity of the user/downloader/criminal can be subpoenaed. Although most of the lawsuits claim potential damages based on number and value of files and thus hundreds of thousands, if not millions, of dollars, the RIAA’s scare tactics have been enough to force the hands of nearly 400 individuals thus far (suits have been brought against 1,977 people), who have settled with the RIAA for fines averaging \$3,000 (“Peer-to-Peer,” 2004). None of the cases has gone to full court yet, and that occurrence will provide to be a milestone moment in filesharing.

⁹ The litigious approach to the Napster problem may backfire on the recording industry. According to Clay Shirky (2003a), who has taken a Darwinian approach to network development, the RIAA is sowing the seeds of its own destruction with its lawsuits. In its attack on Napster, record companies have encouraged the evolution of decentralized systems like Gnutella and KaZaa. The attacks on filesharing may work momentarily to discourage sharing, but over the long haul RIAA will lose because it will simply foster the development of new social systems that will bypass the limitations, the law suits, and the firewalls. According to Shirky, filesharing will happen in smaller “trusted groups” rather than larger groups of sharers, but it will still happen. Research conducted in January 2004 confirms this prediction: A study by Thomas Karagiannis, Andre Broido, Nevil Brownlee, K. C. Claffy, and Michalis Faloutsos (2004) indicated that despite legal challenges, P2P filesharing has not decreased. In fact, what

What these cultural scenarios show is that the cultural and ethical battles lines have been clearly drawn. On the one side we have the fierce protectors of long and strong copyright control of digital material (like the RIAA), arguing that copyright is a necessary mechanism for protecting vested economic interests. On the other side we have an emergent culture of young people (mostly) who live in (and, at times, create) networks encouraging widespread sharing and distribution of digital material. The clash is between a view of the Internet as a mechanism for delivery of goods to market versus a view of the Internet as a public living space. As we will explain, these differing views also pertain in critical ways to attitudes and understandings about copyright and intellectual property—which in turn pertain to basic questions of rhetoric and writing.

2. Copyright and the politics of filesharing

When rhetoric asks questions about audience and purpose—“What is my purpose for writing?”, and “who is my audience?”—it is also implicitly asking questions about delivery, economics, copyright, and credit. What motivates someone to produce and distribute a piece of writing? What motivates someone else to access it, read it, interact with it? These are basic questions of rhetoric, which are also basic questions of delivery, economics, and copyright. Think of copyright not as merely an abstruse legal matter. Think of it as a set of guidelines governing the relationship between writers, readers, and publishers. From that standpoint, copyright is—or should be—an essential question of delivery and a key topic of rhetoric. In the discussion that follows, we discuss the politics of copyright and explain its involvement in the Napster issue.

U.S. copyright law, which has its origins in the U.S. Constitution, provides a basic ethical principle governing the Fair Use of “writing and discoveries”:

Congress shall have power to [. . .] promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. (Article 1, Section 8)

Take a close look at this constitutional clause. What is important to recognize is that copyright law “was created as a policy that balanced the interests of authors, publishers, and readers. It was not intended to be a restrictive property right” (Vaidhyanathan, 2002). Authors and inventors would enjoy the fruits of their labors “for limited times”—and then the writing and discoveries would be freely available for use by society “to promote the progress of science and useful arts.” Copyright law, then, is essentially characterized by a *balance*: between (a) creating a system of incentive by rewarding the author’s labor and (b) encouraging benefits to society from the flow of information that can stimulate new ideas, inventions, and creations. In this balance we can also see the basis of the conflict between the two sides in the digital filesharing culture war.

is happening is that “an increasing number of P2P networks intentionally camouflage their traffic” (p. 1). Some musical artists at least are inclined to take a different approach from the lawsuit strategy. In an effort “to cast around for compromises with what they see as the inevitable nature of file sharing,” a group of 14 musical artists, including the Beastie Boys and David Byrne, has created its own compilation CD that is “meant to be copied and shared” (Smith, 2004).

Copyright law was not framed as an absolute, God-given property right of the individual creator, but as a temporary right.¹⁰ Writing for the majority in the case of *Feist Publications, Inc. v. Rural Telephone Service Co.* in 1991, Supreme Court Justice Sandra Day O'Connor crafted a strong endorsement in favor of the public's right to use and benefit from works that have entered the public domain:

The primary objective of copyright is not to reward the labor of authors, but to promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art. [Copyright law] ultimately serves the purpose of enriching the general public through access to creative works. (O'Connor, 1991)

Here O'Connor makes very clear that the purpose of copyright is not to reward authors. Rather, rewarding authors is a means toward an end, and that end ("the primary objective") is "the progress of science and useful arts." In short, copyright serves society. What is significant in O'Connor's statement is that it presumes that copyright and Fair Use favor progress—what is good for society trumps the rewards to a select and small group of creators. Yet, O'Connor's statement also recognizes a balance: It is important to credit the work of creators in order to motivate creations that benefit society. Here we see a balance of practice and an evolved perspective on copyright—a balance of economic recognition and ethical practices.

And here we see another instance of an emerging ethic—one historically framed by but relatively unfettered in its understandings and privileging of sharing. If we were to label the columns in appendixes A and B, we would label the left-side columns as most closely tied to the old ethic of print and print distribution. The right-side columns we would label as more closely wedded to the new, emergent ethics of digital filesharing, of freely using information—but with some ethical restrictions.

Copyleftists may favor the broad public use of information, but recognition of the source of creation is core to filesharing; P2P users hardly *ever* violate this ethic. In fact, part of the essential capital of filesharing depends on identification of the origin, the source. If one of us downloads "Smells Like Teen Spirit," we are not attempting to co-opt authorship; we fully recognize Nirvana as the artist, and, in fact, the authorship is essential to the value of the downloaded product: it is *Nirvana's* "Smells Like Teen Spirit." The musical authorship is part of the capital. An interesting danger here, however, a danger that further complicates ethics of digital ownership, is that authorship can become fuzzy in filesharing spaces where it is in the hands of users to label files.¹¹

¹⁰ Copyright is a form of legal protection for authors proposed to the framers of the U.S. Constitution by James Madison in 1787. It secures "to literary authors their copyrights for a limited time." The first copyright law was presented to Congress two years later and then enacted in 1790. The first copyrighted work, arguably a writing-related textbook, was protected later that year: John Barry's *The Philadelphia Spelling Book*.

¹¹ For instance, a KaZaa audio search for "Brown Eyed Girl" results in, depending on when the user searches, hundreds of hits. There are two levels of confusion: The first level pertains to the original author/singer of the song. Some of the hits credit "Van Morrison" as the songwriter, but other hits label "Jimmy Buffet" as the artist. ("Brown Eyed Girl" was first recorded by Van Morrison in 1967 and appeared on the album *Blowin' Your Mind*.) The second level of confusion pertains to the punk/ska cover of the song; if users are searching for this version of the song,

Another instance that further muddies the distribution of capital in digital spaces is linked to the *representatives*—whether obvious or not, whether wanted by the songwriters and artist or not—of the record labels. It is commonplace—and became so in 2002—for record company reps to flood filesharing networks with trash files. The files are cleverly titled and disguised and may appear to users as complete and authentic files. However, when users download the files, they find that they are able to listen to perhaps the first 10 seconds of a song, and then the file erodes into digital distortion, often loud and painful to the ears. Another, similar technique is to loop 10 seconds of a song over and over so the file appears to be complete in size and length but is actually a seemingly infinite loop of the identifiable key riff of the song or the first 10 seconds of a song. In this case, the song isn't distorted or destroyed, but the file actually becomes a sort-of advertisement or commercial for the full and official product (which may or may not be circulating on the filesharing network).¹²

In their 2004 decision on *Metro-Goldwyn Mayer (MGM) v. Grokster*, the U.S. District Court characterized this current historical and cultural moment as a “quicksilver technological environment.” Authorship and origin, perhaps murky (as the examples above illustrate), are still core to this emergent digital ethic. Authorship and origin are not entirely erased in the face of new digital ethics and filesharing spaces, but they do change shape. The Napster legacy is a significant one, and not just for record label executives and music fans. P2P systems allow for the sharing of any files; and because the files shared on P2P systems circulate underneath the Web and thus are invisible to Google or other popular search engines, these files are invisible to most writing teachers. More importantly, however—and *most* importantly for this article—Napster has birthed a new digital ethic, a new understanding of intellectual property and ownership for millions of people around the world.

A core value in filesharing spaces is credit, respect, giving proper creds. Creators are (and this is an admittedly simplistic but helpful breakdown) of two sorts: The *artists* who perform the music and the *publishers/distributors* who pay for the recording, packaging, marketing, and distribution of the music. Music aficionados value the work of the artists but resent the price-gouging practices of the producers/distributors. In the ethic of the music world, it is the publishers (the recording industry) whose rights are considered less important: They are the business people who sit between the musicians and their adoring and appreciating public.

it's attributed to MXPX, Reel Big Fish, Less Than Jake, Lagwagon, and Pennywise. Who has actually covered the Van Morrison classic? It's difficult to discern because if users download each of the versions attributed to the five artists above, they'll find that each version is *the same*. Although we have suspected for quite some time that the economy of ideas changes shape in digital spaces, this is but one example of how that change takes place (Barlow, 1994).

¹² Madonna is the only artist (that we know of) who has deliberately inserted herself in the filesharing process in this manner. When Madonna released her album *American Life* in April 2003, she seeded filesharing networks with a personal message. When users tried to download songs from the album, which seemed to be complete files, instead of getting an entire song; they received a personal message from Madonna asking “What the fuck do you think you're doing?” followed by minutes of dead air. One savvy copyletist hacked <www.madonna.com> and replaced the front page with the text “This is what the fuck I think I'm doing” and links to full, authentic MP3s of songs from the new album. The Madonna site was soon after taken down and remained closed for more than a day. Also included on the parody site was the tagline: “Brought to you by the editors of phrack magazine, <<http://www.phrack-don't-give-a-shit-about-dmca.org>>.” *Phrack*, an online magazine for the hacker community, clearly stated its opposition to the DMCA (Logie, 2003).

In a non-Internet world, the publisher has an important role: Unless Jim attends a live Phish performance and audiotapes the music on his own (which Phish, following the Grateful Dead, encourages its fans to do) or unless Dànienne attends a 50 Cent/G-Unit concert and secretly and illegally audiotapes a live performance (because 50's and G-Unit's music reps do not share the sharing ethic of Phish), neither Jim nor Dànienne has a technological mechanism for recording the sound and preserving a copy of the concert they attend, hence the value of the recording industry in producing and distributing albums. Enter the Internet, and suddenly there is a mechanism in place for broad, immediate, and *flawless* reproduction of sound. And now the recording industry is in trouble—because the value they add to the product is *no longer necessary*. (The value-added that is missing in digital filesharing is, in part, nostalgic—the feel of the CD case and the opening of a Brand New Product. The value-added, however, is also tangible—the artwork and inserts that come with a purchased CD.) Here lies the major paradigm shift: a shift in technology that relates to a shift in economy, and an industry based on packaging and analog delivery that seems to be in crisis. Except, paradoxically, this is not the case—although the RIAA would desperately like to make it seem the case. The industry is *not* in trouble. The music and recording industry in the United States is actually thriving in spite of this new technology that would seem to render it obsolete.¹³ So how do we account for this oddity?

One lens for doing so is *Sony Corporation v. Universal City Studios, Inc.*, a 1984 Supreme Court case. In the early 1980s, Sony began manufacturing and selling home video tape recorders (VTRs). Part of the promotion of the VTRs relates to the fact that users could now record their favorite television shows. Universal City Studios' response to this new technological possibility was to claim that Sony was liable for copyright infringement because VTR consumers were recording Universal-produced and copyright-protected works. This case may seem humorous today when VCRs are an ubiquitous technology in our homes and when new devices, including TiVo and DVD recorders, are anchoring themselves in our marketplaces with little harm done to the television or movie industries. However, *Sony Corporation v. Universal City Studios, Inc.* was a core case in determining the Fair Use of technologically captured information. The Supreme Court, ruling in favor of Sony, explained that any individual may reproduce a copyrighted work for a Fair Use. The most obvious Fair Use of VTR-recorded television shows was in-home, private screenings of limited quantity. In such cases, the control of the copyright holder is not exclusive and absolute.

Earlier we mentioned the example of audiorecording a Phish concert. If today we were to record the concert, we'd probably have a digital-recording device from which we could make multiple and flawless copies of the concert. On top of that, we'd also have software we could use to filter the concert and perfect the sound. As Rob Dornsife (2004) noted, multiple

¹³ A large-scale study, which compared downloading/downloader trends with music purchases during a period of time in 2002, concluded that:

spikes in downloading had almost no discernible effect on sales. Even under their worst-case example, "it would take 5,000 downloads to reduce the sales of an album by one copy. After annualizing, this would imply a yearly sales loss of two million albums, which is virtually rounding error, given that 803 million records were sold in 2002." (Schwartz, 2004)

This key study hacks at the RIAA's contention that downloading music hurts album sales.

perfect copies is a relatively new phenomenon. In scribal culture, prior to the printing press, hand-written copies of sacred texts—transcribed painstakingly by hand prior to the printing press—resulted in degraded passages, inadvertently deleted material, and deliberately added commentary that became part of the original text. Prior to digital recording and digital files, we relied upon cassette tapes to record. Each copy made resulted in a loss of quality. So if Dànienne made a copy of a tape recording Jim made at the Phish concert and then made a copy for a friend who made a copy for his friend, the friend's copy would be significantly lower in quality than Jim's original. With advanced digital recording technology, however, that's no longer a problem. Improvements in the quality of audio reproduction, in conjunction with the ease of wide distribution, are key components of the Napster crisis.

Emergent and evolving technologies offer users increasingly sophisticated levels of control over different files and thus decrease, if not eliminate, the value-that-used-to-be-added by music producers.¹⁴ Prior to these technological developments, the streams of control over media were very tight. The music industry controlled “revenue streams” with a “long history of industry standardization and legal protections” (GartnerG2 and The Berkman Center). The music industry's stronghold on the control and distribution of music began to erode with CD-ROMs and further decayed with the advent of Napster. Writers now have the technology that allows them to control the revenue streams. Even before Napster, since the embrace of the World Wide Web by commercial interests in the late-1990s, we have been in the midst of a copyright war—an intellectual property and Fair Use war over digital information. This war puts in opposition two different views of copyright and Fair Use of information, two different economic models of development, and, ultimately, two different rhetorical ideologies (views reflected in [appendix A](#)). The two sides of the battle can be described in terms of the contrasting political philosophies toward information access and ownership aligned in [appendix B](#).¹⁵

The battle has to do with the conditions of copyright, especially electronic copyright. On the side of *open access and distribution* we have small businesses, small web publishers, librarians, and public interest groups such as the Electronic Frontier Foundation. The side of *copyright control and constraint* consists of the Big Ten media CEOs (Miller, 2001); people such as Michael Eisner, chairman of Disney, and Jack Valenti, former president of the Motion Picture Association of America (MPAA); and the conglomerates that own most of the world's telecommunications, sports, news, and entertainment industries. The sites for digital domain copyright skirmishes include the federal court system; the U.S. Senate committee hearing room; the hallways and restaurants and bars where lobbyists roam; and, also, colleges and universities (upper administrations, boards of trustees, offices of technology transfer, instructional computing centers, network services, etc.). And of course with its filesharing lawsuits,

¹⁴ GartnerG2 and The Berkman Center (2003) argued that the CD-ROMs made available on most PCs starting in the mid-1990s marked a key transformation in computing and control over media. When CD-ROMs first were developed and marketed, the Web did not yet hold a key place in our culture, and the PC was, for many, a workspace. CD-ROMs changed the role of the computer as the PC as gaming platform became incredibly more robust and as users could play music on their computers, which this initiated a “shift from a pure productivity tool to an entertainment platform.” The resulting impact on the entertainment industry was profound.

¹⁵ [Appendix B](#) simplifies into two clear sides what is really a continuum of views. For our purposes, however, this simplification is necessary to clarify big picture issues before we attempt to map writing teachers onto the table.

the RIAA has moved to a new battlefield: the dormitories where students live and work. Very soon the battle will move to our classrooms.

The proponents of strict copyright controls favor a view of information as a tangible product; they recognize (rightly) that the technological capability of the individual networked computer is an immense threat to their proprietary control of audio, video, and other forms of digital information. They are working hard to close what they see as copyright loopholes (such as the Fair Use provision of copyright law) that allow for easy distribution of digital text. They are mostly concerned with entertainment- and news-related information and more concerned with digital audio and video than with static text. But the copyright changes they are advocating will affect print distribution as well as audio and video filesharing; these changes will limit educational use of electronic material; they will limit the ability of students and teachers to access information for research; and they will stifle criticism, especially criticism of corporate behavior, consumer culture, and economic policy (Benkler, 1999; “Copyright, Plagiarism,” 1998; Gurak & Johnson-Eilola, 1998; Heins, 2002; Kranich, 2004; Mann, Barlow, Stefik, & Lessig, 1998; Schiller, 1989).

The Big Ten media conglomerates view the Internet as a means of advertising and for distributing “digital content.” The problem with the Internet, from this perspective, is that it is hard for them to control digital property: a computer connected to the Internet is a dangerous technology, like a copy machine with global broadcast power. The copy–paste function is a threat to their livelihood as anybody can copy “their” content and distribute it to anyone else.¹⁶ Given their view of the Internet, these content controllers need to constrain digital producers (e.g., writers) and push them into a passive consumer role, which they do through two means: (1) through the design of passive point-and-click web sites and other “interactive” media, which are an attempt to condition user response toward consumerism and (2) through lobbying, legislation, and threats of litigation, which are attempts to control the renegade audience, the illegal hyperlinker, and the rampant music downloader. The biggest threats to the big media are an active, participatory audience and the innovative individual e-writer—and the Big Ten are using the DMCA and the post-9/11 climate of information paranoia to crack down on these cyber-dissidents.¹⁷ They portray the individual participant as a “hacker” or “pirate”—the insurgent whose acts of production are really acts of theft. “Good users” are those who passively consume, respect intellectual property, and pay per use. “Bad users” are those who produce parody web sites, or who hyperlink without permission, or who distribute

¹⁶ The problem with digital information, from a traditional economic point of view, is that it is characterized “by massive fixed costs of original production and low marginal costs of reproduction and distribution” (Ciffolilli, 2004, p. 2). In other words, it’s expensive to produce but cheap to copy and distribute. Plus, copyright owners have difficulty controlling—either technically or legally—the reproduction and distribution of digital information. Copyright exists as a legal solution to address this problem: by providing copyright owners with exclusive rights for a limited period of time, copyright provide the protection necessary as an incentive for producers to invest in original production.

¹⁷ Ever since September 11, 2001, the big media group has been using post-9/11 scare tactics. Valenti has said that the motion picture industry is fighting a “terrorist war” against people who trade digital copies of video and sound on the Web. Microsoft has claimed “that unauthorized software production is funding terrorism.” Judith Platt of the Association of American Publishers referred to librarians who advocate a robust public domain and who lobby on behalf of Fair Use as “Ruby Ridge or Waco types.”

and download content without paying for it. Mostly, corporate content producers are worried about the audience as co-producers of content and as active distributors of digital material.

The media conglomerates insist that value and quality cannot emerge without economic incentives. Without free-market capitalism (as appropriately supported by governmental legislation and public policy), the Internet can never be more than a forum for trash-talking, game playing, entertainment, and mindless recreation. These Web pioneers see the United States as having arrived in a new age of economic manifest destiny—post-industrial capitalism (McChesney, 2000).¹⁸ Economic necessity, historical destiny, and the need for continued development all dictate that the Internet and World Wide Web should be secured for corporate development. What seems clear is that it is the land-grab model (rather than the public-access model) that mega-corporations and their lawyers are pressing forward right now.¹⁹ Through a combination of legislative lobbying, legal threats and bullying, and the pure power of money and media advertising, corporations are trying to seize control of what others are trying to construct (although not without difficulty) as a “free” citizens’ network and as an educational and political forum. James Porter (1997, 1999, 2002) has referred to this as “the corporate takeover of electronic writing” (Lessig, 2001; Samuelson, 1996; Schiller, 1989).²⁰

Like their 19th-century predecessors, the railroad barons of the Old West, this group needs government help to seize control of digital territory, which they see as wild and untamed and, thus, as unprofitable. As they see it, the Internet is occupied by a wild race of inhabitants—hackers, pirates, and cyberpunks who embrace anti-American slogans such as “information wants to be free” and “let the music play”—dangerous electronic vandals with no respect for intellectual property, corporate security, or economic growth. They show no respect for property lines; they “steal” audio, video, and texts and redistribute them wantonly, thus showing disdain for an economic model that insists on measuring the value of information by its cost. They co-opt images for their own political and satirical purposes. They disrespect

¹⁸ Robert McChesney (2000) said that the “great fear for the media firms is that the Web will breed a new generation of commercial competitors who take advantage of the medium’s relatively miniscule production and distribution costs. And its greatest fear is that the broadband Web will lead to an entirely new media regime that makes the corporate media giants irrelevant and obsolete.”

¹⁹ It is interesting—also troubling—to track the language being used by these big media content producers, whom McChesney (2000) referred to as the “global media oligopoly.” In the late 1990s, they talked about Web development in terms of 19th-century, Old Wild West pioneering metaphors like “land grab,” the Oklahoma land rush, the California gold rush, and the development of the Transcontinental Railroad. Their 19th-century predecessors used economic development arguments to seize “unused” territory from Native Americans. Analogously, these new media pioneers insist that corporate America should control the Web, because free enterprise (by which they mean “controlled enterprise”) offers the best model for managing and developing its resources, resources that cannot be trusted to the government and certainly not to the cyberlibertarians, the free-Web crowd, or the Fair Use wackos.

²⁰ This takeover relates to the increased lobbying efforts by media companies and other corporations to restrict Fair Use, to lengthen the term of copyright, and to establish tighter copyright controls over all information and especially digital information; to the heightened efforts by Microsoft and other companies to establish proprietary control over computer interfaces; and, generally, to the accelerating effort to redefine writing not as “expression” or “free speech” but as *information*—and a consequent move to define information as a product to be bought and sold. The effort is to redefine the Internet not as public land, as open territory, or as a library—but rather as proprietary space to be surveyed, parceled, bought, sold, rented. As Johnson-Eilola (1997) pointed out: “By appropriating—and encouraging—the construction of information as a landscape, monetary concerns are able to foster a rethinking of information as commodity, like land, that can be bought, sold, and rented” (p. 133).

Mickey Mouse. These cyberradicals—we might call them “digital content producers,” perhaps even “writers”—see the Internet as a free space to be “surfed” by all for purposes of enjoyment, recreation, political discussion, and education. They have a primitive notion of space and property, a naive conception of economics, and an outmoded sense of what will motivate content production.

But there’s another view in play here. On the other side of the political spectrum we have small business, small Web publishers, librarians, and public interest groups such as the Electronic Frontier Foundation and the Chilling Effects Clearinghouse, which hold to a very different view of the Internet, seeing it as a public commons, as a freely accessible space for citizens to share information and exercise their right to participate in the shaping of public policy. They are working actively to protect the potential of the Internet as a democratizing space. Pamela Samuelson (1998a, 1998b), Lawrence Lessig (2001, 2002, 2004), John Perry Barlow (1994), Howard Besser (1995, 2001), Richard Sclove (1995), James Boyle (n.d.), and others are pushing to design technology in ways that enhance democratic participation in ways that expand the digital public commons and provide new opportunities for citizen involvement. Theirs is a pro-active and policy-driven approach to technology that aims to change the terms in which technology development is typically couched. The focus of this effort is on Internet law and policy. The issues for this group include promoting access (technical accessibility as well as information access), protecting the copyright public domain (particularly by strengthening the Fair Use provision), protecting privacy on the Internet, and defending free speech rights.

These others (we might call them the “cyberlibertarians”) want networks—especially the Internet, which is *the* network—preserved for the public welfare; they want a “free net.” The Internet of course is not free: It was originally created and has been paid for by U.S. citizens’ tax dollars and is thus, in some senses, a publicly owned, shared space. This public advocacy approach represents an attempt to create a certain kind of public space. That is, these advocates are attempting to influence technology design, not via technical approaches to system design, but via law and technology policy—to create the kind of Internet that would promote the emergence of a critical, involved, participatory audience. They are utopians, but they are pragmatic and organized ones, capable of using legal arguments and legislative action to promote their view of the information commons.

Lawrence Lessig (2002) is one such advocate of the information commons, of what he called “free culture,” by which he means a public domain reserve of works, stories, images, texts, patterns, sounds—discursive fragments that are not owned and controlled by anyone, that are re-usable, and that anyone can pick up and use to create some new product. Make my day. Be all you can be. A woman’s place is in the White House. Three-peat. I have a dream. Leave the gun, take the canoli. These phrases should not be “owned” by anyone; although some of these phrases have authors associated with them (and at least one, “three-peat,” has trademark protection), they should exist in the public reserve and should be available for use and re-use. You should be able to use these words on a monument, on a T-shirt, in a parody, in a speech, on a Web site.

Lessig argued that a robust public reserve is vital to innovation, creativity, and originality. New work grows out of old work. Mickey Mouse wasn’t an original idea; Walt Disney pirated the idea from Buster Keaton:

1928, my hero, Walt Disney, created this extraordinary work, the birth of Mickey Mouse in the form of Steamboat Willie. But what you probably don't recognize about Steamboat Willie and his emergence into Mickey Mouse is that in 1928, Walt Disney, to use the language of the Disney Corporation today, "stole" Willie from Buster Keaton's "Steamboat Bill." (Lessig, 2002)

Lessig went on to point out that Disney built its film empire by riffing off the Brothers Grimm and their horrifying fairy tales. In short, Disney took stories from the cultural commons and remade them into popular—and fiercely protected—films. In Napster parlance, Disney was an effective "remixer" (Ebare, 2004). However, now that Disney has established that empire through its "piracy" of the cultural commons, it has become a copyright monopolist that wants to deny others access to the new cultural commons that Disney has helped to create.²¹

This cyberlibertarian notion of the cultural commons has much in common with the rhetorical principles that we know as collaboration and intertextuality. People do not make new works out of nothing. They *borrow* and intertextually stitch and massage fragments into new works. Writing is not an isolated act of individual genius, as the romantic view of authorship would have us believe (Porter, 1986). The act of writing is fundamentally collaborative, fundamentally social, and fundamentally reliant on an existing repertoire of "texts" (broadly defined) existing in a community or culture. If we see writing from this standpoint, then we have to start to rethink our basic notions of piracy—and, by implication, plagiarism: "Many kinds of piracy are useful and productive, either to create new content or foster new ways of doing business. Neither our tradition, nor any tradition, has ever banned all piracy" (Lessig, 2004).

We agree with Larry Lessig when he says that "many kinds of piracy are useful and productive"—and, in fact, necessary to the development of new knowledge and innovation. Piracy can be a creative action, and it can also be a political one—for instance, when a behavior develops as a way to resist the control of powerful forces within an asymmetrical power relationship (e.g., to resist and challenge the workings of monopoly).²² But piracy does have its own limits, rules, ethics—and those are the conventions that we need to understand within the realm of digital writing.

²¹ As Siva Vaidyanathan (2001) pointed out, in reference to the early film industry, copyright holders typically want the law to work in two ways. They want "low protection of [. . .] original works" when they themselves are borrowing to create their products, but later they want "high protection for their own finished products" (p. 98). Why do they do this? Because, as Bill Gates noted, "established companies have an interest in excluding future competitors" (quoted in Lessig, 2002).

²² Lessig sees peer-to-peer networking as precisely this sort of behavior: "P2P seeks to escape an overly controlling industry" (Lessig, 2004). Similarly, Kostas Kasaras (2002) has argued that: "Digital music piracy is a political action. Despite the personal motives of those that create file-sharing web sites or of those that consume free music, the fact that their actions offend the oligarchical music industry makes their behavior political. Their actions are political—in terms of ideology—because they subvert the existing economic structure of profit with new ways of distributing a commodity, based usually on the principle of an ideal non-profitable equality". According to Siva Vaidyanathan (2002), "those who control copyright [. . .] have to create artificial scarcity by limiting access, fixing prices, restricting licensing, litigating, and intimidating potential competitors, misrepresenting the principles of the law and claiming a measure of authenticity or romantic originality."

3. Digital delivery and the new digital economy

Rhetoric has an old term for the processes and issues we have been talking about: delivery (*actio* or *pronuntiatio* in Latin, *hypokrisis* in Greek), one of the five canons of classical rhetoric (Connors, 1983; Reynolds, 1996).²³ We agree with Kathleen Welch (1990), who has said that “the fifth canon [delivery] is now the most powerful canon of the five.” In the era of digital writing we can no longer afford to take delivery for granted.²⁴ What we are calling digital delivery refers to “electronic publishing”—but not just “publishing” in its technical aspects. We are also arguing for an expanded notion of delivery, one that embraces the politics and economics of publishing: the politics of technology development as they impact production and distribution, and the politics of information (What information can be distributed and by whom? what information must be suppressed or controlled?).

A renewal of interest in delivery requires that we take up the question of “economies of writing.” Economics has to do with money, but not only money. It has to do more broadly with value, exchange, and capital; with production and consumption of goods; with giving, receiving, and sharing; with purpose, desire, and motivation; with the distribution of resources, products, and services; and with the systems of understanding that people rely on when they engage in such activities. Writing—all writing, we would say—resides in economic systems of value, exchange, and capital, and we want to recommend that rhetorical theory take up questions regarding “economies of writing.”²⁵ Economics has a significant effect on writing practice and pedagogy—as any writing program administrator, adjunct composition teacher, textbook publisher, or freelance writer knows. However, for the most part, discussions of

²³ Our view of “digital delivery” is not the classical one, of course. In classical rhetoric, and through most of the history of rhetoric, delivery referred to the bodily aspects of the oral speech—that is, to the speaker’s voice (intonation, volume, rhythm) and to gestures (Lanham, 1991, p. 179). Along with memory, delivery is one of the two neglected and underappreciated canons of rhetoric. Aristotle didn’t give delivery much respect in his *Rhetoric*, treating it only briefly and referring to it as a matter for acting and poetry reading. Delivery has not been much discussed in print-based Rhet/Comp work—because perhaps for so long the field was so thoroughly defined by print, that delivery was not an issue. Rhet/Comp theory was implicitly a theory and practice of print delivery. And maybe there’s nothing particularly wrong with that; maybe delivery only needs to be an issue when new technologies emerge.

²⁴ Computers and writing and technical communication have been focused largely on questions of delivery, particularly instructional delivery as it pertains to electronic writing and writing instruction—although the field has only occasionally articulated its work under the heading of “delivery.” (Jim Kalmbach, 1997, and Pat Sullivan, 1991, are two members of the field who have talked explicitly about computer-aided publishing as delivery.) Yet the field has focused on some aspects of delivery but not others. On instructional design, yes. On the writer’s tools, yes. On document delivery, on the production process, on Web design as it pertains to accessibility, yes. But to a lesser degree, or not at all, on other factors, particularly public policy and economics.

²⁵ Elizabeth Grosz (1995) provided a useful definition of “economy,” one that shows its linkage to the production and distribution of writing: “Economy is derived from the Greek term, *oikos*, meaning home or house, residence or dwelling. An economy is the distribution of material (cultural, social, economic, representational, libidinal) goods in a system of production, circulation, and consumption. An architectural economy consists in the distribution, not only of bricks, stone, steel, and glass, but also in the production and distribution of discourses, writings” (p. 118). Martha Woodmansee has also explored the connections between economics and material production of writing through a series of panels and projects sponsored by the Society for Critical Exchange (Society for Critical Exchange, 2000; Society for Critical Exchange, n.d.; Porter, 2001).

writing process, composition research, and rhetoric theory have neglected economic influences on writing and have not sufficiently addressed the relationship of writing to *publishing*.

The Internet has brought us to a historical moment where the economy of writing is undergoing a major shift. New economies of writing are emerging that promise to carry writing practices in directions that are not yet clear but which will have significant impact on basic literacy. Students' writing will be published writing, and it will be produced in genres and by processes that depart radically from the traditional ways writing has been practiced and taught. The development of Internet writing in its various manifestations (Web sites, email, multimedia, instant messaging) is dissolving the traditional gap between writing and publishing. The nature of writing on the Internet is being influenced by economic considerations—for example, involving e-commerce, public policy, copyright legislation—that will have a significant impact on the shape of writing.

In the old print economy, publishers made their money by controlling the reproduction and distribution of texts. If you are reading this article in a print journal, you are probably reading it at least a year, maybe 2 years, and for all we know 20 years, after it was written. From the standpoint of communication efficiency and the flow and exchange of ideas, this might seem like a problem—except that academics have been conditioned to accept such inefficiency as normal in the old economy of the academic print journal. We have even invented reasons to approve of it (e.g., the length of time from manuscript to print is assumed to be a measure of superior quality). Print publishers have a vested economic interest in slowing and controlling the distribution of information. Their identity and capital are invested in the maintenance and control of the pipeline between writers and readers—in making sure that information is scarce, that information flow is regulated in their favor, that they operate the pipeline, and that in order for you to gain disciplinary capital (knowledge), you will pay to access that information. Economics 101 for print publishing.

Now let's talk about Economics 101 for digital publishing, the scary part for all publishers, whether commercial or academic. You have on your desk, sitting in front of you, the capacity to compete with the publishing regime, even to overthrow it. You have a networked computer with a copy–paste function, with the capacity to download and upload files, and, if you have broadband Internet access, with the means to distribute and access a wide variety of information (text, graphics, audio, video) globally, quickly, and relatively easily. This technological capacity makes you as an individual a threat to the publishing industry and also to the recording industry and the music industry—those traditional media conglomerates whose economic interests depend on their ability to slow and control access to information and entertainment.²⁶

²⁶ Writing in 1859, Karl Marx provided us with the language for understanding the nature of this crisis:

At a certain stage of development, the material productive forces of society [i.e., how people actually create products] come into conflict with the existing relations of production or [...] with the property relations within the framework of which they have operated hitherto. From forms of development of the productive forces these relations turn into their fetters. Then begins an era of social revolution. (Marx, 1970, p. 21)

The digital copyright crisis has resulted because, in Marxian terms, a shift in the mode production at the level of material production (i.e., how music is reproduced and distributed via peer-to-peer networking) has effected a shift in social consciousness (i.e., students attitudes), which in turn has resulted in a conflict with existing relations of production (i.e., the music industry, and dominant media interests in general).

As we move from a print economy to a digital economy of information, we encounter some interesting new rhetorical problems and questions. Open-access publishing, a model favored by the Open Source movement and by the public advocates, is an alternative economic model that's being considered, especially in regard to journal publication (Dahlander, 2004).²⁷ Of course support for print journals—for both library and individual subscriptions—is eroding as readers/users now expect free online versions of material. Online journal publishers are asking, Can open-access publishing work? The advantage is that it cuts production costs, but how do you generate any sort of revenue stream from it? That's the issue, and editors are looking at funding their journals through advertising, indexing services, organizational subscriptions, and value-added services of various sorts (Willinsky, 2003).

Economies of publishing have to shift to find these balance points—that is, the cost that the market will bear for a certain product—and to figure out how publishing is going to work in the digital realm, which has empowered all of us to be digital distributors. The same holds true for the music and film industries, though of course their first response is to fight change. The problem is that the recording industry has relied on making its money off distribution, and this revenue stream is precisely what is under threat in the digital realm. The industry will eventually have to change its economic model—and it probably will. The recording industry survived the technology of the cassette tape; the film industry survived the evolution of videotape.

To some extent, we all have to answer the question of delivery, on a micro level, for our own work as researchers. When does it “pay” for us to publish our work online (in terms of academic capital)? In what circumstances might publishing online “cost us” in terms of publication value? We are already making these economic decisions every day when we make choices about publishing our material online versus in print. And generally we think most people in the computers and writing community and most academics lean in the direction of “open-access publishing.” We see its value overall—though we also make decisions not to publish online for various reasons.²⁸

Working through these kinds of delivery questions—at both the macro level of public policy and the micro level of the individual writer—is part of the art of rhetoric. Delivery is the canon that could allow us to connect concerns about, say, audience and Web design with questions about the economics of publishing and the politics of information—and it provides a space for teachers and scholars of Rhetoric/Composition to contribute to the debate about information law and policy, including the intellectual property debates.

²⁷ What would motivate people to share files freely in an open-source environment? Some economists at least have come to understand that “co-operation, especially when repeated, can breed reciprocity and trust, to the benefit of all” (The Economist Group, 2005).

²⁸ What do we want when we publish our material? What are our aims for publishing? We don't always necessarily want money for our work. When we share our syllabi with colleagues, we don't expect money. But don't we expect reciprocity? Don't we expect recognition or credit? Most of us do want: (1) wide distribution and recognition of our work, and (2) credit for our work (whether in the form of dollars, prestige, appreciation, reciprocity). The economic model of the academy has long been based on a “gift-exchange model”—it's not pay per use, but rather open and free exchange for the mutual benefit of all. It's a community model that has worked, and worked well, in all sorts of situations—but it's not a model that classical economists accept (Aigrain, 2003; Cedergren, 2003; Ciffolilli, 2003; Lakhani & Wolf, 2003; Raymond, 1997; Shirky, 2003b).

4. Plagiarism, academic honesty, and the new digital ethic

When we toss plagiarism issues and academic honesty policies into the mix of Napster as cultural phenomenon and of the dynamics of delivery, we can see more obviously how print-based and limiting most plagiarism policies are. Certainly, the recognition of the punitive and disciplinary approaches of academic honesty policies is nothing new; many scholars in Rhetoric/Composition have challenged punitive approaches to plagiarism.²⁹ However, regardless of this research and scholarship, many institutional policies still emphasize the value of the singular author and the privilege of owned text produced through individual and “original” work. As [Andrea Abernethy Lunsford \(1999\)](#) put it, “the romantic concept of the author as singular, originary, autonomous, and uniquely creative [. . .] effectively hid[es] from view the largely collaborative and highly dispersed nature of most creative endeavors” (p. 529). [Jane Greer \(2003\)](#) further staked a claim also absent from our institutional policies—that “writing and reading are activities that give rise to relationships, rather than property rights” (p. 622).

What *is* new to these conversations are the emergent dynamics and economy of digital delivery and how they work to further complicate our institutional approaches to plagiarism. In the digital, copy-and-paste, information-rich, post-Napster age, we *must* renegotiate our personal and institutional approaches to plagiarism. If we don’t do so, we will flounder in the face of digital possibilities rather than take advantage of them, and we will miss the moments in which we can best cultivate critical, appropriate understandings of delivery and digital ethics among ourselves and the students in our classrooms. It is no longer possible to deny our responsibility to do so as writing teachers in part because the spaces in which we and students write—and the spaces that shape students’ approaches to digital documents, notions of text, and ideas about writing and delivery—are intimately tied to computers, networks, and filesharing. The history of composition and the importance placed on notions of individual authority, authorial rights, and “original” texts need to be revised in light of today’s information and communication technologies.³⁰ And, in tandem, our institutional approaches and the “work” that these policies do must be rewritten to take into account the changing dynamics of text production and distribution.

²⁹ [Rebecca Moore Howard \(1995, 2000\)](#), [Lunsford \(1999\)](#), [Lunsford and Susan West \(1996\)](#), and other scholars have addressed the problematic and limiting aspects of these documents. Howard has, in particular, made significant contributions to our understandings of how these policy documents can shape—almost always in negative ways—the approaches and understandings of student writers. Further, scholars such [Danielle DeVoss and Annette Rosati \(2002\)](#) and [Sarah Robbins \(2003\)](#) have read issues of authorship through the complications of competing paradigms—traditional, romantic, and modern notions of authorship versus postmodern approaches to authorship that erode authorial agency and make more complex notions of original ideas and owned text.

³⁰ Taking a broader historical perspective, we can see that what we typically refer to as “traditional” views about authorship, copyright, and plagiarism are actually fairly recent, post-Gutenberg developments. There were no such restrictions in classical and medieval education. *Imitatio* and *compilatio* were fundamental to learning in the educational system in the Roman Empire and into the Christian era: students were supposed to imitate, copy, and collect the writings of the masters as part of their educational development. And some of the greatest writers of the era “borrowed” others’ work heavily. Were St. Bernard of Chartres and St. Jerome plagiarists? Yes, by our standards. However, the “usual attitude” at that time was, according to [Carol Dana Lanham \(2001\)](#), *Oratio publicata res libera est* (once published, it is a free thing): “Once published, a literary work became common property, available for imitation, paraphrase, and appropriation by subsequent writers” (pp. 107–108).

If we were to position composition teachers in [appendix B](#), we fear that many would fall squarely under the column related to the control and constraint of information, along with the RIAA. The plagiarism policies and detect-and-punish approaches of many writing teachers and almost all academic honesty policies align well with approaches to information as owned, controlled, and carefully distributed. This sort of approach requires and always already incurs *more* policing, *more* criminal responses, *more* surveillance. Think of the multiple spaces in which teachers integrate their plagiarism policies. Think of the carefully scripted tiers of punishment in most academic honesty and plagiarism policies. Think of the myriad online spaces devoted to helping teachers detect plagiarism (e.g., [turnitin.com](#), [plagiarism.org](#)).

University policies set the stage for the find-and-punish trends that play out in our classrooms. For instance, Michigan State University sets forth its academic honesty approaches in several documents, the key document being the “Protection of Scholarship and Grades” statement included in the General Student Regulations. Six points are included in the protection document; the most important to writing instruction is that students not “claim or submit the academic work of another as one’s own.” Clearly, even in the face of postmodern approaches to authorship and changing dynamics of collaboration and text production, removing another author’s name and replacing it with your own is wrong. But there’s also nothing in the “Protection of Scholarship and Grades” document that suggests that teachers very narrowly define collaboration, prohibit the appropriate use of sources, or consider it part of their academic work to ferret out possible plagiarists.

The partner document, the “Integrity of Scholarship and Grades,” in fact suggests to teachers that they “exercise care in the planning and supervision of academic work so that honest effort will be positively encouraged.” The document thus begins positively and emphasizes the need to plan carefully, supervise effectively, and reward effort. The document quickly takes a primitive turn, however, in describing the repercussions of breaking any of the codes included in the “Protection” document. The statement is fairly robust and is framed by a discussion of the principles that guide the University community, including truth and honesty. In the case, however, that dishonesty and lies prevail, the consequences range from the instructor giving a failing grade for an assignment or a failing grade for a course. The student-appeal process is briefly described, and the actions of involved deans and provosts are outlined.

Although these documents are rich in their language and scope, they are almost entirely punitive policies. They tell students what *not* to do and advise instructors how to respond if academic dishonesty is suspected. They were also written without regard for the digital dynamics of document production and distribution. How to equip students to understand textual ethics and authorial responsibilities and how to create an ecology of academic honesty are suggested, but not described, in these documents. This absence of best practice approaches leads to examples such as this: An online syllabus from a course offered at our institution reads, “Michigan State University has an all university policy concerning Integrity and Scholarship of Grades. As a student of Michigan State University it is your responsibility to become familiar with, understand, and abide by General Student Regulations which protect both you and the university if an infraction has occurred. Ignorance of these regulations is not a defense in cases of infringement. So . . . Just DON’T Do It!” Although “Just DON’T Do It!” seems like an anemic approach to us, it’s often a fall-back for instructors without models for understanding academic honesty and explaining to students the scope and history

of academic honesty within intellectual communities and the dynamics of Fair and unFair Use.

We certainly don't mean to paint a portrait of writing teachers as entirely in cahoots with the Recording Industry Association of America. And we don't want to create a sense of writing teachers as *always* on the prowl, *always* suspecting plagiarism, *always* questioning if not outright persecuting the acts of students. In fact, Rhetoric/Composition has a long legacy of discussions and tools available to us so that we can better understand issues of intellectual property as they affect our worklives and our teaching. Unfortunately, many of these tools *need* retooling to best apply within digital writing environments and filesharing networks.

Sarah Robbins (2003) offered a notion of distributed authorship, the language of which fits well within discussions of distribution networks. With this approach to distribution, she advanced approaches that recognize and value shared textual processes and practices. Lunsford (1999) suggested that we tackle the difficult work of creating, enacting, and promoting “alternative forms of agency and ways of owning that would shift the focus from owning to owning up; from rights and entitlements to responsibilities [. . .] and answerability; from a sense of the self as radically individual to the self as always in relation” (p. 535). Lunsford's claim provides an initial framework for creating space in today's digital, corporate, globalized world for the subjectivity of writers, writers who own up, who attend to the responsibilities they face as writers, and who answer and are answerable to the texts that they produce. For us, doing so is inherently intertwined with intellectual property issues specifically related to copyright and more importantly linked to Fair Use, which we want to explore in more depth.

One of the most important aspects of U.S. copyright law for educators and for our articulation of a digital ethic is section 107, or the Fair Use doctrine. The Fair Use doctrine limits the exclusive rights of copyright holders, allowing certain individuals to *fairly* use copyright-protected work.³¹ Fair Use fits well as a framework from which we can encourage students, as Lunsford suggested, to focus on owning up and to approach writing tasks with an understanding of the responsibilities of being answerable for one's choices, uses, and citations. Our role, then, is to provide students—and each other—with scaffolding so that they understand Fair Use practices and engage in ethical relationships with the works from which they are borrowing.

The focus on original authorship, authorial ownership, and plagiarism is a rear-guard action, both a defense of and longing-for a paradigm that is fading into the past (Woodmansee & Jaszi,

³¹ Fair Use applies generally to “purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research” (copyright.gov; Logie, 1998). Much confusion surrounds Fair Use practice; many in the academic community believe, for instance, that there are magic numbers and formulas provided by Fair Use in the U.S.—for instance, that it's acceptable to provide students in a class with copies of two chapters of a 20-chapter book or that it's allowable to use 10 seconds from any copyright-protected audio recording before copyright is violated. There are, however, no *specific* guidelines for determining Fair Use written into U.S. copyright law. Four specific *factors* are, however, included in section 107:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- (2) the nature of the copyrighted work
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole
- (4) the effect of the use upon the potential market for or value of the copyrighted work (<<http://www.copyright.gov>>)

1995). And it is certainly an ideological vantage point that clashes, at times, with an approach focused on ethical relationships and Fair Use practices. Plagiarism is, we argue, beside the point; the key issue of digital ethics in a post-Napster world is *sharing* and *Fair Use*. As we see it, the purpose of writing is *not* to reward the author, or for the author to gain prestige, credit, wealth, and fame. Author reward is a means and not an end. To borrow some language from the U.S. Constitution, the purpose of writing is to promote, for the common good, the progress of the sciences and useful arts; to improve society; to help people live their lives; to expand their knowledge, to excite their imagination, to ease their anxieties; to help them live, grow, survive, and thrive. In other words, the ultimate aim of writing lies in its ethical effects: to improve society, inform individuals, expand knowledge, assist communities, and so on.

Given this sense of aim, an ethic of Fair Use based on reciprocal filesharing promotes these broad goals, not a negative ethic of plagiarism and punishment, but a positive ethic that promotes collaboration, sharing, and Fair Use. Writing is an act of sharing and borrowing as well as of creating. Whenever you write, you borrow ideas, phrases, images, sounds, details from others—and then you weave those pieces into a new cloth and onto new fabric and with new threads and *that* becomes “your” writing. Imagine a quilt: Pieces of old cloth from various places. A blanket of your sister’s. Some old jeans. An unidentifiable rag or two. A piece of a beautiful and prized curtain from your grandmother’s house. The pieces are woven into a new whole that is both a new thing *and* an old thing: Old pieces stitched in a new way to form a new pattern for, perhaps, a new purpose. That new pattern carries the past with it, bringing the past into the present for a new purpose. When Thomas Jefferson “wrote” the Declaration of Independence, he borrowed phrases, details, sayings, forms of argument from his own time, and stitched them together in a new way, for a new purpose and context (Johnson-Eilola, 2005; Porter, 1986). In fact, some of the most revered writers and speakers of American Culture—Thomas Jefferson, Mark Twain, Martin Luther King—could, from a narrow perspective, be accused of plagiarism. But we see them, rather, as *effective writers*—who remix existing cultural tracks to create significant new compilations.³²

The ethic we describe here requires an acknowledgment of collaboration—and in that respect the new digital ethic is *not* so very different from the old print ethic, or at least it doesn’t seem to be different. However, the difference lies in the purpose for acknowledgment. In the print tradition and following print’s ethics, acknowledgment was all about identifying origination: about distinguishing “your” language from others’ language; it was about marking territory, noting individual credit, claiming authorship, and staking exclusive ownership and protecting the boundaries of that ownership. The new digital ethic has a different orbit of delivery, ethic of use, of territory, and of ownership. Students understand this better than we do. Our own practices as teachers come out of a print and academic world that stresses ownership of property. To shift that ethic to an approach more appropriate to the digital context in which

³² In *Datacloud*, Johndan Johnson-Eilola (2005) referred to the DJ as “a creative agent, articulating new meanings by creatively mixing fragments of pre-existing information” (p. 178). Chapter 8 of *Datacloud* is an entire chapter made out of fragments of other people’s texts (including visual as well as verbal fragments): in essence, Johnson-Eilola “remixes” an entire chapter, thus exemplifying the new mode of writing in the postmodern, digital age. This mode is no less creative than other modes, but it requires different kinds of writing skills than, say, traditional essay writing. In terms of the categories of the classical rhetorical canon, the process merges arrangement and invention.

students work and write, we must stress a positive ethic of collaboration and acceptable use of others' work/writing (vs. a punitive approach). We must encourage the necessity of an ethic of Fair Use in a community of researchers and scholars.

5. (Some) Conclusions and implications for pedagogy

What is this new digital ethic that has emerged in the context of the dynamics of the Internet and the rise and fall of Napster? In sum, we believe it is a positive ethic of filesharing and not how it is usually described as a criminal act of piracy. Not to say that there is no such thing as illegal music downloading, because there is. (We are not trying to argue for an ethic of “filetaking.”) But filesharing is by no means the vast social problem that the music and film industries like to portray. The ethic we are describing here corresponds to Pekka Himanen's (2001) and others' positive notion of “hackers” as programmers and other information developers who believe that “information sharing is a positive good, and that it is an ethical duty of hackers to share their expertise by writing free software and facilitating access to information and to computing resources wherever possible” (Himanen, vii).³³ Again, the key word is *sharing*. Kevin McGee and Jorgen Skabeby (2004) pointed out that sharing itself can be a motivating purpose behind Internet activity and that in fact it is a “gifting” ethic of reciprocity that explains much of the recent filesharing activity in online communities.³⁴

What we have tried to describe here is the cultural, social, and economic context for this emergent ethic, arguing

- that this ethic was spurred and defined by a particular cultural and historical event—the rise and fall of Napster—and the copyright crisis that emerged with Napster and continues to emerge today;
- that this ethic is framed by a battle over the control of the distribution of information access and distribution (i.e., limited corporate control vs. public commons approaches); and
- that this ethic is characterized by drastic changes in delivery of information (a.k.a., “writing”), which has initiated a dramatic move from a print economy of distribution to a digital economy of distribution.

These cultural, social, economic, and political developments of Napster should matter to writing teachers. We need to rethink conventional notions of writing, rhetoric, and composition pedagogy in light of these developments, prompting us

- to shift our understanding of writing, of what counts as writing, of where writing is distributed, and of motivations for writing;
- to consider how punitive and historically anchored our approaches to authorship and plagiarism often are;

³³ See also The Jargon File, <<http://www.catb.org/~esr/jargon/html/H/hacker-ethic.html>>.

³⁴ Gift giving is not only an ethic; it is also an economic model, though, as McGee and Skabeby (2004) said, “gift giving cannot easily be explained entirely in terms of traditional economic concepts such as transaction, profit, utility, or even barter.”

- to consider notions of distributed authorship, alternative forms of authorial agency, and different ways of owning; and
- to actively participate in issues of intellectual property, especially the protection of Fair Use.

We close with two general pedagogical prompts that derive from our discussion:

1. *Teach not just a punitive approach to plagiarism, but a positive ethic of sharing.* We worry that most writing teachers are not building a positive ethic of sharing in their courses, and are instead following the traditional disciplinary (and by disciplinary, we mean discipline and punish) approach to the use of others' work. Rather than approaching production with a collaborative spirit and attention to a positive ethic of sharing, writing teachers warn students not to plagiarize and then punish them when they do. Filesharing is a helpful lens for approaching digital delivery and contemporary writing practices. Teaching a positive ethics of sharing is important to teach a balanced approach to and understanding of copyright, not just to teach respect for others' work (granted, this is important) but also to teach respect for access, for Fair Use, and for the public domain—in other words, the flip side of copyright, the side that we don't hear about from the recording industry or the MPAA.³⁵ Yes, we need to teach students to “avoid plagiarism” and to respect the labor of others, but we also just as vigorously need to teach students to defend and contribute to the public domain, to encourage Fair Use of others' material, and to share their work as widely as possible.³⁶ What the larger post-Napster trend in digital delivery and the shift in digital ethics signify to us is that writing teachers must join fight to protect Fair Use and consider the ways in which Fair Use provides a timely and relevant lens for digital document creation and delivery.
2. *Teach not just a rhetoric of audience and purpose, but an “economics of rhetoric” in conjunction with a theory of digital delivery.* Of immediate value in our composition courses is teaching a rhetoric of audience and purpose and also an economics of rhetoric. Why do we write? The stock answer in rhetoric/composition is something like “to inform, to persuade, to entertain,” etc. But why would anyone want to *inform* somebody? What's the point? There's certainly another calculus involved in any act of writing: purpose in the sense of *value*. There must be some value for the reader(s) and for the writer(s) in the act of exchanging texts. Somebody has information, somebody else needs it—but what motivates an exchange? Often it is money, or capital in some form, but we do not want to conflate value only with money or economic gain or political advantage. Rather, the kind of economics we are referring to has to do with value broadly defined: motivation, desire, participation. We

³⁵ The American Library Association claims that copyright instructional materials provided by industry groups such as the Business Software Alliance and the Motion Picture Association of America are not teaching a balanced approach to copyright, rather they “are designed to influence kids with one-sided information” (Dean, 2004b). In response, the ALA is developing its own instructional materials for teaching a balanced copyright approach to copyright to high school students. These materials are designed to talk both about the rights of copyright holders *and* the rights of writers to use copyrighted information under the Fair Use provision.

³⁶ This is the approach to sharing, writing, and distribution that TyAnna Herrington (1998) wrote of in her article encouraging writing teachers to better understand the interdependency of Fair Use and the First Amendment. Herrington noted the teeter-tottering balance between individuals' rights to work versus society's need for information and also noted the often-competing interests of copyright (an approach anchored by ownership) and of Fair Use (an approach anchored by the open and shared expression of ideas).

think this broader sense of value helps to explain the proliferation of blogs on the Web and the growing number of entries in spaces like Wikipedia. People write because they want to interact, to share, to learn, to play, and to help others. They engage others for connection, compatibility, love, sex, desire, self-fulfillment (or egomania), the thirst for justice, the thirst for freedom, out of boredom, out of need for interaction, to make their lives more comfortable, and, yes, they engage others for money, which they need to survive.

Our composition pedagogies need to emphasize the question of value—of why it is people write, produce, interact, and disseminate ideas in writing on the Internet. Perhaps this is one of our most important next steps and future directions as a field. We need to continue to delve into the various digital spaces in which people shape their identities, exert subjectivities, and write themselves into the world. And we also need to dig deeper into the structures and laws at play in these digital spaces to better understand how it is ownership can be rewritten and Fair Use can be protected. Certainly, the students in our classrooms—those who have been downloading music, burning CDs, and writing within a realm in which millions of files zip freely across open networks on a daily basis—know a lot about this realm. They can help inform our thinking and shape our understanding, if we let them.

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Appendix A. Differing political views toward filesharing

Presumption in favor of. . .

Copyright control and constraint

Open distribution and filesharing

“Our message is simple: File sharing is illegal, and no one engaging in this activity is immune from prosecution.”—IFPI General Council Allen Dixon, April 10, 2004 (Legrand, 2004)

“I don’t believe that I did anything wrong.”—Daniel Peng, 18-year-old filesharer who settled with RIAA, May 2003 (Veiga, 2003)

“We expect to hear people say, ‘Well, it wasn’t me, it was my kid.’ If they would prefer that the lawsuit be amended to name the kid, we can certainly do that.”—RIAA president Cary Sherman, September 2003 (Cassavoy, 2003)

“I can understand why the music industry is upset about this, but the fact that we had access to this as the public, I don’t think gives them the right to sue us.”—Lisa Schamis, 26-year-old filesharer, sued by RIAA, September 2003 (RIAA, 2003)

“Mr. Chairman, make no mistake. The law is unambiguous. Using peer-to-peer networks to copy or distribute copyrighted works without permission is infringement and copyright owners have every right to invoke the power of the courts to combat such activity.”—Marybeth Peters, Register of Copyrights, before the Committee on the Judiciary, United States Senate, September 9, 2003 (Peters, 2003)

“We’ve got 32 million people standing behind us. Instead of sticks and rocks, we’ve got CD burners and PCs.”—Steven Griffin, chairman and CEO of Internet startup MusicCity Networks, developer of Morpheus, November 2001 (Grow, 2001)

Appendix B. Political views toward information access and ownership (Porter, 2005)

	Presumption in favor of. . .	
	Copyright control and constraint COPYRIGHT	Open access and distribution COPYLEFT
View of property and ownership of information	Information is private property. The incentive for production requires strict ownership and control. Without guarantees of ownership and control, there is little or no motivation for production.	Information is a shared resource. New works and inventions can only be created if there is wide access to ideas in a robust public domain. A robust public domain not only serves the public interest, but it serves economic interests as well, creating demand for new products and services.
View of public access to information	Information is potentially dangerous (e.g., to the safety of the state and its citizens) if it falls into the wrong hands. Better to withhold information from the public than to allow information to leak into the wrong hands. Trust elected representatives and technical experts to know what is best.	Information is required for knowledge and awareness; it is essential to the functioning of a democracy and the effective functioning of the state. Citizens need full access to information in order to understand and decide what must be done. Citizens need information to oversee and influence decisions of elected representatives.

View of what World Wide Web should be	Shopping mall, advertising billboard, Internet television; public can view and then buy, but range of interaction is controlled. Negative, critical, or potentially dangerous information is discouraged or suppressed.	Library, community forum, public commons; information is widely accessible to the public. Web is forum for discussion, disagreement, critique, parody, alternative views.
View of authority (who should decide)	Experts; elected representatives; copyright owners; media conglomerates	Informed citizenry
Representative figures and groups	Jack Valenti, MPAA President; Recording Industry Association of America (RIAA)	Larry Lessig, Pamela Samuelson (IP lawyers); Creative Commons; Electronic Frontier Foundation (EFF)

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