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THE 2016 CCCC INTELLECTUAL PROPERTY ANNUAL

**TOP
INTELLECTUAL
PROPERTY
DEVELOPMENTS
OF
2016**

A
Publication
of the
Intellectual
Property
Caucus
of the
Conference
on
College
Composition
and
Communication

June
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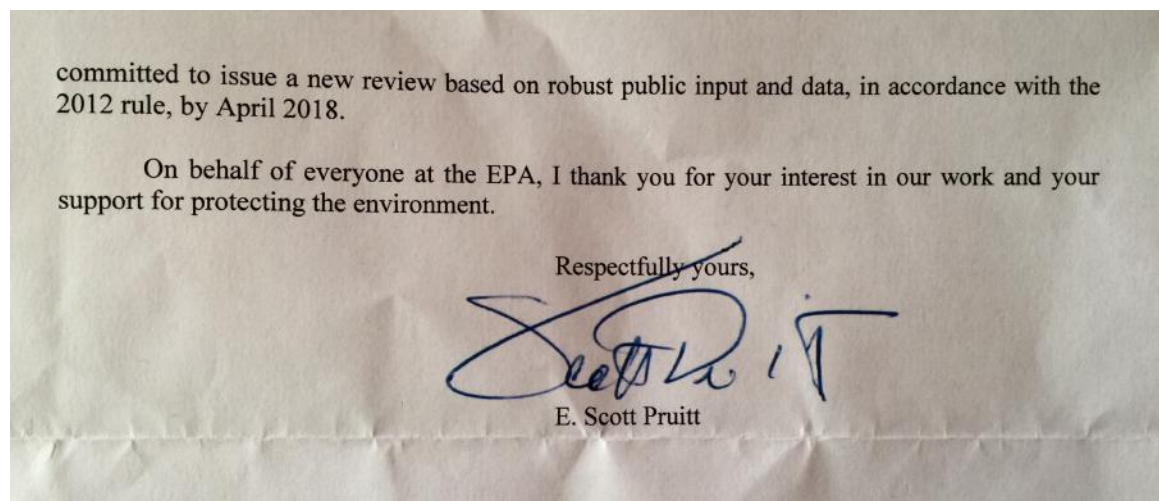
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INTRODUCTION TO THE 2016 ANNUAL

Needless to say, 2016 was a humdinger of a year. We will remember it primarily as the year that Donald Trump shockingly received more electoral votes than Hillary Clinton in the presidential election, and the year we lost many talented artists, including David Bowie, Prince, George Michael, Carrie Fisher, and the very next day her mother, Debbie Reynolds. It was also the year that the largest number of Indigenous tribes in a century gathered for months at the Standing Rock reservation to protest the construction of the Dakota Access Pipeline, a struggle that continues in the courts. Intellectual property developments continued as always, as the eight excellent articles in this year's *CCCC-IP Annual* show.

This year has challenged my understanding of plagiarism. As Camryn Washington, Joseph Myrick, and Steven Engel show, Cabinet nominees of the Trump administration (and Donald and Melania Trump themselves) were shown to have plagiarized. They describe a few of these instances in their article, but I would add that two other Cabinet members had documented histories of plagiarism as well: Secretary of Education Betsy DeVos in her written answers in a questionnaire from the Senate, and Environmental Protection Agency Director Scott Pruitt, who allegedly plagiarized from an oil company document in a letter he wrote to the EPA in 2011.

However (and far be it from me to defend the Trump administration), it isn't that simple. The Senate questionnaire contained over 1000 questions, and it's understood that various aides and staff members wrote much of the material in the answers. Pruitt's situation could be compared to an action letter from an advocacy group; many of us receive emails regularly from such groups, encouraging us to use their letter and sign our names to it. Indeed, just a couple of months ago, I wrote a postcard to Pruitt expressing my support for the Obama administration's plan to reduce vehicle emissions. I received a letter in response, two pages, signed "Scott Pruitt."



Who is this Scott Pruitt? Did he write this letter himself? I don't have that expectation. For what it's worth, I did web searches for several sentences in the letter, and I didn't find any matches with any other documents from the EPA or anyone else. Did he sign it with his own hand? Is it a rubber stamp? I don't know. I can understand, though, how these and so many other similar complexities could muddy students' understanding of citation norms. In a Facebook comment thread about these Trump administration plagiarism cases, which resulted in little or no consequences for the people accused of plagiarism, Michigan State University rhetorician Wonderful Faison wrote that economic power and race privilege are key factors in what the consequences for plagiarism end up being. Student writers of color are faced with bias, sometimes with teachers like hovering, suspiciously watchful sales associates in stores. I have seen this "I don't think this student wrote this himself/herself" phenomenon in my experience as a WPA. As intellectual property scholars, we must step up the work that attends to social justice in plagiarism and appropriation.

It has also been a year that notions of *free speech* have been in the spotlight. Free speech, as a concept that has guided the copyleft, open source, open access, and fair use movements, is being claimed and co-opted by the group euphemistically called the alt-right. I'm not writing about this now in order to present any answers to this complicated matter or to argue for restricted speech, only to recognize the truth that for many people, the words *free speech* conjure images of Westboro Baptist Church signs, Confederate flags, and Klan robes. The term *intellectual property* itself has been criticized as colonialist, as decolonizing methodologies continue to generate interest in rhetoric and composition studies. I do want to call, though, for careful thought about the framing of IP issues. We must foreground what we value about open access and Creative Commons models: accessing and using copyrighted materials in ethical, respectful, thoughtful, socially just ways.

PLAGIARISM IN THE AGE OF TRUMP

INTRODUCTION: ANOTHER YEAR, ANOTHER CASE OF POLITICAL PLAGIARISM

During the run-up to the 2016 election, the transition of power, and the early days of the Trump presidency, there have been several notable accusations of plagiarism surrounding members of the Trump administration and family. While some of these feel like more standard cases of plagiarism (Monica Crowley's book and dissertation), others seem slightly off (Melania Trump's RNC address), others unusual (Donald Trump's inaugural address), and still others are just bizarre (the Salute to Our Armed Services Ball Cake.) However, in all these instances, the politicizing of the plagiarism seems to have reached new levels, and this increased intensity has brought to the surface the various elements of plagiarism.

Accusations of plagiarism have been wrapped up in power relationships ever since the Roman poet Martial called out his poet rival for kidnapping his poems without appropriate compensation. And examples of plagiarism and politics seem to crop up every few years. (e.g., Joe Biden's 1988 presidential campaign, HUD Secretary Ben Carson's prepared statements for his Senate confirmation session, Senator John Walsh's final essay for his master's degree, or Rand Paul's speeches.) The cases that have been linked to the Trump campaign and administration have occurred in a political environment in which opponents are fervently fact-checking every utterance and surrogates are ready to defend both the words and the intent of each speaker. Beyond just compelling political theater, these cases highlight several components about plagiarism: 1. the role of the audience in plagiarism, 2. the wide variety of literacy practices that get grouped under the label of plagiarism, and 3. the ways in which defenders of these practices challenge the conventional understandings of plagiarism.

In this article, we explore four instances of plagiarism accusations in the past few months. We provide an overview of each case and an investigation of the response to the reports in the popular media. Finally, we offer an exploration of the significance of these examples.

MONICA CROWLEY: WHAT THE (BLEEP) JUST HAPPENED

In contrast to some of the more unusual examples we discuss here, the case of would-be deputy national security adviser Monica Crowley's plagiarism initially seems like a run-of-the-mill instance of plagiarism: a political appointment's past writing is scoured to look for something potentially damaging; the news reports on it; and then the politician retreats from the spotlight in shame. Yet, while the initial events unfolded in typical fashion—and the end-result seems similar—the ways in which this case has continued to linger reveals the ways plagiarism has become a strategic tool for politicians.

On January 7, 2017, CNN.com published a report accusing Monica Crowley of plagiarizing several dozen passages in her 2012 book, *What the (Bleep) Just Happened* (Kaczynski). The online article displayed the typical damning side-by-side snippets: sixty-one samples of Crowley's text on the right and highlighted matching passages from other published articles, websites, and Wikipedia on the left. All the examples are relatively short and illustrate the usual range of types of plagiarism that we see when authors incorporate research into their work without conforming to the conventions of academic writing. Some of the examples look like ordinary cut-and-paste plagiarism. In Crowley's book, she writes: "In December 2007 CIA director Michael Hayden stated that 'of about 100 prisoners held to date in the CIA program, the enhanced techniques were used on about 30, and waterboarding used on just three'" (230). The same passage can be found on Wikipedia: "In December 2007 CIA director Michael Hayden stated that 'of about 100 prisoners held to date in the CIA program, the enhanced techniques were used on about 30, and waterboarding used on just three'" ("Enhanced Interrogation"). Other examples illustrate issues with more nuanced citational practices. For example, Crowley writes, "According to the *Wall Street Journal*, that's quadruple the cost of creating a job in a nonsubsidized private farm [sic]" (92). The original source (Daniel Horowitz from a 2011 *Red State* article) reads: "According to the *Wall Street Journal*, that's quadruple the cost of creating a job in a nonsubsidized private firm." While the source is attributed, the language is taken from a secondary source without indicating the indebtedness to the *Red State* article. On its own, this example seems less troubling than some of the others; however, as part of an extensive list, it becomes more critical as it seems to illustrate a pattern of problematic source use.

The Trump transition team issued a statement defending Crowley that tried to deflect the accusation as "a politically motivated attack that seeks to distract from the real issues facing this country" (Kaczynski). Additionally, the statement looked to use the book's publisher ("one of the largest and most respected publishers in the world") and its popularity ("a national best-seller") as evidence that the accusation couldn't be true.

Two days later, *Politico* reporters Alex Caton and Grace Watkins published an article that claimed that Crowley had plagiarized "numerous passages in her Ph.D. dissertation" and provided a similar side-by-side comparison of sections of Crowley's work with other texts. Caton and Watkins reported that an examination of the dissertation and the sources it cites identified more than a dozen sections of text that have been lifted, with little to no changes, from other scholarly works without proper attribution. In some instances, Crowley footnoted her source but did not identify with quotation marks the text she was copying directly. In other instances, she copied text or heavily paraphrased with no attribution at all.

In addition to providing the two texts, the authors also annotate many of the comparisons to provide a little more context. For example, Caton and Watkins claim in one section that Crowley "cites a Kissinger statement—footnote 7—but is pulling direct phrases and otherwise paraphrasing Gaddis with no footnote or in-text citation." While this practice aligns with the definition of plagiarism as set forth by Crowley's graduate school, it appears to be citation error rather than fraud.

After the initial political reactions to the reporting, Lynne Chu posted an open letter on *Facebook* entitled, "My statement on Monica Crowley's alleged 'plagiarism.'" The letter provided evidence from a copyright attorney for many right-leaning websites that these

accusations were politically-motivated and that the passages that were pulled out did not constitute plagiarism. Chu conducted a systematic review of all the reported instances of plagiarism in the book and in Crowley's dissertation. Based on that review, she claimed that [i]n the case of the book, I found 57 out of 61 items presented by CNN to be unwarranted accusations. The match often seemed computer-generated from shared proper names and generic phrases, or news and anecdotes repeated by aggregators and editorialists. This type of material is generally considered fair use and/or public domain. As a result, this CNN list was misleadingly long, possibly a calculated attempt to condemn her with manufactured, but false, bulk.

While Chu's argument conflates copyright and plagiarism, it was enough evidence for sympathetic readers that the charges were overstated. Nonetheless, Crowley withdrew from consideration for the position on the National Security Council.

Not all conservative websites reacted in the same way. The conservative blog *Red State* published the tongue-in-cheek assignment for Trump supporters who wanted "minimize the allegations in a partisan manner." The blogger Patterico, who seems to be part of the Never-Trump camp, offers up six approaches to take to defend Crowley including "There are more important things going on in the world," "It's CNN. Ignore the facts in front of your nose and attack the source," and "It's old news." He ends the assignment with by advising the commenters that "whatever you say, say it loud and with great fervor and self-righteousness. That usually helps."

More recently, Crowley has appeared on Fox News' *Hannity* claiming that she was the victim of a "political hit job" (Link). She claimed that "[t]here is a very toxic, and it is getting increasingly toxic and poisonous, atmosphere of personal destruction in Washington and the media. It's always sort of always been there, but now it is at a whole different level. And this is exactly why smart and good people do not want to get into government service" (Link). Crowley's defense shifts the focus away from the textual practices of her writing and places the attention on the ways in which the political environment has created readers who use accusations of plagiarism as a way to destabilize and discredit the administration. Additionally, Crowley has framed the accusations against her as part of the larger trend of fake news and political attacks. Despite the textual evidence that was leveled at her, Crowley maintains that because it was politically motivated, it can't be real.

MELANIA TRUMP: YOUR WORD IS YOUR BOND

The intersections of the personal, the political, and the plagiaristic began much earlier in the presidential campaign. On July 18, 2016, Melania Trump took the stage at the Republican National Convention. Her speech was much anticipated, with pundits predicting that the speech would soften the image of Donald Trump in the ways that a candidate's spouse is often called upon to do. While the speech was being delivered, writer Jarrett Hill tweeted that an entire paragraph closely mirrored Michelle Obama's speech from the 2008 Democratic National Convention (@JarrettHill). Ms. Trump's speech contained the following passage:

From a young age, my parents impressed on me the values that you work hard for what you want in life; that your word is your bond and you do what you say and keep your promise; that you treat people with respect. (qtd. in Haberman et al.)

Michelle Obama's speech had a similar passage:

You work hard for what you want in life; that your word is your bond and you do what you say you're going to do; that you treat people with dignity and respect, even if you don't know them, and even if you don't agree with them. (qtd. in Haberman et al.)

The speech caused an immediate controversy, and Trump's campaign and their supporters came out to either deny that the words came from Ms. Obama's speech or defend her use of Ms. Obama's words. But on July 20, two days after Ms. Trump's speech, one of her speech writers, Meredith McIver, came forward and confessed that she did take the words directly from Ms. Obama's 2008 speech (Chan). McIver claimed that she was given those phrases by Ms. Trump but that she had failed to remove them from the final draft of the speech. Although McIver offered to resign, her resignation was not accepted by the Trump campaign (Chan).

The various responses to the speech and the attempts by the Trump campaign and its supporters to explain what happened and why it happened are significant. There were those such as Ryan Lizzia who wanted to give Ms. Trump leeway because she is not a politician: "Of course, Melania is not an author or academic. She might be unaware of how seriously people in the press and at universities take plagiarism" (Lizzia). Others defended her by arguing that she shouldn't be held accountable because English isn't her first language (Kliff). Still others argued that Ms. Obama does not own the English language and that they both used "common phrases" attempting to disconnect Ms. Obama's authorship and ownership of her speech thereby making Ms. Obama's words free for common use (Kliff).

One of the more interesting explanations was that the plagiarism was politically strategic (Kliff). Not only her plagiarism but also the very accusation of plagiarism was dubious because it was a political attack and not truly about the issue of plagiarism. For example, Paul Manafort, the Trump campaign chairman, argued that this was "an example of when a woman threatens Hillary Clinton," Clinton "seeks out to demean her and take her down" (Wilkie). This focused the conversation less on the literacy practices of plagiarism and put the focus instead on the intent behind the accusation. This accusation of plagiarism becomes a political tool. We have been aware of the necessity of an audience for plagiarism, and we have had some sense of the political nature of an accusation of plagiarism. However, with defenses like Manafort's, we now have those forces being brought to the forefront even as they are being obscured.

DONALD TRUMP'S INAUGURAL ADDRESS: PLAGIARISM AS A LAUGHING MATTER

Several months following Melania Trump's RNC debacle, another Trump speech was once again steeped in controversy. This time, Donald Trump was accused of borrowing the words

of fictional characters-- the supervillain Bane from *The Dark Knight Rises* and Barry B. Benson from *Bee Movie*. Trump's populist call for "giving [power] back to you, the people" echoed words uttered in Bane's villainous monologue where he promised to "give [Gotham]



(Fig. 1. Trump and *Bee Movie* Meme)

back to you, the people" (Oakley). In the case of *Bee Movie*, though, the words which Trump has been accused of borrowing from Mr. B. Benson do not appear in the film (Evon). Still, that did not stop a meme image from circulating which highlighted a side-by-side comparison of each party's similar quotes (see figure 1).

In this case, the accusation of plagiarism is wielded to make the President appear to be so incompetent that he feels the need to look towards fictional characters for words of wisdom.

Donald Trump's speech patterns and habits have been analyzed, parodied, and mocked since he arrived on the political scene. Just the insinuation that his speech sounded similar enough to Bane's monologue was enough to make the case that it could not possibly be anything more than a coincidence. Once the accusation hit social media, it spread because of shock value, humor, and the power of the echo chamber. At the most, the inauguration speech was patchwriting (Howard), but closer examination reveals that the lines that were supposed to have come from the movies weren't actually in the movies. Yet, as the meme circulated (as well as its close cousin of an *Avatar* reference), it didn't really matter if it was true: those who wanted it to be true believed it and those who felt it was a political attack discredited it right away. Neither party needed evidence--that would be unnecessary.

THE SALUTE TO OUR ARMED SERVICES BALL CAKE: CAN YOU PLAGIARIZE A CAKE?

The strangest example has to be the cake at Trump's Salute to Our Armed Services Ball. After the publicity photos were released, Food Network celebrity baker Duff Goldman tweeted out pictures of the cake he created for Barack Obama's Commander in Chief's Ball in 2013 and the one created by Tiffany MacIsaac of Buttercream Bakeshop for Trump's ball (see figure 2). As with all of the cases we have presented here, both sides of the comparison were similar. Goldman had created a multilayered cake for Obama's celebration and MacIsaac copied the cake for the Trump party. MacIsaac explained that the Trump campaign "came to [her bakery] a couple of weeks [before the inauguration], which is pretty last minute, and said 'We have a photo that we would like to replicate'" (Wang and Carman). When MacIsaac suggested that she could use the photo as inspiration, the Trump team claimed that they wanted "this exact cake." (Wang and Carman). After the (now) expected social media storm, the bakery announced that it was donating the profits to Human Rights Campaign (Reynolds).



Figure 2. Duff Goldman's Tweet Comparing the Two Cakes

Ironically, the Trump cake was mostly styrofoam with only the bottom two layers made out of cake. While the cakes appeared to be the same, they only had the same outward appearance.

CONCLUSION: STYROFOAM PLAGIARISM?

In all four examples, the surface appearance of plagiarism led to an accusation and then a vociferous defense. While the role of the audience was foregrounded by the ad hominem attacks of the accusers and the general politicization of the entire event, these examples reveal the ways in which the literacy practices that make up plagiarism were, in effect, dismantled and separated. The text was split from the author. The audience was distanced from its reaction to the text and was impugned with motives separate from its response to the text. Instead of seeing a more unified interaction between the various actors in the literacy practice, plagiarism in the Trump era seems to be a series of actions that can each be questioned and challenged. Like the Trump cake, we only have Tweeted images of the outsides of the texts and the accusations that follow.

WORKSCITED

- @JarrettHill. "CORRECTION: Melania stole a whole graph from Michelle's speech. #GOPConvention WATCH: <https://youtu.be/53Ei2dSDsFY?t=2m4s> ... pic.twitter.com/zudpDznGng." *Twitter*, 18 Jul. 2016, 8:26 p.m., twitter.com/JarrettHill/status/755242423991709697.
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CORRUPTION, HIGHER ED, AND RUSSIANS (OH MY!)

1	2	3	4	5	6	7	8	9	10	eleven	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	thirty	31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
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81	82	83	84	85	86	87	88	89	90	91	92	93	94	95					
101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120
121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140
141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160
161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180
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Cheating is a national sport and a source of pride, because in a country that is so thoroughly and wantonly corrupt, rigging the game to your advantage is the only skill that matters. ~[Diana Bruk](#), Russian-born writer and Viral Content Editor for Hearst Magazines writing about Russia

One of the continual concerns in higher education is plagiarism and the impact it has across the academy. While plagiarism should be a concern we continue to manage and educate about, here I suggest a deeper, more looming, and problematic one: corruption in higher education. Corruption can be defined as dishonest conduct and can be demonstrated by an exchange of money for some form of power. More to the core of corruption, I turn to Arvind K. Jain, author of “[Power, Politics, and Corruption](#),” who explains that the political system where corruption takes place is an institutional “failure” (3).

To deepen this discussion, I touch on the reports of corruption (and plagiarism) by prominent Russian political figures over the last several years. I also provide some insight into the framework that has allowed the (alleged) corruption to occur. Finally, I point out how corruption is not only a Russian concern, but also a international one by suggesting that the conditions that have allowed it to flourish in Russia are becoming more prevalent here in the United States and other parts of the world.

For nearly 25 years, reports of various levels of plagiarism have been coming out of Russia. Even Vladimir Putin hasn’t avoided questions about his dissertation. His 1996 dissertation in economics came under suspicion when a 2006 report by the Brookings Institution found “16 pages [were] copied with minor changes” and lacked reference to the “American economics textbook published in 1978” from which it was taken ([Shuster](#)). However, one does not accuse Putin of wrongdoing and most references to this suggest these are allegations, and Putin himself refuses to address the issue at all (see also [Khvostunova](#)).

Just because Putin refuses to address it, does not mean it's not a problem. Simon Shuster, a Moscow-based reporter for *Time*, points out that the level of plagiarism in Russian dissertations is quite high. In a random sample of 25 dissertations, "All but one were at least 50% plagiarized, with some as much as 90% copied from other sources," according to Igor Fedyukin, the Deputy Minister of Education and Science (via Shuster). Speaking from experience, Mikhail Kirpichnikov, who was once in charge of the Russian Higher Attestation Commission, suggests dissertation quality decreased in the 1990s as the quantity of dissertations increased (Khvostunova). Likewise, the number of purchased advanced-level work increased as well, but I will touch on that momentarily (Khvostunova). Perhaps the most famous (and comical) plagiarism case involved Igor Igoshin, a United Russia lawmaker. In his dissertation, he reprocessed the dissertation of Natalia Orlova. Orlova wrote about chocolate. Igoshin mostly replaced the word "chocolate" with "beef" and if more detail about the kind of chocolate was provided, he would adjust accordingly, such as domestic beef in place of white chocolate (see a page in translation for yourself [here](#) or the complete highlighted dissertation [here](#)). While much of the plagiarized dissertation is concerning, Igoshin remains a member of the ruling government.

Another prominent example is Sergei Naryshkin, a former chief of staff for Putin, who "was suspected of paying a ghostwriter to produce a thesis [. . .] then bribing academic officials to secure its certification" ([Neyfakh](#)). (the multi-colored picture above shows his dissertation—each color represents a plagiarized source, also one can see Naryshkin's dissertation [here](#).) In Russia, once a dissertation is composed, it must go through a board for certification. The process is similar to a committee in the US, but it is clear that these boards can easily be persuaded with bribes. Beyond these three examples, Lean Neyfakh, a *Slate* staff writer, points out that "more than 1,000 high-achieving, well-heeled Russians [. . .] have recently been caught plagiarizing large parts of their dissertations."

While certainly some of the plagiarized dissertations were compiled by the ones submitting them, others like Naryshkin's were ghostwritten. In other words, someone wrote them for money. As many Rhetoric and Composition instructors know, there are dozens of online companies willing to "write" papers for paying students. Many of them come with guarantees of original writing and plagiarism-proof prose. And sadly some students undoubtedly take that route. The thinking is that if there is a market for a service that service will be provided. If you have the right amount of money, you could even have an original dissertation written for you on any topic you want in thirty days. Focusing on Eastern European countries, Aleksandar Manasiev and Semir Mujkić, in their article "[Trade in Academic Work Thrives in Macedonia and Bosnia](#)," sought out these ghostwriters of dissertations. They found, not surprisingly, plenty to choose from. For a handful of euros per page, one can acquire "professors" to write original material (Manasiev and Mujkić). They further explain, "A cross-border investigation has revealed a highly organized and efficient system for churning out dodgy dissertations by taking advantage of legal loopholes, lack of enforcement by the state and institutions, complicity by some academics, and rising demand from students who are unwilling—or unable—to do the work themselves" (Manasiev and Mujkić). At this point, we recognize this is a systemic problem.

So, what was the Russian governmental response to this clear corruption and deception by members of its own body? In 2013, after calls for an investigation, the

Education Ministry issued a response “stating that dissertations that were defended more than three years ago could not be subjected to such an investigation” (Khvostunova). The previous understanding was ten years. The clear impression left is that if officials like Putin can do it and measures put in place to manage it are being eased, then everybody can do it. This nefarious system is thus condoned because it continues to exist and is not challenged by any true authority.

One of the concerns about the implication of corruption is the understanding of it. To help illustrate, if 90% of all dissertations plagiarize, is that corruption or just the way things are done? To help understand, I return to Jain, he explains that those in power do not define moral behavior, but operate in “established norms” (4). As we have seen, corrupt behavior in Russia regarding plagiarized dissertations might be considered a norm that is now being pushed back against by those involved with organizations like [Dissernet](#). Dissernet.org serves as a partial response to this substantial and systemic plagiarism. Several Russian scholars began investigating dissertations, started a website (dissernet.org), and began publishing the results of their findings. As of this writing, thousands of people have had their work examined and found to be plagiarists through the volunteer work of Dissernet. The (understandably) elusive founders of Dissernet took action because they sought to protect the integrity of Russian academics. In effect, they are making reasonable attempts to counter the corruption and restore integrity to higher education in Russia in a very public forum. Instead of accusing officials directly, Dissernet developed software that scans dissertations and highlights verbatim language, then each one is checked by an actual person. Assuming the text is considered plagiarized, these highlighted results with some brief objective commentary are provided on their public website.

A next logical question becomes that if a system is corrupt, can quality, ethical education take place? As Jacques Hallak and Muriel Poisson assert, “teachers who indulge in unethical practices are arguably unfit for teaching universal values (civic education, moral values, honesty, integrity, etc.)” (3). In other words, they argue that an environment should be free of corruption and unethical behavior if it is going to teach ethical practices otherwise it is unable to teach such practices. The complexity of this particular point needs to be elaborated upon briefly. One may argue that no system is without corruption, so the possibility of teaching ethical behavior is an illusion: an illusion of integrity. This paradox, then, becomes a rallying point to attack an educational system, which then sets up a rationale for that system to become (more) corrupt.

Still, there are several reasons why education corruption has become more common in Russia (and provides potential in other places). First, educators are not being paid a reasonable wage or just compensation. Referencing D. Chapman, Paul Temple and Georgy Petrov, authors of “Corruption in Higher Education: Some Findings from the States of the Former Soviet Union,” explain salaries “have dropped dramatically” and those wages are only a fraction of those available in industry (90). Lower salaries have forced some to justify taking bribes so they can continue working in education. In related fashion, once educators retire they will likely have even less income because the salary they earned will be a percentage of what it once was, which was cut as the political and economic landscape changed. Second, as teachers are attacked by accusations of being too politically dogmatic or other unsubstantiated charges and politicians accuse them of indoctrinating students, their

social status decreases. Thus, instead as being seen as innovators and educators, they are seen as corruptors (an odd twist to say the least) and dissenters or even unpatriotic.

The third reason is an increased pressure on colleges and universities. This pressure may be economic or scholarship based. Obviously, the economic pressure comes from decreasing funding from the state in relation to inflation and costs. The scholarship-based area could be seen in quality of students produced or employment after graduation or graduation rates. If a school is not fulfilling certain criteria, often funding is slashed even further, which only exacerbates the problem. Another area of concern is the impression that the quality of education is poor. If society feels this is the case, support for education will decrease and potentially dramatic changes will occur that create more problems that weaken the entire system. This does not mean to suggest that adjustments to any given educational system are not needed, but adjustments suggest course corrections or reasonable and rational improvements, not rebuilding at the foundation. Finally, if society feels that the entire “system” is corrupt, then, as noted in the epigraph, the challenge, for students and teachers, becomes how skillfully one can work the corrupt system to maximize personal benefit, maintain social-economic status, or just put food on the table.

There are deeper causes that lead to corruption though. To help explain, Jain writes, “When a segment of the society feels its interests have not been served by the political system, it will try to circumvent the accepted political processes and explore weak points within the system that will serve its interests” (7). It is possible this is why Russian politicians decided to fudge their dissertations—they felt they needed to find a way to garner or maintain power. To some degree, we see this occurring in the U.S. political system with the most recent presidential election. Nevertheless, any one of these reasons or factors may create a corruption-ripe atmosphere in higher education. Jain continues, “When political markets are imperfect, voters may opt for the second-best solution of a corrupt politician who serves their interest rather than an honest politician who represents others as well. Politicians, of course, may exploit voters’ ignorance as well as their uncertainties” (7). One might equate how it was common to hear in our last major election how one was voting *against* one instead of voting *for* the other. As wisdom, and potentially as warning, those in powerful positions, such as President of the United States, may make a society more corrupt by utilizing the ignorance of those that put them in office. And those that aid them may be self-serving instead of creating an environment supportive and willing to find equitable solutions to difficult problems.

Presently in the US, there is a general distaste for fake, copied, or plagiarized material. However with the reality of factual information being challenged and what appears to be an increase in cognitive dissonance, a new level of disinterestedness in education may take hold. When, and if, this occurs the meaning of an advanced degree and what it means to be an academic will have limited importance. If the continued proliferation of alternative facts continues, the American academy may find itself with a similar level of plagiarized dissertations—and people in positions of power telling us they aren’t plagiarized or simply ignoring the fact that they are. To put it simply, with the increase of ghostwriting entities, there is an increase in substandard and plagiarized material.

The heart and genesis of this piece was Russian plagiarism in dissertations, but a more important recognition became much of the body. While the international academic

community may not be as mired as Russia, yet, we need to recognize the potential of how corrupt our educational system could become and recognize how precarious a position the U.S. system is resting. The factors that led to Russia's corrupt system are becoming reality in the United States: poor teacher pay, attacks by political figures, cutbacks to education, and so on. These circumstances serve as beacons of alarm; we should not ignore them.

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¹ Items are also hyperlinked in body text upon first usage.

WHAT'S IN A MEME?

Like everyone else, I am an avid consumer of memes. However, it was only recently that I also dabbled in the production of memes. The transition from consumer to producer was prompted by my abiding love for the musical *Hamilton* and my subsequent dabbling in Hamilton social media fandom, which, as it turns out, routinely cranks out memes. I produced a few of my own with modest success (a few hundred likes, some shares, nothing earth-shattering), but it made me wonder: am I infringing any copyright laws? And, conversely, how would I feel if I saw that meme reproduced somewhere else without attribution?

Meme diffusion inevitably occurs without proper attribution, generating gray areas in terms of intellectual property rights. When the creator is known and has a legal claim to the original image, video, or message, legal action to prevent copyright infringement is possible (more on that in a second). However, in many cases the originator is obscure, lost, or tracked down but unable or unwilling to claim intellectual property (IP). To take just a recent example, the #shepersisted hashtag and “Nevertheless, she persisted” meme were lifted from Sen. Mitch McConnell’s tweet explaining his censure of Elizabeth Warren during her Senate speech protesting Jeff Sessions’ nomination as Attorney General in January 2017. The quote became something else entirely in the hands of internet culture and has been featured in countless parodies, Facebook statuses and Tweets, image-based memes, and, of course, T-shirts; so far, there have been no signs Sen. McConnell is interested in claiming IP for any of these cultural products. One may even argue that the relevant creative act occurred not when the tweet was generated but when it was reinterpreted—satirically—in a particular context. “Hamilton’s” author, Lin-Manuel Miranda, similarly appropriated the quote of an unknown exuberant woman who approached him in the street, saying: “I know you. You wrote Hamlet, right?” Miranda tried to deny it: “I wish!” but the woman either ignored him or didn’t hear him and departed shouting “Yay Hamlet!” Miranda related the incident on Twitter, giving birth to a meme - #YayHamlet; you can now buy #YayHamlet merchandise on his site. Should the anonymous, albeit confused fan be entitled to a portion of the proceeds?

In general, nothing about meme authorship is really straightforward. In my case, it is doubtful that I could have claimed any sort of copyright even hypothetically: some of my memes both borrow and parody content, while others were my original lines, yet structurally mimicking other memes based on ironic contrasts and well-trodden Internet tropes. For example, I used mashups of musical lines, my own satirical interpretations of them, lines of dialogue I made up, memes of the LOL guy variety, and pictures of the Hamilton cast. They were shared freely on a large Facebook group (which numbered 16 thousand member at the time I joined and grew to over 40 thousand three months later and closer to the time of this writing). Plenty of others shared fan art, parodies, mashups, memes, and a variety of other creative ways to express fandom.

Thus, when I was asked by a student whether he could create a meme as a form of visual argument for our freshman argumentative writing class, I was torn. On the one hand,

I did understand that certain ways of using memes are creative endeavors that require thought, planning, writing, and a certain nimbleness with visual media. On the other, I had seen too many facile, unimaginative, and repetitive memes to wonder whether the student wasn't trying to get away with something. Even the fact that I could easily "shoot off" into the ether a meme that had taken me less than 15 minutes to create gave me further pause. Was that enough, from the point of view of the course objectives and assignment description, to merit a grade, even if the meme was well executed?

I told the student no. But was I right? Well, as usual, the answer is probably to be found among shades of gray. It would be difficult to separate pedagogical applications from understanding an analyzing meme culture and from addressing potential copyright infringement issues. Therefore, in the remainder of this essay, I will briefly explore some of these issues, paying attention to definitions, recent copyright suits, and finally possible application of memes in the writing classroom.

WHAT MAKES A MEME A MEME?

The prevalence of social media and visual culture can obscure the more abstract original meaning of meme as proposed by Richard Dawkins in *The Selfish Gene* (1976), in which the term (an abbreviation from the Greek *mimema*, "something which is imitated") is used as a cultural analogue for gene: as genes encode biological information and are subject to both replication and evolution, so memes encode cultural information that is similarly replicated and can evolve. For Dawkins, God is, famously, a meme. Other examples include "... tunes, ideas, catch-phrases, clothes fashions, ways of making pots or of building arches." The mechanism of transmission from brain to brain is imitation. Dawkins quotes his commentator, N. K. Humphrey: "... memes should be regarded as living structures, not just metaphorically but technically. When you plant a fertile meme in my mind you literally parasitize my brain, turning it into a vehicle for the meme's propagation in just the way that a virus may parasitize the genetic mechanism of a host cell"—a passage that certainly evokes the idea of digital virality *avant la lettre*. Just as genes, memes can mutate and mix in ways that depart significantly from the original. This definition of meme gave birth to memetics, a whole field of study that pre-existed the Internet and is being renewed by recent scholarship.

Memes have been radically transformed by Internet culture: they thrive on the Internet due to the speed of propagation and wide reach, but also are more potentially controversial for the same reasons. One of the more prominent emerging meme scholars defines an "Internet meme" as "(a) a group of digital items sharing common characteristics of content, form, and/or stance, which (b) were created with awareness of each other, and (c) were circulated, imitated, and/or transformed via the Internet by many users" (Shifman, 2014, p. 41). Memes are not to be confused with viral content: some videos or images can go "viral" but not be turned into memes, although they can do both, at which point the distinctions between memetic propagation and virality can become considerably blurred (Soha and McDowell, 2016 p. 2).

Memes start on a "micro" level (Shifman, 2013, p. 365) as individual expressions but end up being propagated socially on a massive scale; often, they offer a lens through which culture can be interpreted or encapsulate vital features of a cultural moment. They are highly

adaptive and sensitive to the sociocultural environment and are defined by varying degrees of success. Propagation models may include genetics or epidemiology—as in the “virus” metaphors; this latter model is considered highly problematic by Shifman because it construes of people as passive hosts or milieus that can be parasitized by ideas or media. (The implied irony is strong: the “viral media” uses the person as a conduit, in a tautologic, McLuhanesque effect in which people would become media propagating media.)

A meme is not a meme until it is replicated; in fact, mass replication is its single most important feature. Its reproducibility and capacity for adaptation beyond the singular event of its inception are really what make memes memes. Memes can also, of course, mutate, and that transformation is related to their evolutionary fitness—proving it or helping it, as it may be the case. This fitness is therefore manifested in the robustness of replication in terms of numbers and lengths of time. Patel (2013) explains the most important features of meme replicability as follows:

Three attributes influence replicability: fidelity, fecundity, and longevity. Memes with fidelity are memorable, meaningful, and intuitive—regardless of their utility or their truthfulness—and thus are easily replicated and disseminated without losing their inherent value. Fecundity refers to the degree of reproduction and dissemination of a meme; successful memes must achieve a high degree of fecundity.... Longevity is also a key element of replicability because the longer a meme exists, the more recognized it becomes, and this recognition in turn enables easier reproduction, mutation, and dissemination. [First World Problems, 2014, p. 249]

CAN MEMES INFRINGE COPYRIGHT?

In a word, yes. Several lawsuits and other legal actions taken by copyright owners have ended favorably for the plaintiffs. In other cases, the copyright owners successfully claimed ownership to monetize their original work, or at the very least they managed to convince certain website to take down the image in question in accordance with the Digital Millennium Copyright Act (DMCA). The website Know Your Meme keeps a public log of the memes they were requested to remove from the site (<http://knowyourmeme.com/forums/q-a/topics/15676-kym-office-of-cease-and-desist-records>). Let's take a look at some of the recent cases that have been triggered copyright action:

1. **The Socially Awkward Penguin:** In 2015, Getty Images, the copyright owners of a National Geographic penguin photo used in countless memetic reinterpretations successfully argued that their copyright was infringed when the image was reproduced on a variety of social media. In at least two documented cases, Getty threatened to sue a relatively obscure German blog, whose owner removed the images as a result and paid the ensuing fine. Many speculated that this was a rather incongruous battle (Getty's legal behemoth vs little known bloggers in a different country), but it was meant to set clear boundaries and precedents. The actual photographer of the penguin, who is now retired, could not be reached for comments. The *Washington Post* reporter wonders:

But what of the “artists” whom Getty does not work with — the ones who have contributed to the vast oeuvre that is Socially Awkward Penguin? In the six years that Getty and National Geographic have allowed the meme to flourish, it has far transcended Mobley’s original photo: It’s a remix, a discourse, a pastiche assembled — like so much of popular Internet culture! — from the aggregated efforts of millions of people. (Dewey, 2015, para. 13)

Indeed, one may argue that George Mobley’s wildlife photograph in and by itself does not constitute a meme, and it was not initially considered one. Rather, from the moment that it was cropped out of context and offered for consumption accompanied by memetic captions, it became something else entirely, and only superficially resembled the original (*ceci n’est pas une pipe!*), much like the “Nevertheless, she persisted” quip-turned-catchphrase. Furthermore, as I have outlined above, such images become memes only when they have been successfully and abundantly replicated in a variety of “mutations.” The meme as a cultural phenomenon is a completely distinct entity from the original nature photograph; in fact, it cannibalizes that artifact to transform it into something completely different. Finally, high-powered legal teams of big players like Getty may only serve to control access to content and thus stifle creativity and enthusiasm among consumers and fan. In the end, these practices may backfire.

2. **Nyan Cat and Keyboard cat:** In 2013, Charles Schmidt and Christopher Torres, creators of Nyan Cat and Keyboard Cat, sued Warner Bros. for copyright infringement. The company had used their creations in the *Scribblenauts* game. The case was settled out of court, with Warner Bros. agreeing to pay for the use of the images.

3. **The Harlem Shake** (a “dance craze” video meme widely spread on YouTube) benefited from YouTube’s automated system for copyright detection, which eventually allowed them to steer ad profits into the pockets of the song’s creator and license owner. The case is a little more complicated, as documented in Soha and McDowell’s 2016 study. Memes involve brief dance sequences by various participants using a sample of a song by Baauer, a DJ specializing in Electronic Dance Music (EDM), and who himself relied heavily on sampled music. Soha and McDowell argue that “The commonplace notion of ‘authorship’ as either an individual or group of individuals laying claim to a work, already on shaky ground with EDM music, seems to fall short when attempting to encapsulate the large collections of digital labor that go into Internet memes” (p. 6). The YouTube Content ID mechanism, a finely tuned system, allows for content matching and several options for copyright holders whose rights appear to be infringed: blocking, tracking, or (the preferred route), monetizing content versions (via pre-roll and overlay ads)—in which case ad revenue is split more or less evenly with YouTube. This system has been soundly critiqued as enabling a few large corporations to profit from the work of the many, and has been dubbed “digital sharecropping by Nicholas Carr:

One of the fundamental economic characteristics of Web 2.0 is the distribution of production into the hands of the many and the concentration of the economic rewards into the hands of the few. It’s a sharecropping system, but the sharecroppers are generally happy because their interest lies in self-expression or socializing, not in making money, and, besides, the economic value of each of their individual contributions is trivial.” (Carr, *Roughtype.com*, 2006).

Because of YouTube's content ID mechanism, the authors of the Harlem Shake were able to profit handsomely from "hours of creative free labor" to the tune of what Soha and McDowell estimate to be at least \$4.5 million from ad revenue, to say nothing of exposure, direct song sales, and Billboard chart rankings (2016, p. 9).

4. **The *Downfall* meme** (Hitler's final bunker scene from the movie *Downfall*) was highly popular for a while after the movie came out. All versions modify the English subtitles and use Hitler's rage to comedic effect by applying it to relatively minor nuisances, such as manuscript rejection by peer reviewers, or getting a ticket to an Adam Sandler movie. (When a study of Internet memes as a genre is written, it will have to include hyperbole, irony, and dramatic contrast among its primary features). While the director of the movie has apparently approved of the memes and found them funny, the company that released *Downfall*, Constantin Films, found the memes less amusing and demanded that YouTube take down the videos. Schwabach provides arguments in support of the idea that the *Downfall* videos are transformative rather than derivative (and thus not infringing copyright), and argues that, as parodies, they may fall squarely within fair use (2013, p. 15). Fans claimed that the videos only enhanced the profile of the movie, though the production company reported no increase in revenue from DVD sales. In the end, Constantin Films stopped blocking the propagation of the meme in favor of monetizing it. Thus, Schwabach concludes, "The work of the fans . . . benefits the original content owners without harming the fans or deterring the creation of such works and, interestingly, without actually requiring any resolution of possible copyright claims" (2013, p. 22).

These cases differ in significant ways. Warner Bros., for example, a large company with abundant financial means, used memes with identifiable authors for the purpose of making money; the case was settled to the benefit of the copyright holders. Schmidt and Torres, however, never went for the likely millions of users who spread the memes and reinterpreted them. If anything, the copyright holders benefited from the digital work of those fans, which contributed to the huge popularity and visibility of the memes, and which led to the use of those memes for commercial gain by Warner Bros. It was that commercial purpose that enabled Schmidt and Torres to claim their dues for their original productions (which are separate from the memes); without the memetic replication, their work might not have been so recognizable as to be profitably used by a commercial enterprise. The Harlem Shake also profited from the invisible digital labor system, though the money came from companies placing ads on YouTube, and eventually the *Downfall* movie distributors may profit in a similar manner. However, Getty's claim to the Social Awkward Penguin, in my opinion, would not or should not stand scrutiny in court. The memes generated through the use of copyrighted photography would fall under fair use as argued by Patel (2013):

Memes are worthy of the judicial protection because they effectuate cultural interchange and the productive use of copyright, and because protecting memes responds to a market failure-i.e. the inability for memes to develop without copyright infringement. When analyzing fair use, courts should consider the unique role that Internet memes play in providing clear expression of thought and purpose, as well. When courts do, it will be clear that Internet memes are well deserving of the fair use defense's protections. (p. 256)

Fear of litigation and possible liability, however, has likely deterred the blogs targeted by Getty from pursuing these arguments in court.

Finally, another factor to consider is racial bias. Kayla Lewis, the inventor of the catchphrase “on fleek,” which rapidly propagated and became a successful meme, was eventually recognized as its author but was not able to monetize her IP due to what some argue is a familiar pattern of racial discrimination. Eventually she set up a crowdfunding site to finance her cosmetics line, but questions linger: “...why didn’t she get college scholarships like Chewbacca Mom, whose claim to fame boils down to laughing while wearing a plastic mask? Lewis’s problem is part intellectual property law, part access to influence, and all systemic racial inequalities. However egalitarian the internet was supposed to be, creatives’ ability to profit off their viral content seems to depend on their race” (Ellis, *Wired*, 3/1/2017).

HOW CAN MEMES BE USED IN THE CLASSROOM?

There are fruitful ways to engage memes in writing pedagogy. It is hard to deny that the process of appropriating a digital meme and adapt it to a novel circumstance requires some creativity and pop culture savvy. However, doing so may still be considered by many a mimetic exercise, something that could be done in class as a practice or group activity, rather than a graded assignment. I see nothing fundamentally wrong with using memes this way. Indeed, embracing memes in that way in the classroom may produce insightful conversations about authorship and intertextuality. Furthermore, the same factors embedded in the very definition of meme and in the evaluation of copyright claims should be considered here. Serving as a propagation vector for replicating a meme could potentially open up issues of intellectual property: students should ponder whether using a certain meme to make a point may fall under fair use. Such a prompt can generate productive discussions of mashup culture (in this, *Hamilton* the musical and the *Hamilton Mixtape* that mirrors it in some ways can offer abundant lessons, as Miranda copiously borrows from a wide variety of artists and genres to produce a highly original work of art). Eventually, students can engage in another useful class exercise: drafting their own plagiarism and fair use policies, inclusive of the use of images/videos.

And what if the students claim they want to create their own original memes—e.g., a novel idea in a unique, replicable form? (This would be basically the equivalent of a student creating the Nyan Cat or the “on fleek” meme and seeing it become a cultural phenomenon.) This is an unlikely, though not impossible scenario, given that the essential features of memes (factors such as fidelity, fecundity and longevity—Patel, 2013) need typically a longer time frame to be developed and assessed than a traditional quarter or semester. Furthermore, while memes are intentional mutations and replications of the original, the original instance rarely sets out to be a meme (The *Downfall* meme, the Socially Awkward Penguin, and the Harlem Shake Meme all have this in common). By contrast, a lot of content is created in hopes it goes “viral.” However, students *may* conscientiously isolate an image or idea as potentially meme-generating and enhance its profile and distribution until, in effect, it becomes a meme. In this scenario, the Harlem Shake song is not the “moment zero” of the meme: the meme is born when the first dance video using the song is produced and published. I could see this as a semester-long (or even year-long) project, ideally in a digital writing class, in which students (in pairs or groups, maybe) can work from the beginning on launching and monitoring a number (fixed or unlimited) of “original”

memes on various social media channels for the purpose of observing and analyzing their Internet fate. Using pre-determined measures, students can describe and interpret factors that lead to the relative success of a meme over another (number of shares for virality is not enough, number of replications with mutations would be a much more telling one; so would longevity). The downside of this project is that the potential for failure or stagnation is high, as memes only come into existence when they are (abundantly) propagated and reused, and there are no precise formulas for why certain ideas or images are fertile memes while others are not. (Kairos and luck may play a role.) Even so, there are valuable lessons in perceived failure—in this case, failure to replicate and therefore, to actually generate a meme. On the flip side, if a meme so created becomes wildly successful, students may be confronted with actual rather than academic issues of copyright and monetization.

Finally, writing students can learn a lot from studying the propagation of a meme and analyzing it. There are already several very good analyses that could be used as models (Ronak, 2013; Shwabach, 2012; Shifman, 2013; Soha and McDowell, 2016). In particular, Shifman (2013) establishes a rigorous theoretical apparatus that can be employed in digital meme analysis (either of single memes or meme clusters). She proposes an analytical framework based on three fundamental dimensions; content (“the idea/s and the ideology/ies conveyed by a specific text”), form (“the physical formulation of the message, perceived through our senses”), and stance (“information about the communicative positioning of the addresser in relation to the text/message, the context, and other potential speakers”); stance also has various subdimensions such as participation structures, keying, and communication functions (2013, p. 369). This type of analysis would produce different results for the original or generative work (e.g., the *Downfall* movie, which is based on actual events and has a serious key) and for the derivatives (which are ironic). Other issues of broad rhetorical appeal can always be analyzed in sample meme subsets—such as hidden gender or racial biases that may infuse meme culture (Seget et al., 2015).

The rhizomatic (rather than hierarchical) structure of the Internet makes IP claims difficult to track, prioritizes a point of origin, and obscures the creative labor of meme distributors. As Soha and McDowell argued in their study of the Harlem Shake meme, “[t]he distributed and networked nature of authorship for digital cultural production, and memes in particular, runs against the legal premise of contemporary intellectual property” (2016, p. 6) and enables what Carr has dubbed “digital sharecropping.” A proper discussion and practice analysis of memes in the writing classroom can, therefore, be extremely useful for exploring concepts of authorship and copyright and may even generate creative, useful content that demonstrates the compositional abilities of the students.

And as for my Hamilton memes? I may return to producing them as an enthusiastic fan, without fearing either copyright infringement or further distribution. And yes, you have my permission to freely share them if you can find them. I’m willing to wait for it.

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SNAPS WITHOUT PROPS: SNAPCHAT'S BLATANT (MIS)APPROPRIATION OF MAKEUP ARTISTRY

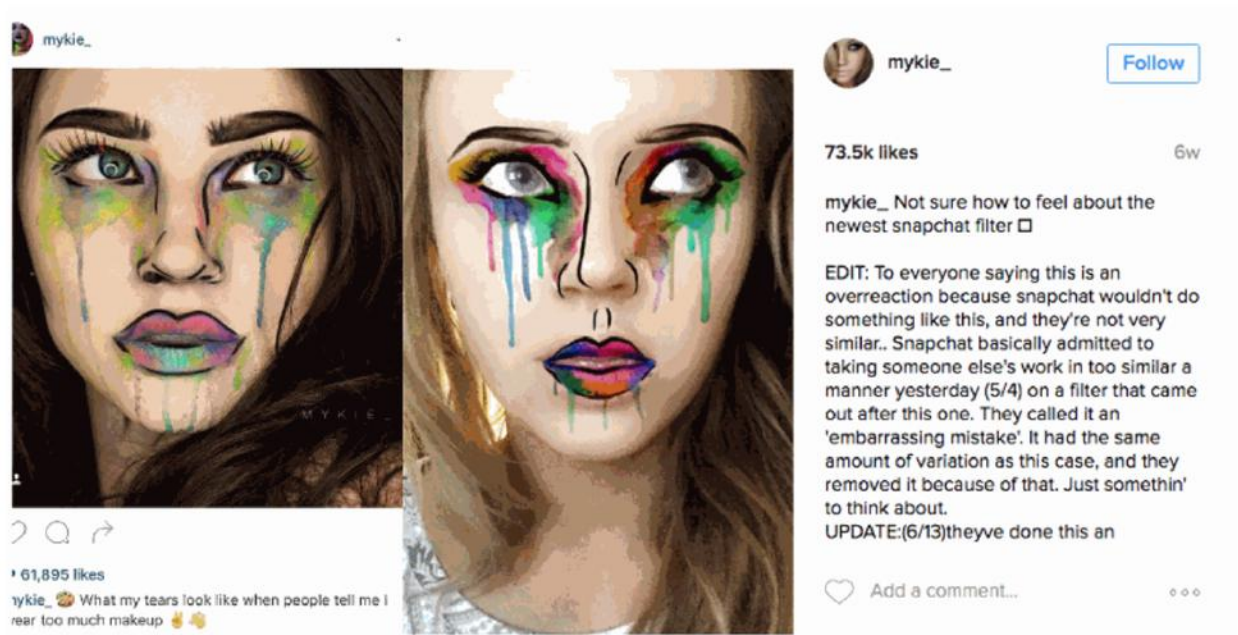
In 1915, Maurice Levy designed retractable lipstick. At that time, theatrical performers were expected to do their own makeup and supply their own costumes (Spivack, 2013). Through the twentieth century, makeup artists were virtually unknown, despite the fact that Oscars are given for special effects, makeup and hairstyling. Before social media became a daily part of culture, makeup professionals depended on word of mouth and networking connections. Perhaps the more tech-savvy artists created websites to showcase their portfolios of work but privacy was more highly guarded in the past, particularly in Hollywood and cell phones were typically not allowed on sets. If a photo was taken, clearing the copyright for the image was a lengthy endeavor, so the public rarely saw the process of a makeup artist's work (Burton, 2016)

In the social media age, the emphasis of the visual has made YouTube and Instagram natural mediums for promoting the evolving genre of makeup artistry, tutorials and professional makeup artists themselves. Today, many artists use Instagram, YouTube, and even Facebook Live to share makeup secrets, before and after images, experimental looks and tutorials. Additionally, celebrities are using social media to showcase "red carpet looks" including their hair and makeup artists in many of their photos or at least acknowledging them by linking to their profiles. Social media has become a consistent tool for self-promotion for these previously unknown professionals. Unfortunately, it has also created a unique avenue for stealing artists' work, most notably turning elaborate makeup designs into uncredited Snapchat filters.

Snapchat is a messaging platform, launched in 2011, where the images and videos that users post disappear in 24 hours. In a recent study published in *Computers in Human Behavior* participants explain that the ability to send drawn or typed text along with photos allows for a deeper understanding of "emotional contexts" of conversations because they can see what someone's face, expression, or surroundings are like (Vaterlaus, 2016). The hybrid text-image creates an immediacy and an intimacy because unlike Twitter, Facebook or Instagram the image has a sense of time as well as a brief shelf-life. In 2015 Snapchat created one of their most popular features: lenses. Lenses are filters that act as live overlays on pictures or "snaps". Popular lenses can make you look like you're vomiting a rainbow or have cute, animated dog ears, or allow you to swap faces with someone else in often hilarious results. The filters change frequently; there's a new option almost every single day. The high turnover of filters and expectations of users to constantly have something new with which to play may be what leads the need to borrow images and using them without concern. In an article in *Bloomberg*, Max Chafkin and Sarah Frier called Snapchat the "looser, goofier social network." But recent controversies over racially and culturally insensitive lenses, one which allowed users to face swap with Bob Marley led many to accuse the company of creating digital blackface. The "nerd filter" included thick-rimmed glasses and braces while an "anime filter" created buckteeth and narrow eyes in what many users described as yellowface. Others have raised concerns about the ways in which various filters

“whitewash” their skin. These instances showcase at best, a lack of oversight when creating lenses and at worst, a thoughtless disregard for those who use its services (Lee, 2016).

In April of 2016 makeup and special effect artist Mykie, who has millions of followers on her Instagram account, Glam&Gore, used her popularity to speak out against Snapchat when they copied her pop art melting watercolor look. Mykie filed a report with Snapchat who eventually responded by saying they did not believe the image infringed any copyright.



On the right, Mykie’s original makeup, on the left, the Snapchat filter. Photo from her Instagram feed.

In May 2016, a new geometric design filter appeared on Snapchat that bore a strikingly similar pattern down to the order of colors Russian artist Alexander Khokhlov used in his 2D design, which had been widely seen as part of a collaboration with makeup artist Valeriya Kutsan and featured on the cover of *Scientific American Mind* in 2014.



Shortly after Khokhlov and his fans noticed the Snapchat filter, they began tweeting and mentioning Snapchat asking for answers. Khokhlov received no compensation nor acknowledgment of the use of his design. Snapchat issued an apology and removed the filter, saying, “We agree that this lens is similar to other artists’ creations and we have removed it. We are sorry for this embarrassing mistake and we are taking action to make sure it won’t happen again” (Miranda). Only it did happen again, several more times, in fact. (Orlan Loses Trial Against Lady Gaga at First Instance, 2016)

In June 2016, Argenis Pernal, a veteran makeup artist who frequently posts his face and body painting designs to thousands of Instagram and Snapchat followers, was flipping through the various Snapchat filters when he saw his own Joker face paint design as a filter. Like Mykie, he posted a

side by side comparison on his Instagram account and wondered why his work had been used without his knowledge or permission. The filter later disappeared without a statement from Snapchat.



Around the same time, illustrator and artist Lois van Baarle; whose work appears on her website, Instagram feed, and books she publishes as Loish; decided to join Snapchat. In the process of setting up her account she came across her drawings of foxes that the platform had traced and made into a “sticker” which users can add to their photos. Van Baarle tweeted her original image beside the Snapchat one and accused the company of breaching intellectual property. Van Baarle told *The Ringer* that she drew the foxes as a challenge in stylizing shapes. She believes someone at Snapchat copied and traced the foxes. “[...] it seems very unlikely that an artist working with Snapchat coincidentally happened to create the exact same level of stylization in their graphics” (McHugh, 2016). Snapchat did not respond directly to van Baarle nor did they remove the stickers. Instead, they issued a comment to *The Ringer* story about the numerous instances of theft. “The creative process sometimes involves inspiration, but it should never result in copying” their statement read. “We have already implemented additional layers of review for all designs. Copying other artists isn’t something we will tolerate, and we’re taking appropriate action internally with those involved.” What that action has amounted to, isn’t exactly clear.

Copyright protects original works of authorship, while trademark protects distinctive pictures, words, or symbols used by businesses to identify goods or services in commercial activity. The band KISS was the first to register a makeup-related trademark for their distinctive geometric black and white makeup. In *Carroll v. Shubert* the stage makeup for the Broadway musical *Cats* which requires up to eight layers of makeup and several hours of work each night, was found to be an original work of authorship fixed in a tangible medium, and thus protected under copyright (Carroll v. Shubert Organization, 2000). While there are legal actions available to Khoklov and Van Baarle given the nature of their graphics which can be seen as art and therefore protected under copyright law, as a finished product, makeup design is tricky, though not impossible to protect.

Contemporary French artist Orlan who modified her face through multiple plastic surgeries sued Lady Gaga in 2013 on claims of plagiarism and copyright infringement for her use of facial prosthetics and body modification in both the music video and the album art for the “Born This Way.” Orlan also felt that a scene where Lady Gaga recites “The Manifesto of Mother Monster,” was a clear reference to Orlan’s *Manifesto of Carnal Art*. According to her lawyer, Orlan considered Lady Gaga’s album a copy of her “universe of hybridisation” rather than merely an inspiration for Gaga’s work. After hearing the case in early 2016, a Paris court dismissed the claims, ruling an artistic installation could not be reduced solely to its physical elements. It further stated that the idea of transforming the human body into a hybrid being is a “concept that should remain free” (Orlan Loses Trial Against Lady Gaga at First Instance, 2016).

Many makeup artists who post images, videos and tutorials to social media sites want their makeup looks recreated by users. One of the fastest growing genres on YouTube is makeup tutorials which help viewers replicate high fashion makeup from home. Vloggers like Jaclyn Hill, Zoella, and Michelle Phan spend hours creating looks for viewers to try (Marshall, 2014). Everyday makeup, however, lacks sufficient originality for copyright law. It

is significant that, at least in the eyes of the law, it is unnecessary to credit makeup artists in photography portfolios, at red carpet events, or in celebrities' social media feeds.

Perhaps because makeup artistry can legally go unacknowledged, makeup artists like Mykie and Argenis Pinel seem particularly vulnerable to having their work used without their consent. Mykie told *The Ringer* she can't afford an expensive court case and that it seems like not much can be done when makeup artists' work is unattributed, "I believe many makeup artists do not have a lot of recourse in these situations because of that factor, more than anything else" (McHugh, 2016). Van Baarl suggests the speed with which today's professionals are asked to create a look or emulate a style quickly may be the cause of such frequent plagiarism. But as Holly McHugh points out in her piece, Snapchat has worked with corporate entities like Gatorade, Taco Bell, the Superbowl, and musicians like DJ Khaled to create branded filters beneficial to both Snapchat and the brand. Nothing would stop them from creating the same relationships with graphic designers, artists, and makeup professionals. It would be easy to, at the very least, credit an artist for their work or link to their profile. When a social media platform like Snapchat takes a makeup artist's work and turns it into a filter, uncredited and unacknowledged, there's something that feels unethical about that. And while the landscape of makeup art and intellectual property needs much more nuanced development, the pattern Snapchat has developed thus far is increasingly problematic. And it looks an awful lot like plagiarism.

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*I dedicate this article to my Grandmother who passed away just before its publication. She was one of my biggest supporters though she rarely understood “all the digital Google” I am into.

I also offer a sincere thank you to Clancy Ratliff for her patience as I worked on this piece from the road.

FAIR USE AND FEMINIST CRITIQUE: *THAT SWHATSHESAIDS* (COPYRIGHT) COMMENTARY

Fifty-nine backers donated over \$4,100 to amplify actress Erin Pike and screenwriter Courtney Meaker's *Kickstarter* campaign that claimed, "Theatre has a big, patriarchy-shaped problem." The campaign, launched in late 2015, helped the duo (along with director HATLO) fund an experimental, one-woman theatrical piece in early 2016. Though the run only lasted four nights in the 50-seat Gay City Arts' Calamus Auditorium (within Seattle's LGBTQ center), *That'swhatshe said* aimed to begin a very public conversation exploring the questions:

Take a look at any large, established theatre's current season of work-- how many of their plays/musicals are written by women? How many female characters does each play/musical feature? Of the female characters presented, how many are integral to the plot? Are they integral to the plot because of their relationship to a man? What qualities do the female characters have? Are they complex? Stereotypical? Boring? (Pike)

While the play most certainly addressed such questions—and according to its first full review in Seattle's free weekly *The Stranger* (headed by Dan Savage), it likewise successfully highlighted "paradoxical gender stereotypes" within scripts that display "subtle misogyny" (Smith "Erin Pike")—the piece's creators did not expect to begin a different kind of conversation: about copyright, fair use, theft, and censorship.

The piece's source material came from the 11 most-produced plays during the 2014-15 season as reported by *American Theatre*. *That'swhatshe said* mined this material for only the lines and stage directions written for women. The result was a two-act play looking at how the most popular plays in America implicitly silence, demean, or otherwise complicate women's role in theatre. In some cases, the most-produced plays don't even include women at all: one play (Matthew Lopez's *The Whipping Man*) contains no female parts, and so was referenced by Pike onstage (she furiously reads through the 72-page script to no avail), but never directly quoted.

What was quoted, however, became the catalyst for brief, but no less dramatic, legal threats volleyed at the show's creators. Just before the curtain went up for the second of four scheduled shows, Gay City received a cease and desist letter regarding Joshua Harmon's *Bad Jews*. Shortly thereafter, Pike received a threatening voicemail from a Samuel French executive claiming that the production was "illegal," and that if the remaining shows went on as planned, the licensing team would go after Gay City Arts (Garnett).

Feeling surprised by the threat, and protective of their venue, the show's creators reacted quickly. Most importantly, the show went on as scheduled, both that night, and for the following two. But there were two important changes amended to the original production (still just a day old): all of the stage directions and speaking lines from *Bad Jews*

were redacted (Pike still silently pantomimed the actions on stage, but an off-stage voice shouted out “Redacted!”); and before Pike entered for the first time, a lone male voice was played over the theatre’s loudspeakers—the threatening male voice recorded directly from Pike’s personal voicemail. The audience was now complicit in seeing an “illegal” production.

But was it? Hyperbolic threats aside, copyright law makes up our country’s most important pieces of intellectual property legislation. Copyright creates virtual monopolies for (arguably) brief periods of time, allowing authors to retain intellectual and financial strongholds on their works and consequent authorship and ownership rights.

That’swhatshesaid was accused of breaking copyright law by literally lifting exact wording from ten plays. Though the initial *Stranger* review referenced the play as “collage” and “critique” (Smith “Erin Pike”), the use of other playwrights’ work in this new work was never debated.

What was debated, of course, was whether or not this use constituted “fair” use or not. At times described as a defense or a right, fair use acts a counterargument to copyright’s potentially blunt granting of monopolies. Though there is no single application of fair use as a defense, it is generally described using the four factor test: (1) the purpose of the use, such as whether it is for commercial or educational use; (2) the nature of the work; (3) the amount of the work used; and, (4) the effect on the original, particularly how the original’s (financial) monopoly may or may not be affected.

That’swhatshesaid was quickly represented by *pro bono* counsel who replied to the threats within a week of their reception. According to a letter sent to Samuel French, the third factor clearly played into the trio’s defense: only small portions of the original plays were lifted (the most quoted, *Bad Jews*, represented 894 quoted words, while Stephen Sondheim’s *Into the Woods* was represented by just 70 words). More importantly, according to the response, the work was transformative, fitting firmly within the first of the four factors used in fair use determination (Smith “That’swhatshesaid”).

The play’s attorney, Jeff Nelson, took aim at this first factor not just by referring to the new work as parody or critique, but as commentary for “drawing attention to the underrepresentation of women in American theater at every level” (qtd. in Smith “That’swhatshesaid”). The play, then, is explicitly a critique on the patriarchy and hegemony of contemporary theatre, and because of that, according to Nelson, “Continued threats against its performance serve no purpose except to further underappreciate the value of women in theater—the very wrong this work seeks to correct” (qtd. in Smith “That’swhatshesaid”).

It’s within this frame that *That’swhatshesaid* comes to represent not just a critique of women’s place in American theatre, but women’s current and historical place in authorship and ownership studies. The play accomplishes this by creating a collage of representations, including myriad portrayals of women as sex objects, emotional beings, victims, or being silenced altogether. According to playwright Courtney Meaker, “This is a play about all of these plays together, and what they say as a collective whole about where we are in the American theatre scene” (qtd. in Serratorre).

This focus, not on an individual play or playwright, but a “collective whole,” is what

gives this incident such an interesting feminist wrinkle. *That'swhatsbesaid*'s defense against the fourth factor of fair use is that their piece in no way jeopardizes the original works. Their critique is aimed not at individuals, but at an entire system that they see as detrimental to women's place in both the theatre and society at large. As a result, though they admit to using verbatim quotes from copyrighted works, they believe that their deconstruction and recontextualization constitutes not just a transformative work, but one that transcends the original works in isolation. In many ways, their work has allowed them to talk back to the culture that produced and supported the most-produced plays in the first place. And to shut down such dialogue is the very definition of censorship (and perhaps misogynistic silencing of women.)

Since the play was produced for four nights in Seattle in early 2016 it has not run again. Though the producers had hoped to distribute video of the play online, the threat from Samuel French and two other parties achieved its aim of silencing this particular avenue of dissemination. No apparent action has come of the original threats, but that by no means translates to the show's saga being over. After all, Pike and Meaker consistently stated before and after the play that they hoped the staging would produce and sustain a "conversation" about the role of women in theatre.

On her personal blog, Meaker—who is now pursuing an MFA at the Iowa Writers' Workshop—claimed success, if only indirectly: "I'm happy to say that I know [our original questions about female roles in theatre] are being discussed at certain season planning meetings, but we still have a lot of male heavy seasons not just in terms of playwrights, but also subject matter. We can and should do better." Within the same blog entry, Meaker also makes reference to the copyright ramifications of her journey. But, perhaps not surprisingly, that doesn't seem to interest her as much as the issues at hand concerning feminist critique of the "patriarch-shaped problem."

Despite Meaker's cause for optimism, the small uproar over this production seems to have quieted a year after the fact. Just the same, the debate that this production raised over copyright and fair use (especially for feminist critiques of male-dominated texts) continues to echo. A casual web search for *That'swhatsbesaid* reveals more supporters than critics of the women at the heart of the copyright controversy.

Perhaps no support rings more clearly across time than one from attorney Elizabeth Russell who wrote a blog post just days after the initial cease and desist letter. In it, she argues that the show's producers were more than likely covered by fair use. Most memorably though, Russell reminded her readers, and anyone interested in this particular case, that "fair use is like a muscle. If we don't exercise it when doing so is appropriate, it will atrophy and go away. And that would defeat its purpose, which is to preserve the constitutional balance between the rights of authors and the rights of the public to a rich domain of cultural material."

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A CASE OF CRUCIVERBAL COINCIDENCE, CARELESSNESS, OR THE GREAT #GRIDGATE SCANDAL?

If you've ever done a *USA Today* crossword puzzle, it is highly likely you have come across one of Timothy Parker's creations. That is, up until last spring. In the March 4, 2016, issue of ESPN's online magazine, *FiveThirtyEight*, senior editor Oliver Roeder broke the story of a developing "plagiarism scandal" involving the replication of crossword puzzle themes (Roeder).

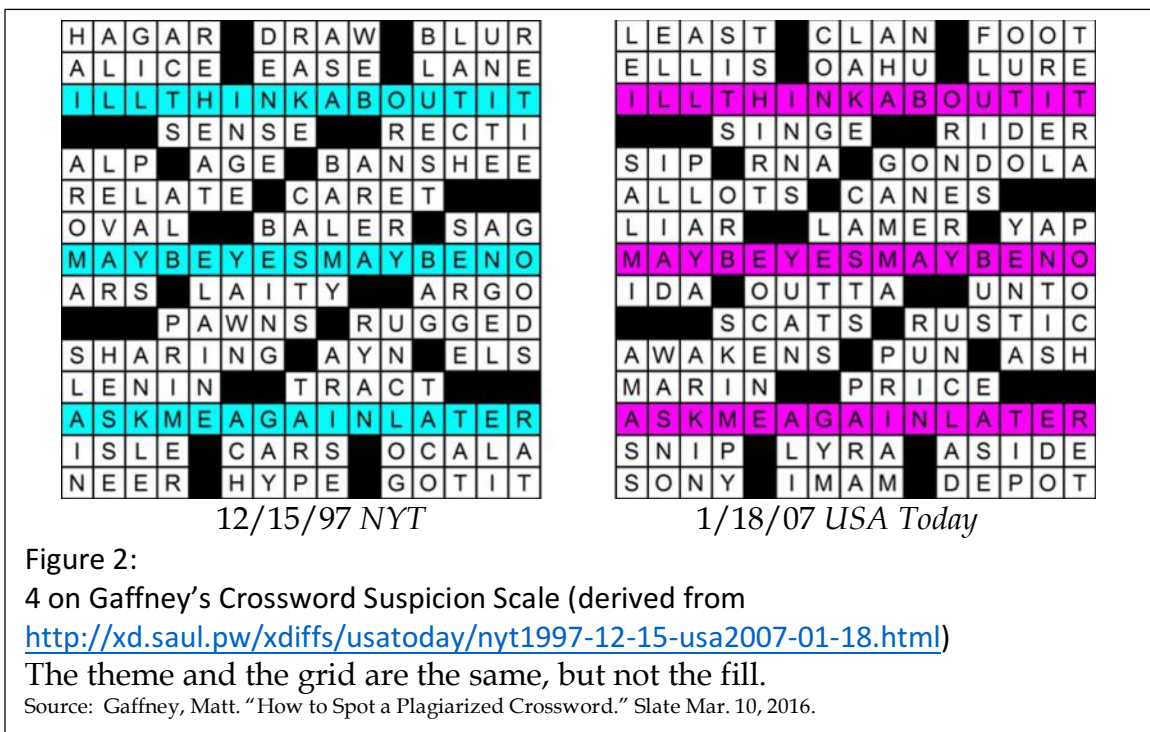
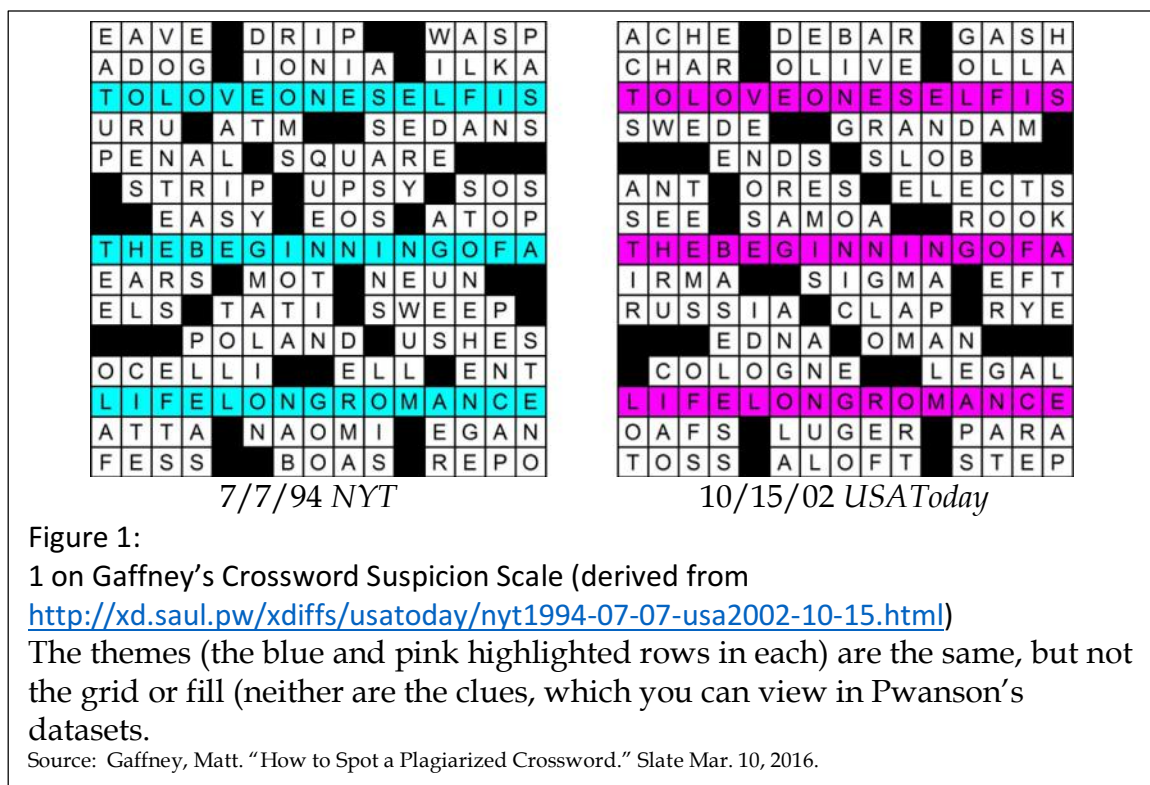
Here's what went down: Timothy Parker was the crossword puzzle editor for *USA Today* from 2003 to 2016 (13 years), and Universal uClick for 15 years. Computer coder Saul Pwanson* was assembling a huge database of about 52,000 crossword puzzles, going as far back to 1942 with *The New York Times* puzzles, and collecting ones from the *LA Times* from 1996. While collecting them, he also tasked the computer to group puzzles similar to each other. Pwanson says that "when you get the data into a nice, clean, dense form, stuff just falls out of it" (Fisher). Immediately, he connected with Will Shortz who edits *The New York Times* crosswords. Shortz's opinion: "It's an obvious case of plagiarism."

The controversy, quickly dubbed #gridgate on Twitter, spread rapidly among the crossword puzzle creator community, and after a short delay, Parker and *USA Today* parted ways. On Twitter, "#gridgate" was referred to on Twitter as a "horrible scandal," *Slate* called it "cruciverbal malfeasance" (Gaffney) at one point, "puzzle identity theft," at another. The editor of the American Values Club thought it was a "gross violation" (Tausig). However, while we generally know what plagiarism is in the context of writing, in the world of crossword puzzles we aren't dealing with just sentence structure and word choices. Oliver Roeder, whose piece on Parker's plagiarism (which is accompanied by a video interview about the case) points out the four basic parts that all crossword puzzles need to have, most of which should be original:

- The **theme** of the crossword puzzle – the common subject that all good crossword puzzles center around;
- The **grid** – the frame of the puzzle (frequently a 15 x 15 cube of rows and columns with white space for the answers and black ones where a square isn't used);
- The **clues** – brief, often clever hints to help you with the answers; and
- The **fill** – the answers that fit within the grid.

While Roeder's *FiveThirtyEight* article breaks down Parker's problematic crosswords into two categories—"shoddy" (possibly just careless) and "shady" (downright suspicious) – Matt Gaffney's analysis of the "huge scandal" goes into even more detail for the reader. Using a self-designed "Crossword Suspicion Scale" (1 being completely innocent, 10 being directly copied), he analyzes six pairs of puzzles that illustrate a similarity of Parker's puzzles appearing in *USA Today* or *Universal uClick's* (*Puzzle Nation*)., and the similarity all goes one

way—from *The New York Times*’ puzzles in the 1990s or later, to those edited by Parker, often nine or 10 years later.



I	C	E	S			S	M	E	L	L		E	P	I	C
S	I	N	E			T	A	B	O	O		X	E	N	A
A	V	E	R			R	A	B	B	I	T	E	A	R	S
A	I	R	F	R	A	M	E		S	E	C	R	E	T	
C	L	O	S	E	T		D	A	L	E	S				
					H	A	H		R	A	N		W	E	T
P	L	A	Z	A		E	D	E	N			J	I	V	E
H	A	R	E	B	R	A	I	N	E	D	I	D	E	A	
I	V	A	N			E	R	M	A			O	M	E	N
L	A	B			I	Q	S		S	C	I				
					K	N	U	T	E			A	N	N	U
U	P	S	I	D	E			L	A	R	G	E	S	S	E
B	U	N	N	Y	S	L	O	P	E				R	A	T
E	R	I	K			T	Y	P	E	S		V	I	E	D
R	E	P	S			S	E	E	D	S		E	R	R	S

10/20/97 NYT

T	A	L	C		C	A	R	E	D		N	O	S	H		
I	S	A	R		A	M	E	B	A		E	P	E	E		
K	I	T	E		R	A	B	B	I	T	E	A	R	S		
K	A	T	M	A	N	D	U		S	I	D	L	E	S		
I	N	E	E	D	A		S	T	Y	L	I					
					L	C	D		A	M	T		A	B	S	
I	A	M	B	I		E	T	N	A		L	I	R	E		
H	A	R	E	B	R	A	I	N	E	D	I	D	E	A		
O	A	S	T		E	L	S	E		R	E	E	D	S		
P	A	C			A	C	E		D	B	A					
					T	I	E	R	S		O	W	N	S	U	P
T	A	P	E	R	S		T	A	L	L	T	A	L	E		
B	U	N	N	Y	S	L	O	P	E		E	F	T	S		
A	D	O	S		E	E	N	S	Y		S	E	R	T		
R	I	M	E		S	T	E	E	N		T	R	A	S		

2/5/07 Universal

Figure 3:

6 on Gaffney's Crossword Suspicion Scale (derived from

<http://xd.saul.pw/xdiffs/universal/nyt1997-10-20-up2007-02-05.html>).

The theme and the grid are the same, and the first theme phrase is set off flush right, which is unusual, according to Gaffney.

Source: Gaffney, Matt. "How to Spot a Plagiarized Crossword." Slate Mar. 10, 2016.

M	M	A			R	O	T	O	R		P	A	L
O	I	N	S		E	V	A	D	E		E	L	I
U	T	T	H	E	C	A	R	D	S		R	O	E
N	T	E	R	V	A	L			E	A	S	E	D
D	S		O	I	L		S	P	A	C	E		
		P	U	L	L	T	H	E	L	E	V	E	R
C	A	L	D			H	E	R	S		E	M	U
A	S	Y		C	A	R	A	T		A	R	I	D
M	S		S	O	L	E			P	I	E	T	Y
P	I	N	T	H	E	W	H	E	E	L			
	S	E	I	N	E		U	T	E		N	A	T
I	T	E	R			I	N	C	R	E	A	S	E
D	A		R	O	L	L	T	H	E	D	I	C	E
E	N		E	R	A	S	E			D	E	V	O
A	T		D	E	B	A	R			N	E	T	S

2/7/05 NYT

C	P	A	S		U	S	A	G	E	S		R	I	B	
O	R	C	A		S	O	L	I	D	S		E	V	E	
C	U	T	T	H	E	C	A	R	D	S		S	A	T	
A	D	I	E	U		I	N	T	O		H	E	N	S	
S	E	N		M	B	A					S	U	R	L	Y
			P	U	L	L	T	H	E	L	E	V	E	R	
C	H	A	I	S	E		H	O	L	Y		O	N	O	
R	A	N	G		A	O	R	T	A		A	I	D	S	
A	R	T		A	C	N	E		T	W	I	R	L	S	
S	P	I	N	T	H	E	W	H	E	E	L				
H	O	P	U	P				U	S	A		S	P	A	
L	O	O	N		T	S	A	R		V	I	P	E	R	
A	N	D			R	O	L	L	T	H	E	D	I	C	E
N	E	E			O	R	I	O	L	E		L	E	A	N
D	D	S			B	E	T	T	E	R		E	D	N	A

4/10/09 Universal

Figure 4:

8 on Gaffney's Crossword Suspicion Scale (derived from

<http://xd.saul.pw/diffs/nyt20050207-fcx20090410.html>

The theme and the theme fill words are the same, but not the grid. Only one of the clues to the theme phrases is the same.

Source: Gaffney, Matt. "How to Spot a Plagiarized Crossword." Slate Mar. 10, 2016.

A	P	I	A	N		R	C	A		M	E	A	R	A		
C	O	S	M	O	N	A	U	T		A	S	T	E	R		
H	E	R	O	W		W	O	R	S	H	I	P	P	E	R	S
E	T	A	S		G	A	P	E	D		L	E	E			
D	I	E						N	O	M		I	N	N		
	C	L	I		H	O	N	E		A	R	E	T	E		
			L	A	U	R	A		I	G	O	R	S			
			K	I	N	G	O	F	C	L	U	B	S			
	H	E	A	T	H		T	A	S	S	O					
P	E	N	D	S		P	A	P	A		T	O	W			
L	A	D		Y	E	A						N	I	B		
A	V	A			D	R	Y	E	R		A	T	E	E		
Y	E	L	L	O	W		S	U	B	M	A	R	I	N	E	
U	H	L	A	N			E	L	A	S	T	O	M	E	R	
P	O	S	I	T		D	E	N		O	N	E	R	S		

7/28/94 NYT

A	P	E	N		G	A	M	A		A	L	A	M	O		
S	E	R	E		O	R	E	S		S	A	G	A	S		
H	E	R	O	W		W	O	R	S	H	I	P	P	E	R	S
B	W	A	N	A	S		H	O	R	A	S					
I	E	N		R	E	V		T	A	R		S	E	A		
N	E	T	S		E	A	R		S	A	D	I	S	M		
				M	A	G	P	I	E		G	E	N	T	S	
				K	I	N	G	O	F	C	L	U	B	S		
H	A	I	T	I		R	E	L	I	S	T					
A	S	T	H	M	A		R	A	N		S	E	E	S		
S	S	E		R	A	N		T	E	A		U	R	I		
			S	T	E	A	L		S	H	I	N	E	R		
Y	E	L	L	O	W		S	U	B	M	A	R	I	N	E	
O	N	A	I	R			A	R	I	A		I	C	O	N	
N	E	W	T	S		L	E	O	N		S	E	W	S		

3/20/07 Universal

Figure 5:

Bonus 8 on Gaffney's Crossword Suspicion Scale (derived from

<http://xd.saul.pw/diffs/nyt19940728-fcx20070320.html>

The theme and the fill are the same, as well as where they are placed on the grid, although the grid itself is not the same. In the earlier NYT crossword, the clue for KING OF CLUBS is related to the theme ("Sandwich fit for royalty?") while in the later crossword, the clue doesn't quite fit the theme, "Card fit for royalty?," but is only one word different.

Source: Gaffney, Matt. "How to Spot a Plagiarized Crossword." Slate Mar. 10, 2016.

G	A	R	B	O		B	A	Y	E	D		N	O	W	
A	L	I	E	N		O	L	I	V	E		A	V	A	
T	A	B	L	E		H	O	P	P	E	R		M	I	X
			G	N	A	T	S		N	I	C	E	N	E	
S	A	T	I	E	T	Y		D	I	V	I	D	E	D	
C	R	E	A	S	E		L	I	N	E	A	R			
O	M	E	N	S		T	A	N	G	S		O	R	T	
L	O	N	S		S	I	Z	E	S		E	P	E	E	
D	R	Y		C	O	M	E	R		E	X	P	O	S	
		B	L	A	M	E	D		F	A	C	E	I	T	
C	R	O	O	N	E	R		M	I	S	E	R	L	Y	
R	I	P	S	A	W		T	A	S	E	R				
A	S	P		S	H	O	W	S	T	O	P	P	E	R	
V	E	E		T	A	P	E	S		U	T	T	E	R	
E	R		A	T	S	E	A		T	S	A	R	S		

4/21/97 NYT

M	A	S	T	S		E	T	T	E			N	O	R	
S	T	O	A	T		V	O	I	L	A		A	L	E	
T	A	B	L	E		H	O	P	P	E	R		M	D	S
			E	R	I	K	S		M	A	D	E	I	T	
A	T	T		E	T	E		D	E	L	U	D	E	S	
S	E	E	Y	O	U		T	E	N	S	E	R			
S	N	E		P	O	I	N	T	E		O	L	A		
T	E	N	T	S		B	L	T		A	R	P	E	L	
S	T	Y		O	R	E	L	S	E		O	P	A	L	
		B	E	L	A	Y	S		N	E	W	E	S	T	
I	R	O	N	O	N	S		S	A	X		R	E	O	
S	E	P	T	I	C		S	A	C	H	S				
H	A	P		S	H	O	W	S	T	O	P	P	E	R	
O	T	E		T	E	X	A	S		R	E	H	E	M	
T	A	R		S	O	N	Y		T	W	I	N	S		

10/1/06 Universal

Figure 6:

10 on Gaffney's Crossword Suspicion Scale (derived from

<http://xd.saul.pw/diffs/nyt19970421-fcx20061001.html>)

The themes and the placement of the theme phrases are the same, and the clues to three of the four theme fill words are exactly the same. The fourth clue—to TEENYBOPPER is "Adolescent rock fan?" in the NYT puzzle, while it's "Idol Worshipper?" in the Universal puzzle.

Source: Gaffney, Matt. "How to Spot a Plagiarized Crossword." Slate Mar. 10, 2016.

Gaffney's analysis in *Slate* is quite convincing, as he progresses from explaining a 1 on the Crossword Suspicion Scale with a pair of puzzles (see Figure 1) that he illustrates with links back to Pwanson's datasets for details. Then, through five more pairs of puzzles (Figures 2 through 6 show the various levels of increasing similarity between the pairs), he points out the similarities, rating the last set of puzzles a 10 on his Crossword Suspicion Scale. A crossword puzzle constructor himself, Gaffney analyzes the differences between the puzzle pairs in a conversational and balanced manner, allowing for coincidences and accidents. The two sets are usually published 9 or 10 years apart, but the most damning evidence is that the borrowing only goes one way: from *The New York Times* to *USA Today* or Universal. In each case the editor for the latter crossword in the pairs is Timothy Parker.

The last puzzle in the set offered by Gaffney that serves as a surefire 10 on his Crossword Plagiarism Scale uses three of the four theme words with only one of the theme clues different, but the grid is not exactly the same in both, nor are the rest of the fill words. No one has ever established how much of a similarity two written products need to be before we deem it as plagiarized, just as no one has established how much two crossword puzzles need to be different to be original. But, given that the crossword puzzle creator community is rather small and tight-knit, comprising about 300 people overall, Sharon Fisher points out, it is enough of a similarity to warrant concern to that community.

Jeanne Fromer and Mark A. Lemley in their law review article, "The Audience in Intellectual Property Infringement" opine that the goal of copyright law is similar to patent law, in that sometimes a test of infringement lies with how *an expert* sees a likeness in two products, other times, with how *a consumer* sees it, while at other times, considers how *an ordinary reasonable person* would see the similarity. Crossword creators can easily be considered *experts*, but *consumers* did not seem to notice the likenesses, or we would have heard complaints. However, *ordinary reasonable people* could probably see the similarities between the pairs that Gaffney presents, at least when they are presented side by side. But, just as plagiarism is not a legal violation, one could only turn to copyright infringement for a resolution to this civil violation. Yet how much monetary loss might occur if two crossword puzzles are quite similar eight or ten years apart from each other?

A crossword puzzle is not a piece of academic writing. It is not a newspaper article, it is not a painting, nor is it computer code. Crossword puzzle constructors and many others probably see it as an artistic creation, but it is also a puzzle, a game, i. e., a product with many parts to it, and just as another game company were to copy the the game Stratego, creating a look-alike called Stratega, its creator could be sued for copyright violation.

Scholars in a wide variety of fields, such as psychology (Marsh and Bower; Weidler, Multhaup, and Faust), ethics (Helgesson), and journalism ((Lewis) are investigating the causes of plagiarism and reconsidering what defines plagiarism and what causes it. In the field of cognitive psychology in particular, two research studies dealing with inadvertent plagiarism (Preston and Wegner) and cryptomnesia (unconscious plagiarism) (Marsh and Bower) use word puzzles to investigate the extent to which mental exertion, distraction, and accountability affect inadvertent or unconscious plagiarism. Is it possible that, after a certain number of years and editing more than a few crossword puzzles, Timothy Parker began to overlook the similarities to previous puzzles he had done or glanced at, and simply repeated too many themes and clues? He is still billing himself as a Guinness World Records Puzzle

Master, has launched Timothy Parker Crosswords, “a line of elite daily and Sunday crosswords all constructed and edited by Parker,” and has authored *The Official Bible Brilliant Trivia Book* and app (<http://biblebrilliant.com>).

When the scandal first erupted, *USA Today* put Parker on a three-month leave while they investigated the accusations. Then after confirming the similarities, they let Parker go, although Universal has kept him on. Meanwhile, most people are none the wiser, unless they are a little better educated about what goes into crossword puzzle.

*Apparently, Saul legally changed his last name from Swanson to Pwanson (Roeder). I don’t know whether his first name was originally “Paul,” but it seems a little quirky if he went from Paul Swanson to Saul Pwanson.

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CULTURAL PROPERTY VERSUS INTELLECTUAL PROPERTY: THE CULTURAL APPROPRIATION DEBATE

As scholars have noted, indigenous expressions, symbols, and ideas often constitute collective, intergenerational, religious, and spiritual properties which, by their nature, exclude them from protection under prevailing intellectual property laws. For indigenous peoples, then, there is little protection against the appropriation of intangible cultural “goods,” even if the appropriation is experienced by tribes as distortion, theft, offense, or misrepresentation, each with an attendant set of legal, social, and ethical issues. (Riley and Carpenter 865-866)

The history of literature arguably is a history of appropriation. Early written texts show traces of preceding oral traditions, and later written texts incorporate and reinvent earlier ones. In fact, sometimes it is neither possible nor desirable to read a text without being aware of its relationship to a previous one (think *Wide Sargasso Sea* and *The Wind Done Gone*, the not-so-secret sharers of *Jane Eyre* and *Gone with the Wind*). Because of the fact that we often read one text in the context of its predecessor(s), an academic industry has grown up around the subject of intertextuality.

Intellectual property issues may of course come into play whenever an appropriated text is under copyright, but one might think an author otherwise on safe footing when drawing upon earlier works. Alice Randall and her publisher had to defend *The Wind Done Gone* against charges of copyright infringement brought by the estate of Margaret Mitchell (Schur). Jean Rhys, however, encountered no opposition when she provided voices to Edward Rochester and his first wife, Antoinette Cosway, in *Wide Sargasso Sea*.

Still, accusations of misappropriation, albeit not in a legal sense, have been made against works derived from content that is not under copyright. The premiere of Giuseppe Verdi's *Aida* took place in 1871. When Elton John and Tim Rice adapted the story into the musical *Aida* in 1998, the opera's copyright had long expired. Yet in 2016, a production of the musical by university students was cancelled because of complaints about appropriation (Hetrick). This example, however, illustrates a definition of appropriation that hinges not on the existence of intellectual property but of cultural property, as this passage from the Music Theatre Bristol [UK] press release makes clear:

The central issue surrounded the portrayal of Egyptian and Nubian people on stage. Whilst we ourselves are a small society, there were nevertheless fears that the play itself would be overwhelmingly cast Caucasian, and would subsequently be both culturally appropriative and racially offensive. ... Our function as a university society is to provide enjoyable performance opportunities for all of our members. Thus we believe that as these discussions of racial and cultural appropriation may have continued throughout the year, this would detract greatly from the enjoyment of all students involved in the show, this being our primary societal focus.
(Hetrick)

The debate that led up to the cancellation had largely hinged on the phenomenon of whitewashing—casting White actors in roles that might have gone to people of color. This argument was encapsulated in a Facebook post:

The description of the main character says ‘Nubian princess’ but most of the people on the event are white. It’s quite simply really: if you are going to put on a production set in a particular place with a particular cultural context, then you need to reflect that with the ethnicity of actors....If this show is to be put on and white washed - ‘oh let’s just add a bit of eyeliner’ then I think that’s disrespectful, dumb and embarrassing. White washing still exists, it’s been done enough in Hollywood, look at Liz Taylor in Cleopatra or Emma Stone in Aloha....

(Millie Evans; qtd. in Faint and Kemp)

One individual responding to a story in *The Independent* about the controversy (Dean and Morgan) sarcastically tweeted that “The Egyptians sing in Italian too. If that’s not cultural appropriation I don’t what is” (Andrew Bell; qtd. in Faint and Kemp). The tweeter is referring to the Verdi opera, not the John and Rice musical, but he does make the point that an author from one culture, writing in his own language, created a story populated by characters in another culture, and he implies that no one made a fuss at the time. He could have as equally well pointed out that, until recently, Whites were almost exclusively the singers of the roles in the opera *Aida*. The tweeter is using the term cultural appropriation in its denotative—and therefore most innocent—sense. The term can be “defined broadly as the use of a culture’s symbols, artifacts, genres, rituals, or technologies by members of another culture” (Rogers 474). However, identifying “the conditions (historical, social, political, cultural, and economic) under which acts or appropriation occur” results in a four-part classification system that accounts for the objections to the Music Theatre Bristol production of *Aida*. Cultural appropriation may be a “Cultural exchange” that consists of “the **reciprocal exchange** of symbols, artifacts, rituals, genres, and/or technologies between cultures with **roughly equal levels of power**” (bolding added). Cultural appropriation may be “Transculturation.” In such a case, it may be impossible to identify a source culture because of the intermingled contributions from several groups. By definition, no one culture can take pride of place when cultural appropriation takes the form of transculturation.

The *Aida* tweeter’s understanding of cultural appropriation would not have been challenged by either of the two categories above, and a third category, “Cultural dominance,” was not fundamentally part of the debate, either. (When cultural dominance is involved, one culture forces another to adopt foreign elements.) It is the final category, “Cultural exploitation,” which the tweeter did not recognize as an issue behind the discomfort felt by those who objected to the Music Theatre Bristol production. Cultural exploitation is “the appropriation of elements of a subordinated culture by a dominant culture without substantive reciprocity, permission, and/or compensation” (Rogers 477). Because a power imbalance exists and because of the lack of reciprocity, cultural exploitation is the opposite of cultural exchange.

Implicit to the concept of cultural exploitation is a concept of ownership as understood within a postcolonial discourse in which, rightly or wrongly, “cultural property of colonized people” is viewed as having been coopted by colonizing powers (Cuthbert 257).

In the case of the Music Theatre Bristol production, the misappropriated properties were the roles. However ahistorical their understanding of theatrical casting, critics of the production felt that these roles belonged to people of color. Cultural ownership, however, can take many forms. Who, for example, owns the dreadlock hairstyle? At San Francisco State University, a confrontation took place between a white man and a woman of color over the fact that the white man was wearing a hairstyle associated with African Americans. The woman of color tells the white man that he cannot wear the style “because it’s my culture” (Branson-Potts). Reacting to the incident, Bert Ashe posts an excerpt at *Slate* from his book *Twisted: My Dreadlock Chronicles* that describes an incident in which two White girls fawn over his hair and demand advice on how to grow their own hair into dreadlocks:

Now, there are two schools of thought in regard to whites and Black culture. According to one prominent school, my reaction should be, “What do you mean, ‘How’d I do it?’ I have black hair—it locks because that’s what black hair does.” I’d say it snappishly, according to this school, irritably, weighed down by centuries of instances where, as (white) actor and playwright Danny Hoch once put it, white people demonstrate that they might love black style while not necessarily loving black people.

It’s the school of thought that says, *Why do you want it, white girl? Can’t we have anything to ourselves? You want this too? Damn—leave me alone!* It’s the school of thought that Richard Pryor had in mind when he suggested that Black men “hold their dicks” because “y’all have taken everything else.”

Ashe opts to enact the other school of thought, the one in which Whites “help yourselves to the buffet of black culture—pick and choose.” But, he adds,

Just make sure you credit the source—that’s what makes me crazy. Every kid in America wears ball caps, often backwards. But do they even know who popularized the style? The banjo is an African instrument—complete with an African name (bāhn-jo)—but how many people know that? That’s what was on the table, for me, when these all-too-well-meaning white girls, without a clue as to what they were really asking, essentially said, Take our hands and lead us into blackness, please, sir. We’ve gotta have it.

We’ve gotta have it. The woman videotaped accosting the white man wearing dreads did not articulate her point beyond “Because it’s my culture,” but her resentment may arise from the same source as Ashe’s as he navigates a world in which young whites adopt dreadlocks in order to spend some time “walking on the wild side” only to “cut them to get a job, or because they were graduating, or some other rite of passage” (Ashe). She and Ashe feel that they own the style, but whites play with and abandon it, diminishing it by treating dreadlocks as a fad.

Dreadlocks, baseball caps worn backward, the banjo—all can be viewed as cultural property, but no legal mechanism exists to enforce ownership of such property, regardless of the resentment felt by members of the marginalized group. The artisans of one cultural group writ large—Indigenous Americans—do in a sense derive some protection for their cultural property via the Indian Arts and Crafts Act of 1990, which, in summary, makes it

illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States. (Indian Arts and Crafts Board)

This act, however, says nothing about imitating ‘Indian’ style or incorporating imitative elements into fashion, cuisine, music, literature, architecture, or any other facet of culture. It is purely a “truth-in-advertising law that prohibits misrepresentation in marketing” (Indian Arts and Crafts Board). It is not designed to prevent cultural appropriation as a whole, no matter how exploitative.

Nor does the *Blackhorse v. Pro-Football, Inc.* case on trademarks held by the Washington Redskins provide a model for the protection of cultural property. The Trademark Trial and Appeal Board has canceled Washington Redskins trademarks because of “disparagement” under the terms of the Lanham Act (Riley and Carpenter 911). Rulings favorable to the Blackhorse plaintiffs are being appealed on First Amendment grounds (Rasul). However, even if the Native American plaintiffs prevail through to the end of litigation, the loss of its trademarks will not prevent the Washington Redskins from keeping the team’s name and mascot and from continuing to market the team and team-related products using the Redskins name and icon. The only legal effect will be to prevent the Redskins organization from charging licensing fees for Redskins-themed merchandise. Native Americans do not own the term *redskin*, nor any of the cartoonish depictions of their peoples, and cannot control their use any more than they can control the use of ‘Indian’ elements in any other cultural or commercial sphere. As Riley and Carpenter observe about this case and others, “The experience of cultural appropriation is broad and nuanced, while the law is typically narrow and obtuse” (865).

Leveraging media—traditional and otherwise—is one of the few ways to push back against appropriation, and the cancellation of the Music Theatre Bristol production of John and Rice’s *Aida* is a case in point. A search of the web returns numerous hits of sites where critiques are taking place, although not necessarily with practical or immediate effect. One recent example of satirical pushback is the Honest Trailers’ YouTube send up of the animated feature *Moana*, in which the voice-over declaims, “Enjoy the highest honor a culture can receive these days having your traditions commodified by the Disney corporation,” the line accompanied by a picture from an advertisement of a child wearing a blouse and leggings designed to make it appear as if she were adorned with ‘Polynesian’ tattoos (Honest Trailers). In another case, it is not the spoof trailer but the movie itself that may be a send up of cultural appropriation. In the review “‘Get Out’ Takes Cultural Appropriation to the Cultural Harvest Level,” Rebecca Carroll writes that in *Get Out* “white people want to simultaneously demonize us and appropriate our talents and gifts and resilience.” The idea is expressed in other reviews, including an anonymous one entitled “The Underbelly of White Liberals & Horrific Cultural Appropriation in *Get Out*,” which describes the movie as “an overall allegory for the idea of cultural appropriation.”

On the other hand, other voices, like the tweeter in the *Aida* incident, speak in support of some version of cultural appropriation, sometimes in reaction to what they perceive as political correctness. Lionel Shriver, author of *We Need to Talk about Kevin*, gave a keynote speech entitled “Fiction and Identity Politics” as the Brisbane Writer Conference in

September of 2016. In this speech, she argues that “Taken to their logical conclusion, ideologies recently come into vogue challenge our right to write fiction at all” (Shriver). Specifically, she targets, in scare quotes, “cultural appropriation,” leading off with an example of an incident at Bowdoin College, “a tequila-themed birthday party for a friend” during which the “hosts provided attendees with miniature sombreros, which—the horror—numerous partygoers wore.” There is a question as to whether Shriver’s account of the event and its consequences is accurate (for which see LaCapria at the Snopes fact-checking site, who gives the story a “Mostly False” rating). However, she presents the story as true and asserts that the “moral of the sombrero scandals is clear: *you’re not supposed to try on other people’s hats*. Yet that’s what we’re paid to do, isn’t it? Step into other people’s shoes, and try on their hats.” To drive home her point, Shriver wore a sombrero during the speech (Nordland).

Shriver sees “cultural appropriation” as pervasive:

In the latest ethos, which has spun well beyond college campuses in short order, any tradition, any experience, any costume, any way of doing and saying things, that is associated with a minority or disadvantaged group is ring-fenced: look-but-don’t-touch. Those who embrace a vast range of “identities” – ethnicities, nationalities, races, sexual and gender categories, classes of economic under-privilege and disability – are now encouraged to be possessive of their experience and to regard other peoples’ attempts to participate in their lives and traditions, either actively or imaginatively, as a form of theft.

After cataloguing authors whose output presumably would have been crimped had they been subjected to the latest ethos—Malcolm Lowry, Graham Greene, Matthew Kneale, Dalton Trumbo, Maria McCann, John Howard Griffin—Shriver zeroes in on the phrase “without permission” from a definition of cultural appropriation formulated by Fordham Law professor Susan Scafidi and asks how authors are to set about “seek[ing] ‘permission’ to use a character from another race or culture, or to employ the vernacular of a group to which we don’t belong?” She ridicules the notion of seeking permission, writing, “Do we set up a stand on the corner and approach passers-by with a clipboard, getting signatures that grant limited rights to employ an Indonesian character in Chapter Twelve, the way political volunteers get a candidate on the ballot?” Ultimately, she argues, that charges of cultural appropriation “is part of a larger climate of super-sensitivity, giving rise to proliferating prohibitions supposedly in the interest of social justice that constrain fiction writers and prospectively makes our work impossible.”

Shriver’s speech provoked an intense conversation, both at the conference, where a “right of reply” session was quickly organized (Nordland), and on the web. In her speech, Shriver referred to writer Ken Kalfus, although not by name, when she charged that “the reviewer in the Washington Post...groundlessly accused this book [*The Mandibles*] of being ‘racist’ because it doesn’t toe a strict Democratic Party line in its political outlook” (Shriver). Kalfus replied, “I mentioned a couple of offensive racial characterizations—without contesting Shriver’s freedom to write about Black and Latino characters. My complaints had nothing to do with cultural appropriation.” He then elaborates on the racial characterizations mentioned in his earlier review. One example is that of an African American social worker,

one of only two Black characters in the novel, and the “only character who speaks sub-standard English.” After a Mexican-born president (stereotyped, according to Kalfus) refuses to pay the nation’s debts, the Black woman declares, “I don’t see why the gubment ever pay anything back. Pass a law say, ‘We don’t got to.’” Kalfus observes in response to this passage that

It was once common in newspapers, fiction and nonfiction to report the speech of “ordinary” people in standard English, while voicing minorities in dialect or vernacular, as they might sound to White ears; this still happens from time to time, unfortunately. By recording only the speech of minority characters in sub-standard English, you stigmatize the entire ethnic group as something other than normal. No one speaks perfectly. Respect for your characters suggests that if you record one’s solecisms, dropped consonants, drawl or brogue, you will faithfully record everybody else’s, too.

What Kalfus argues is that the issue is not one of cultural appropriation but of respect. As Jia Tolentino writes in an article in *The New Yorker*, “...there are all sorts of ways to borrow another person’s position: respectfully and transformatively, in ignorance or with disdain” (Tolentino).

In her speech, Shriver asked, “However are we fiction writers to seek ‘permission’ to use a character from another race or culture, or to employ the vernacular of a group to which we don’t belong?” Perhaps Kalfus and Tolentino offer an answer to Shriver’s rhetorical question: proffer respect in exchange for that ‘permission’. Among the many cultural appropriation stories from 2016 are the events at Standing Rock, where Native Americans and supporters protested the Dakota Access Pipeline. No fewer than thirty-four documentary film crews descended upon the encampment, which gave rise to discussion of how the story should be told and by whom. The Native Americans did not necessarily object to the presence of non-native crews, but as Josue Rivas observed, “It might seem cool to take a photograph of the chief in his headdress, but it’s so freaking disrespectful” (Anderson). Mr. Rivas continued, “Respect the feathers,” which is as much to say, respect my culture. In lieu of legal protection, demanding respect for one’s culture in the end may be the only meaningful defense against cultural appropriation.

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up patenting a system that would so dramatically strip users of their agency (Ibid). Tim Cook (CEO of Apple) did make a statement in the former case, indicating in a [“Message to Our Customers”](#) that what the U.S. government was asking (when they asked Apple to help them unlock the phone of one of the San Bernardino shooters) was an “overreach,” asserting that

[t]he implications of the government’s demands are chilling. If the government can use the All Writs Act to make it easier to unlock your iPhone, it would have *the power to reach into anyone’s device* to capture their data. The government could extend this breach of privacy and demand that Apple build surveillance software to intercept your messages, access your health records or financial data, track your location, *or even access your phone’s microphone or camera without your knowledge*. (Cook, emphasis added).

The parallels between the concerns Tim Cook expresses in this message and those expressed by writers investigating the new Apple patent are salient ones: the infrared signals have “the power to reach into anyone’s [Apple] device” and to “access your phone’s camera.” If this power is limited to preventing concertgoers from live streaming Adele concerts or aggravating Benedict Cumberbatch while he is trying to play Hamlet⁵ (and thus preventing copyright violations), then the concern might be much ado about nothing. But, like the fear expressed by Tim Cook about the implications of circumventing the encryption on an iPhone, the concerns about the Apple patent center on the “extension” of such power:

Once it becomes possible to remotely deactivate all cell phone cameras in an area, it is not a stretch to imagine governments and police forces leveraging the technology. Today social movements like Black Lives Matter use social media to broadcast police interactions and live stream their protests. If Apple’s technology becomes mainstream, one could imagine police forces equipping every officer and squad car with the device set to block all citizen recording of police activity. One could imagine repressive governments prepositioning the devices to blanket every public square and major roadway across the nation and activating the network during times of public unrest to instantly silence the iconic citizen imagery that has come to define modern uprisings...if the government just has to point a transmitter at a public square to instantly cut off all social media use or all mobile data use in the

San Bernardino, California. When Apple refused, the FBI sought and received a court order, mandating Apple to comply. Apple continued to fight the order, with Tim Cook (Apple’s CEO) issuing an online “Message to Customers,” in which he indicates that Apple “opposes the order [because it] has implications far beyond the legal case at hand” and that “this moment calls for public discussion...to understand what is at stake.” Ultimately, the FBI received help from a third-party to open the phone.

⁵ These incidents are reported in a [snopes.com](#) article (2016) in which it is reported that “Artists like Adele, Jack White and Zooey Deschanel have publicly expressed frustration with the throng of phones at concerts. Meanwhile Benedict Cumberbatch broke character during a performance of *Hamlet* to tell audience members in London to stop recording him with their phones [this moment was, of course, recorded].” Source is noted in works cited.

area, it is hard to envision that technology not becoming widely deployed.
(Leetaru)

Jessica Goldstein, Culture Editor at thinkprogress.org, reiterates this concern noting that “the most important issue isn’t about what, theoretically, this technology could be used for now, [i]t’s how this technology could be abused going forward.” For example, “are we really game to sacrifice civil liberties on the altar of a less annoying experience at the theater?” (Ibid) Do we really want to accept that an Apple patent might preemptively decide what we can do on (and share with) our phones?

So far, there is no indication that the camera blocking technology will be implemented in upcoming iPhone models. What the recent “leaks” about the new iPhone 8 *have* revealed is that there will likely be significant updates to the camera feature, specifically the incorporation of a “3D sensing, front-facing camera” that will be able to “capture a 3D image of the user, which will have multiple uses, including biometric security and AR gaming” (McGregor). Additionally, the “mac rumor” is that this 3D capability will “replace TouchID with facial recognition capability,” ostensibly for greater security, but that this capability is likely to be “opened to developers, who could use it to do ‘everything from determining your shoe size for online orders to helping make sure you are properly fitted on your bike’” (Rossignol).

Whether or not Apple’s patent ever materializes, the 3D capability of their new cameras is likely to cause both concern and delight (and for similar reasons). Are these concerns merely “unfounded hysteria” or the “dark glimmers of [a] dystopia to come?” (Leetaru) The only thing that is certain is the reality that what lies ahead is not as easily seen as what remains behind. Perhaps the choice was already articulated for us, decades ago, in a dystopian novel about the future: *The choice for mankind lies between freedom and happiness and for the great bulk of mankind, happiness is better.* (George Orwell, 1984)

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