

THE 2018 INTELLECTUAL PROPERTY ANNUAL

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Clancy Ratliff

INTRODUCTION TO THE 2018 ANNUAL

IN MEMORIAM: TY ANNA HERRINGTON

The rhetoric and composition community, and especially the close-knit group who studies copyright and intellectual property, experienced a sad loss in the summer of 2018: the passing of TyAnna Herrington, one of our leading lights. She was in the forefront of scholars who demonstrated the importance of copyright issues to rhetoric, composition studies, and technical communication. She was a kind and generous person who welcomed new scholars and teachers into our community and whose legacy will be remembered and treasured.



It was hard for me to think of something fitting to share about Ty. I searched my email and read all of her messages, and I found one that captures how I will remember Ty. It is from a conversation that we were having on the CCCC IP Caucus email list about the ruling against students as copyright holders in favor of Turnitin, citing the archiving of student work for plagiarism detection as transformative and a benefit to the public, thus falling under fair use, despite the huge profits made by the corporation, iParadigms. Ty wrote:

I'm totally an access person, so I find it kind of unusual to be standing on the "authors' rights" side of an argument. In this case, of course, because the rights in question are those of students who have relatively little power within the mix, I fall back on my "anti-bully" stance that pervades my work.

And this tracks: she did research to help faculty stand up to institutions that would treat their labor as work for hire. She was opposed to the war in Iraq, and she held up signs on a street in Atlanta in fall 2004 with my spouse, when he taught at Georgia Tech, urging passersby to vote for John Kerry in the presidential election. Jessica Reyman has spoken of how warm, kind, and thoughtful Ty was in her reviewing of one of Jessica's article manuscripts. These are only a few of many examples of her advocacy and strong sense of fairness and equity. She will be missed.

2018: THE YEAR IN COPYRIGHT AND IP

One major development in intellectual property was the EU Copyright Directive, which came up for discussion in 2018 but was passed in spring 2019. This is a controversial new set of policies, one of which has been called a "link tax": copyright holders would have the option to charge a fee for linking to their articles or other content. Presumably this would apply to aggregators such as Pocket, which I see with a few links algorithmically curated for me when I open Firefox. The other major flashpoint in the EU Directive has come to be known as "upload filters," which is like an automatic copyright-infringement detector: Turnitin on steroids, it would seem. The Intellectual Property Standing Group will continue to follow and discuss this policy, which has the potential to affect the global IP landscape.

T J Geiger writes about an unusual authorship case we saw this year: a church job advertisement for a new pastor, one who would be willing to preach famous sermons from celebrity preachers. The job ad was off-putting to many readers, but it raises interesting questions. To what extent is preaching a performance, and is it acceptable for a pastor to perform a cover of a famous person's sermon? Geiger mentions that some pastors post their sermons online, encouraging others to use them if they like. To what extent are sermons like teaching materials that we share and use freely, and to what extent are sermons like conference presentations of original research? How important is preaching compared to the rest of pastoring? I think about a quotation I saw recently about the work of being a pastor:



The Baptist church I attended in my childhood and adolescence called the sermon "the message," because it was a message from God, delivered to us by the pastor, the messenger. Theologically speaking, according to that simple logic, authorship would be irrelevant. Faith is very often shared through personal stories about life experiences, and by that reasoning, a congregation has the right to expect sermons to come from the pastors themselves, their own experiences and meditations. Geiger's insights are well worth reading.

Speaking of stories, another major 2018 flashpoint concerning authorship came from the poetry community. Lanette Cadle explores this case in her article about Ailey O'Toole, who plagiarized lines from around a dozen poets. This plagiarism was exposed on Twitter by Rachel McKibbens, one of the poets whose work O'Toole used. McKibbens is a woman of color writing about her experience in an abusive home in her childhood, specifically "spitting teeth into the sink," a line lifted by O'Toole. O'Toole, a white woman, was using it as a metaphor, and the poem ends with the lines "I gather my teeth from the sink and / wonder who I will be on the other side." McKibbens is writing about a memory, however. McKibbens was understandably angry and hurt, especially given that O'Toole was nominated for a prestigious award for the plagiarized poetry. Taking someone's personal story, it becomes clear, is worse than plagiarism; it is a form of gaslighting. O'Toole deleted her webpage, Twitter account, and other social media. She has vanished from the internet. The publication of her poetry collection was canceled. The case raises important questions and issues, including the ethics of

composing *after* poems, homage poems after the style of a famous poet. As both a rhetorician and a poet, Cadle is well equipped to analyze this case.

Kyle Stedman writes about a case involving retro Nintendo games on emulator websites; in 2018, Nintendo took legal action against one of these sites. Stedman highlights digital archives as they pertain to video games. Of the hundreds of games that Nintendo has released over the years, very few games are archived online. These games have value not only for the experience of nostalgia (as Stedman points out), but also for purposes of research.

Another rather remarkable authorship occurrence from 2018 was #Cockygate, which Devon Fitzgerald Ralston details. It was an abuse of cease-and-desist and trademarking, with a romance author attempting to trademark the word "cocky" and stop other authors from using it. Amazon was complicit in this abuse, and authors were affected, including coauthors who wrote a book titled *Cocky Fiancé*, which they ended up having to change to the far less appealing *Arrogant Fiancé*. #Cockygate resulted in a watchdog bot that tracks and tweets trademark applications so that authors can be alerted to the potential excesses of trademarking.

Finally, we have an excellent analysis of the CASE Act by Kim Gainer. This bill has, just as Gainer predicted in her article, been reintroduced as of May 1, 2019. This bill would establish a board of people who would review copyright infringement claims from those who may not have the means to pursue litigation in court. The board would provide a preliminary review and ruling, which the copyright holder could then take to a court. Depending on the composition of the board, this procedure could curtail due process for the party who used the copyrighted work. What's especially difficult about the CASE act, as well as much copyright legislation in general, is its bipartisanship. The CASE act is sponsored in Congress by, among others, hard-right Senator John Kennedy from my home state of Louisiana, but also such Resistance luminaries as Representative Ted Lieu and Senator Mazie Hirono. As fair use advocates, we must form wide-ranging bipartisan coalitions to challenge these kinds of efforts.