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# COPYRIGHT

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# INTRODUCTION TO THE 2017 ANNUAL

The conversation about copyright and intellectual property has grown and changed since the formation of the CCCC Intellectual Property Caucus over two decades ago. When it began, many of the scholars interested in the issues of authorship, copyright, and intellectual property were techies who were also deeply concerned about internet privacy issues such as security, surveillance, and corporate overreach — reflecting the topics that the Electronic Frontier Foundation has always monitored (and continues to). In more recent years, the main interests have been these:

- Plagiarism and authorship
- Collaboration and coauthorship
- Open source software
- Open access publishing
- Creative Commons licensing of content
- Fair use of copyrighted resources
- Peer-to-peer file sharing and piracy
- Cultural appropriation

The content industries have found ways to monetize film, television, and music streaming in ways that involve less locking-style Digital Rights Management tactics and more advertising and data gathering on users' preferences. As I write, I decided I'd like to listen to one of my favorite albums, *The Trinity Session* by Cowboy Junkies. I don't own this album anymore (I owned the cassette tape and wore it out many years ago, then the CD which I lost in a move), so I went to YouTube, where I can listen to the whole thing. When I click the play button, I see a commercial for a new 24K-gold-plated MasterCard. At eight more points in the nearly 43-minute video, the album is interrupted by more ads for this luxury MasterCard as well as for Subaru. No more worries about copyright infringement or illegal downloading — I can listen to the beautiful voice of Margo Timmins guilt-free. But now the companies have gotten me to watch at least a few seconds of their message, and now YouTube knows I like this album. And certainly, now, the video game companies understand how many more users they gain when popular YouTubers like DanTDM play their games for their millions of subscribers.

Now YouTube also knows what my children like, and when they play those games, the game companies learn more about my children as well. It's becoming clear that, while the issues on my bulleted list are no less important, turning our attention back to data privacy and security is needed for the CCCC IP Standing Group. Wendy Warren Austin's article in this year's IP Annual, examining the current tenuous status of net neutrality, is a next step in that direction.

Amy Propen provides a nuanced analysis of a particular 2017 IP development that got significant attention, the now-famous monkey selfie:



Propen uses her expertise in animal studies and material and visual rhetorics to raise good questions. She writes, "while there may not be a mechanism within the legal world or within copyright law for recognizing a nonhuman animal as a rightful holder of a copyright, does that mean we ought to discount the fact that this creature did, in fact, participate in the creation of a photographic image—in the act of visual communication that constitutes a selfie? And, then, what are the rhetorical implications of such visible, visual acts of nonhuman knowledge making?" I'm pleased to have her article in this year's *IP Annual*, which starts a conversation in our field that I believe should continue.

Traci Zimmerman's analysis and critical reflection on the 20th anniversary of Turnitin further reinforces the need to refocus on issues of data privacy and security. After the scandal involving Cambridge Analytica and Facebook, we can more clearly see that Turnitin is of a piece with technology companies that collect data on their users and profit from the data set. On Turnitin's website, I can click on "Higher Ed" on the top menu, which takes me to a promotion of their Feedback Studio feature. I can then click the "Take a Look" button to learn more about Feedback Studio. When I get to that screen and scroll to the bottom, I see Turnitin's ticker displayed. The number of student papers submitted increases in real time:



207 papers in 26 seconds. We might think of this, grimly, as our moment of Zen. In a 2017 article in *Hybrid Pedagogy*, Sean Michael Morris and Jesse Stommel, however, provide us with a tool of protest that students or teachers may use: an action letter aimed at administrators of schools that use Turnitin. They declare that everyone has permission to use and adapt it freely. Here is the letter in its entirety:

Dear [Name]:
In 2014, the Conference on College Composition and Communication, a branch of the National Council of Teachers of English, concluded that plagiarism detection services, like Turnitin by iParadigms, "create a hostile environment" in classrooms, "undermine students' authority" over their own work, and violate student privacy. Despite this fact, I am asked to submit my work frequently through Turnitin in the name of academic integrity. Unfortunately, the use of

student intellectual property and labor for profit by a third party is neither academic in practice or spirit, nor does it model integrity.

Plagiarism detection services rely upon the labor of students as their business model. Although Turnitin markets itself as a "partner in education," "trusted by 15,000 institutions and 30 million students," in fact the service does what no collaborator should do—forces me to license to them my intellectual property and makes it impossible for me to reclaim my full rights to that work. Turnitin's terms of service state very clearly:

**If You submit a paper or other content in connection with the Services, You hereby grant to Turnitin, its affiliates, vendors, service providers, and licensors a non-exclusive, royalty-free, perpetual, worldwide, irrevocable license to use such papers**, as well as feedback and results, for the limited purposes of a) providing the Services, and b) for improving the quality of the Services generally**.**

This means that, not only do I surrender the license to use my work in perpetuity to this plagiarism detection service, but Turnitin *sells my work* back to you.

I've gathered together a few resources on the matter for your consideration:

- What Is Detected? by Carl Straumsheim, from Inside Higher Ed (https://www.insidehighered.com/news/2015/07/14/turnitin-faces-new-questions-about-efficacy-plagiarism-detection-software)
- Understanding "Internet Plagiarism" by Rebecca Moore Howard (https://pdfs.semanticscholar.org/2fe4/f4c5e372d280c9b4cad07b15d0206dda9ef1.pdf)
- CCCC-IP Caucus Recommendations Regarding Academic Integrity and the Use of Plagiarism Detection Services (http://culturecat.net/files/CCCC-IPpositionstatementDraft.pdf)
- McLean Students File Suit Against Turnitin.com: Useful Tool or Instrument of Tyranny? by Traci A. Zimmerman (http://www.ncte.org/cccc/committees/ip/2007developments/mclean)

Please stop using Turnitin at our institution. Choose instead to keep academic integrity a human problem with human solutions. Or, at the very least, allow me to individually opt out. Should I ever unintentionally plagiarize, I would rather have the opportunity to speak with my instructor about my mistake than receive a machine-generated report.    Please put teaching back in the hands of teachers, where it belongs.

There is no reason to surrender this institution's tradition of teaching and academic integrity to a third-party technology solution. Thank you for your support.

Sincerely,

[Name]

To close on a positive note, I would like to close by recognizing a major contribution to not only the general discipline of rhetoric and composition studies, but also the progress of open access scholarly publishing: the tenth anniversary of the Computers and Composition Digital Press, an imprint of Utah State University Press.

Wendy Warren Austin

# NET NEUTRALITY REPEAL CREATES DARK CLOUD OVER STUDENT AND RESEARCHER INTERNET ACCESS AND EQUITY

Heidi McKee's *Computers and Composition* article in 2011, "Policy Matters Now and In the Future: Net Neutrality, Corporate Data Mining, and Government Surveillance," identifies three key policy issues she believes will continue to have influence on the future of the Web and Internet-based communication, one of which is net neutrality. "Net neutrality" is the philosophy that Internet users have the freedom to decide where they want to go online, and that no matter what sites they are trying to access, the Internet's pathways allow users to travel at the same speed, regardless of content. McKee warns that if net neutrality is not present:

> [W]e face a future where the Internet is like cable television where behemoth corporations control and produce the majority of content, controlling what we can see, read, hear, and write online" (280).

Later in the article, McKee projects wistfully into the future that "perhaps by the time this article goes to press, the FCC may have, for example, acted to reclassify the Internet as a common carrier (doubtful, but one can always hope!) . . . "Four years later, her hopes were realized (but only temporarily).

## TIMELINE

On Feb. 26, 2015, under President Barack Obama's administration, the Federal Communications Commission (FCC) voted to classify the Internet as a "public utility," a common carrier, under the Title II of the Communication Act of 1934. While some (Karr; Shaw, "Regulating") decried this move as stifling free market competition, others (McKee; Ross-Brown) viewed the action as a victory for "net neutrality" advocates, a positive step toward social justice and greater Internet access to all. This act came in part because broadband suppliers like Comcast were slowing down ("throttling") some heavily used services and blocking other services and charging more for faster speed and access. However, this dream of neutrality was short-lived.

On Dec. 14, 2017, under President Donald Trump's administration, the FCC voted, with a 3-2 Republican majority to repeal that vote and return to a "light-touch regulatory scheme," with the "Restoring Internet Freedom" Act, essentially reclassifying the Internet from a "telecommunication system" (or "public utility") to an "information service." The FCC sees the action as a move back to the less regulated legal environment of the first 20 years of the Internet.

By the first week of February 2018, Montana, New Jersey, Hawaii, and New York had all signed executive orders for a statewide net neutrality order (Fung, "This;" Mlot; Segerstrom), with California and Massachusetts predicted soon to follow. On March 5, 2018, Washington's Governor Jay Inslee signed into law a statewide net neutrality ruling. Washington Post reporter Brian Fung says the "initiatives have put states on a collision course with the FCC . . . [that] could drive the fight over the

Internet's future into hazy legal territory" ("Washington"). The states' strategies require internet service providers to do business with them only if they follow the guidelines from the more strict net neutrality rules.

On April 23, 2018, the "Restoring Internet Freedom" Act will go into effect, with the exception of amendatory instructions 2, 3, 5, 6, and 8 (of a total of 8 sections in the ruling, about two thirds of the document), the effective dates of which will be determined at a later time.

## NET NEUTRALITY—PROS AND CONS

Tim Berners-Lee, who invented the World Wide Web, points out that the Web Foundation had two specific goals at its outset: access and neutrality:

> We'd imagined that if we keep the Web neutral, get everybody equal access, and keep it non-discriminatory, then surely humanity will do the right thing. Last year, we realized that we can't just assume people will make the right choices to provide justice or truth or democracy. So now the Web Foundation and other organizations are making a conscious, strategic decision to think about the next layer. (Hoffman, 105)

One of the "fathers" of the Internet, Vincent Cerf (who, with Robert Kahn, developed the TCP/IP protocols, used in the early days of ARPANET, the Internet's precursor, and which are still used today) pointed out in his Communications of the ACM column that "the Internet has always been open," and "what we should not and must not tolerate is the arbitrary shutting down of pathways that can link together our increasingly global societies" (7). Clearly, those who helped bring the Internet into being want to help create a better society.

Organizations like Free Press, Common Cause, Color of Change, Demand Progress, SavetheInternet ("Net Neutrality;" Nichols), and over 100 others are gearing up to reverse this repeal in the coming year and, particularly, to show their dismay at the polls in the fall. Nichols, writing before the passage of the ruling, describes the repeal as:

> A blank check to create `fast lanes' for paid content from corporations and billionaire-funded politicians, while relegating the essential information-sharing of civil society to `slow lanes' on the periphery of the information superhighway" (5).

A coalition of 23 attorneys general have already filed a petition in the U.S. Court of Appeals for the D.C. Circuit as of Feb. 27, 2018 (Johns).

However, some don't see the repeal as such a big problem. Andrea O'Sullivan believes that people are getting worked up over nothing and denies that the Internet was ever really "neutral" in the first place. Nor have transmission speeds been all that consistent during the so-called "net neutrality" period, either. C. Mitchell Shaw alleges that:

> Far from protecting the free and open Internet, . . . net neutrality was never about neutrality; it was about regulating the Internet, something the courts had already correctly decided on two previous occasions that the FCC lacked the authority to do. (41)

S. Padmaja's analysis of net neutrality notes that neither the FCC, nor the U.S. government, has the capacity to take over the infrastructure, although whether the

Internet is a "fundamental liberty "has not yet been debated (although it seems to be where the net neutrality advocates are going with their argument.) Christopher S. Yoo maintains that as Internet users rely more and more on wireless networks, the variability in the signal transmissions, the congestion in the wireless pathways, and dropped signals will need to be worked out still. So, speeds are not going to be consistent anyway, due to these factors. With wireless communication, the pathways for communication and access are inconsistent, and the speed of transmission and clarity of connection are more dependent on the surrounding environment which never remains stable.

Ultimately, 2018 will become, indeed, is already becoming a year of the net neutrality wars.

## IMPLICATIONS FOR MINORITIES, STUDENTS, RESEARCHERS

Seven months before the passage of the repeal, the lone Democrat on the FCC, Mignon Clyburn, sought feedback from Skid Row residents (including some homeless people) and community activists to learn their opinions on net neutrality and their Internet needs. Some attending the meeting said a constant concern was locating free Wi-Fi or simply a place to charge their cell phones. Some said they blogged to have a voice, while others felt "invisible" if they couldn't get onto the Internet (Johnson 20).

Despite this disparity in access, when the uprising in Ferguson, Missouri, occurred, it took a million tweets before CNN took notice of what was going on. As the #BlackLivesMatter movement grew, it was the Internet that enabled a faster spread of information. Ross-Brown argues that it's hard to imagine the groundswell of activism that grew from these events occurring "if these [Internet] protections didn't exist." The executive director of the Center for Media Justice, Malkia A. Cyrus, stresses that the Internet enabled the BlackLivesMatter movement to organize by being open and accessible to those who wanted to use it and had access.

To consider how the loss of net neutrality will affect students and researchers, we should take a look at the state of the Internet just before net neutrality went into effect in 2016. Ross-Brown mentions that the Comcast-Time Warner merger was just occurring, creating concerns about monopolistic tendencies occurring because it left two thirds of Americans with no other choice for high speed Internet.

Four years ago (before the 2016 net neutrality ruling), 75% of teachers required students to download assignments and upload completed ones online, with 40% of students required to participate in online discussion boards. However, 87% of teachers don't believe their students have all the digital tools they need at home to accomplish these tasks. And as for job seekers, over 4/5 of Fortune 500 companies require applicants to apply online. Ariana Figueroa reported that a 2017 Pew Research study found 5 million, mostly low-income, school-aged children without access to the Internet.

Even when kids are in school, the speed of the ISP service might change quickly, if the school district doesn't switch to premium services (Bjerdo 13). Depending on budget constraints, schools might be able to sign up for "paid prioritization" (otherwise known as a "fast lane" on the Internet), but if costs are going elsewhere, then traffic may be "throttled" or slowed. Lindsay McKenzie, writing for *Inside Higher Ed,* reports that colleges are especially concerned about the delays they may begin to experience after the

changes go into effect. She notes that, especially in the last couple of years, many online educators have been experimenting with innovative technologies, but when choice of service providers are limited or non-existent, the school's ISP may charge more. Organizations like the American Library Association are among those who are protesting the net neutrality repeal ("ALA"), but may be powerless to do anything but submit a statement. Educators Jill Berkowicz and Ann Myers point out that without being "in control of the information to which we have access," we will lose our academic freedom to those who can pay the most. Although not many academic research organizations have responded directly to the net neutrality repeal issue, the publisher of the Public Library of Science, publisher of PLoS journals, lamented that handing over the power to ISPs to regulate traffic "poses a threat to scholarly journals and research," (147) according to an editorial in Nature ("Loss").

We need to become more well versed in statistics like the Pew Research Center has available to us so that we can use this data in our pleas for fairness in Internet access and in our statements about net neutrality. As educators, we owe that to ourselves and our students.*

*We are starting to get a little help from an unlikely quarter, however, in Burger King's recent commercial about the net neutrality issue, which makes the fast lane/slow lane analogy crystal clear to its customers and any viewers. See https://www.youtube.com/watch?v=ltzy5vRmN8Q

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Amy D. Propen

# GOING BANANAS OVER COPYRIGHT: MONKEY SELFIES AND THE INTERSECTIONS OF RHETORIC, INTELLECTUAL PROPERTY, AND ANIMAL STUDIES

Readers may recall a story that circulated in the popular media several years ago, about a macaque monkey by the name of Naruto who allegedly took its own selfie. The monkey's selfie quickly went viral, and not surprisingly, a debate ensued about who actually holds the copyright to the image. The freelance photographer who orchestrated the photo, David Slater, had traveled to Indonesia, where he apparently spent a good amount of time interacting with these monkeys in ways that eventually led to their taking selfies (Wilkinson). Slater ultimately ended up with the selfie in question, sparking the debate about copyright and intellectual property, and who owns rights to the photo.

Slater was able to get copyright for the photo in the U.K., "where he resides, and published the photo in a nature photography book" (Wilkinson). Shortly thereafter, larger websites began reprinting the selfie but did not pay Slater any royalties as copyright holder. At that point, Slater requested that these websites stop reprinting the photo. They refused, however, stating that Slater had no right to make such a request, since the monkey had taken the photo, not Slater. More specifically, "The U.S. copyright office subsequently weighed in, saying that animals cannot hold a copyright, and therefore the image is in the public domain," which meant that Slater could not receive royalties for the photo in the first place (Wilkinson).

Further complicating matters, in 2015, the People for Ethical Treatment of Animals (PETA) sued Slater in federal court on behalf of the monkey; their argument in doing so was that the monkey legally owned copyright to the image (Wilkinson). PETA lost the suit in 2017 in a California U.S. district court, and later "appealed to the Ninth Circuit, which heard arguments last month" (Wilkinson). More recently, the parties "filed a joint motion saying that they have settled the case and asking the court to dismiss the appeal" (Underhill).

As one media article put it, "PETA's case was largely scoffed at," given the perceived lack of plausibility that a monkey can hold a copyright" (Wilkinson). Or, put differently, "PETA's standing to sue depended entirely on whether nonhumans can legally hold a copyright under U.S. law" (Underhill). While the notion may seem outlandish to some, I would argue that this case has implications not only for copyright law but also for how we understand our relationships with our nonhuman kin more broadly. That is, while there may not be a mechanism within the legal world or within copyright law for recognizing a nonhuman animal as a rightful holder of a copyright, does that mean we ought to discount the fact that this creature did, in fact, participate in the creation of a photographic image—in the act of visual communication that constitutes a selfie? And, then, what are the rhetorical implications of such visible, visual acts of nonhuman knowledge making?

Monkeys, especially, are arguably considered both charismatic and enigmatic creatures within the context of popular culture, often appearing in social media clips and

popular examples involving science and animal communication, as well as animal ethics. (For more on the intersections of rhetoric and animal communication that also takes monkeys as a representative anecdote, though in a different context, see Laurie Gries' discussion in "Monkeying Around.") As Hayley Zertuche describes in her discussion of animal selfies, albeit with a slightly different focus, "These popular animal images are significant since depictions of animals in visual media have a crucial influence on cultural perspectives and actions" (2017, n.p.). A material feminist approach to understanding the implications of this photo might then consider a more nuanced configuration, in which humans, nonhumans, technologies, and environments participate in specific intra-actions that catalyze nuanced configurations of the worlds that humans and macaques share (see Alaimo, 2010, 2016; Barad, 2007; Haraway, 2008).

A material feminist reading might understand the photo not only as a rhetorical configuration that has clear, initial implications for copyright law but also, more broadly, has significant implications for building worlds that reveal and perpetuate knowledge about a particular species of macaque monkey that thrives, or more aptly, struggles to survive, in a landscape that is vulnerable to the forces of human interaction and consumerism. As one *National Geographic* article describes, Indonesian crested black macaques "are hunted for meat, kept as pets, and threatened by a shrinking habitat" (Holland). By dismissing this case as just about copyright, and likewise by dismissing the possibility of the monkey as participant in the creation of this image, we tread the slippery slope of denying or silencing the voices of nonhuman creatures as sentient beings in high-stakes contexts involving animal rights, animal testing, factory farming, environmental degradation, and related scenarios in which animals' lives are at stake or on the line. We run the risk of overlooking the ways that visual culture can participate in the complex and nuanced practices of rhetorical advocacy, in the name of focusing on who "wins" the immediate, agonistic debate.

Thus, a material feminist reading imbued with ideas about animal studies might question the terms of this creature's participation in the creation of the photo in the first place, and its implications for how we understand the nature of our relationships with nonhuman animals and our potential ethical obligations to them. Photographer David Slater describes in detail on his website, for instance, the processes of interaction with the monkeys that eventually led to the selfie in question. He spent a good amount of time observing and interacting with the monkeys, during which he experimented with different techniques that included setting up his camera with the self-timer activated, and waiting for the curious monkeys to come over and play with the camera (Slater, "Sulawesi macaques..."). Eventually, as he describes:

> I put my camera on a tripod with a very wide angle lens, settings configured such as predictive autofocus, motorwind, even a flashgun, to give me a chance of a facial close up if they were to approach again for a play. I duly moved away and bingo, they moved in, fingering the toy, pressing the buttons and fingering the lens. I was then to witness one of the funniest things ever as they grinned, grimaced and bared teeth at themselves in the reflection of the large glassy lens. (Slater, "Sulawesi macaques...")

Such photographic practices have become commonplace enough in contemporary culture. A recent NPR article, for instance, described what happened when "an

expeditioner with the Australian Antarctic Division left his camera on the ice while visiting a penguin colony, [and] the birds quickly hustled over to investigate" (Kennedy). The camera, already recording video, captured "a hilarious 38-second video" of the characteristically curious Emperor penguins gathering around to examine the camera, thus resulting in some popular penguin selfies.

On the one hand, then, we might consider that the macaque monkeys did not necessarily comprehend the terms of their interaction with these technologies of visualization, and subsequently we may question the implications of what, for them, was mostly likely just a process of curious play with the objects they encountered in their immediate, surrounding environment. On the other hand, the photos arguably draw attention to a cryptic and vulnerable species in need of human advocacy, for as Slater contends: "It is totally humbling and almost beyond my ability to write here just what impact these images have had. Some people admit to crying with laughter, other to crying with shock as they stare into the face of a close ancestor they never realised existed, and so uncannily like us humans. And then they discover these creatures are hunted and in need of some publicity" (Slater, "Sulawesi macaques..." emphasis added). Finally, we may consider the ways that the practices of visualization themselves paradoxically make vulnerable, as they simultaneously seek to advocate on behalf of those already-vulnerable species (see Propen, 2018). I do not mean, here, to dismiss the legal rhetorical aspects of the debate by delving into the murkier questions of human ethical obligation as it pertains to our interactions with vulnerable, nonhuman species; rather, my intention is to think about the immediate debate as a point of entry into the larger questions that it surely prompts, or really to think of these issues as two sides of the same coin.

In terms of the outcome of the actual court case, it has not been wholly clear as to who holds the copyright (Underhill, 2017). However, in April 2018, a U.S. appeals court upheld a lower court ruling, when it ruled "that lawsuits can't be filed claiming animals have copyrights to photos," thus suggesting that Slater then owns the copyright. (Thanwala n.p.). Some media articles have suggested that the photo may fall into the public domain; this would mean, then, that "Slater can still sell his book, for example, even if one or more pictures in it are in the public domain. He couldn't keep other people from using the picture, though, which limits the value" (Underhill). However, Slater's website notes his "right to be identified as the author of all images published on this website"; moreover, the website also allows visitors to purchase signed copies of the monkey selfie, whereby ten percent of the purchase is donated to a monkey conservation initiative in Sulawesi, Indonesia (Slater, "The Monkey Selfie"). We may also speculate about the different possible motivations for PETA's lawsuit, as other media articles have done (see Underhill, Wilkinson). At the end of the day, though, we might wonder what we as scholars of rhetoric, and those in the legal community, have gained by thinking about or handling the specifics of this case. From a legal perspective, it seems difficult to see any real winners here. Moreover, it would seem that the monkey was made more visible through the practices of visualization, in an effort to advocate on its behalf, while in the process being made simultaneously, and paradoxically, more vulnerable, through those very practices, by way of a court case that attempted to demonstrate why, according to the law, agency should be denied to nonhuman animals. This case thus raises as many questions as it answers, and when considered in light of its broader

rhetorical implications, provides a fruitful point of entry for engaging with the intersections of legal rhetorics, animal ethics, and nonhuman animal agency.

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# TWENTY YEARS OF TURNITIN: IN AN AGE OF BIG DATA, EVEN BIGGER QUESTIONS REMAIN

A funny thing happened on the way to academic integrity. Plagiarism detection software (PDS), like Turnitin, has seized control of student intellectual property. While students who use Turnitin are discouraged from copying other work, the company itself can strip mine and sell student work for profit.
--Sean Michael Morris & Jesse Stommel, "A Guide for Resisting EdTech: The Case Against Turnitin"

It was never about the loom per se. It's always about who owns the machines; it's about who benefits from one's labor, from one's craft.
--Audrey Watters, "Education Technology's Completely Over"

It is hard to believe that Turnitin has been around for 20 years. What is perhaps harder to believe is that, despite the robust challenges and tough questions it has faced during that time, Turnitin is *thriving*. Why this fact should matter to educators and students – and why, particularly, now – is the subject of this exploration.

## SOME BACKGROUND AND CONTEXT

According to the information in the Turnitin *Company Backgrounder*:

> Turnitin® is the leading originality checking and plagiarism prevention service used by millions of students and faculty, and thousands of institutions worldwide.
>
> Founded in 1996 by a group of researchers, teachers, mathematicians and computer scientists from University of California, Berkeley, iParadigms set out to create a new model for the protection of written work from misappropriation on the Internet. Ultimately, their vision was to create an instructional tool that would increase student engagement in the process of preparing written work, and help them better learn to write, think and reason.
>
> Today, Turnitin is a key component of education worldwide. It stands at the forefront of a building awareness for best practices in teaching and learning with a service that has expanded far beyond just originality checking. Turnitin now offers a full complement of web-based services to manage a 100% paperless process for reviewing and evaluating written assignments.

It is demonstrably true that Turnitin is the "leading" plagiarism detection product[1] and, as such, it is one of the most lucrative: in fact, when iParadigms (the creators of Turnitin) was acquired by Insight Venture Partners and GIC[2] in 2014, it sold for $752 million (iParadigms). According to Chris Caren,[3] the chairman and CEO of iParadigms at the time of the sale, this partnership would allow Turnitin to "execute [its] vision to be the most innovative and effective technology for evaluating and improving student work" by "provid[ing] the resources and support to accelerate [its] product investment plans and expand [its] reach into international markets" (Ibid).

But what remains at issue is how Turnitin has made such profits, how they've built such a successful product, and how it "protects written work from misappropriation on the Internet" and "builds awareness for best practices in teaching and learning" (Turnitin "Backgrounder," emphasis added).

## CHALLENGES AND CONTROVERSIES

Despite their outward-facing success, Turnitin has faced numerous challenges over the last decades. The history of these challenges provides a scaffold upon which to build a clearer understanding of our current moment; thus, what follows here is a brief summary of some of the more formative challenges Turnitin has faced.

### Questions of Accuracy

There have been multiple investigations into Turnitin's accuracy, and the findings range from reports indicating that Turnitin incorrectly labels *too much* student writing as plagiarism ([Lang, Texas Tech, 2009](#)) to reports that Turnitin actually catches *too little* student plagiarism. ([Schorn, 2007](#); [Schorn 2015](#)).

Susan Schorn's (UT-Austin) studies, and Carl Straumsheim's reporting on them for *Inside Higher Ed*, cut right to the heart of the matter: the software doesn't work. As Schorn asserts:

> We say that we are using this software in order to teach students about academic dishonesty, but we're using software we know doesn't work. In effect, we're trying to teach [students] about academic honesty by lying to them. (Straumsheim).

Susan Lang (Texas Tech) agrees, indicating that while she was "not surprised" by Schorn's findings – particularly given the "exponential explosion of information" on the Internet and the "constant shifting and reposting of content," she is surprised that Turnitin's software hasn't really improved their performance over the years (Ibid). And

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[1] There are a number of proprietary plagiarism detection products out there, such as SafeAssign, Plagscan, and Quetext with DeepSearch, and an equal or greater number of "free" products, such as PlagiarismChecker, Grammarly, Dupli Checker, Plagiarisma (though most of these offer "premium" plans, where you have to pay for greater access and additional features. Still, Turnitin is the leader in the plagiarism detection software (PDS) market.

[2] Insight Venture Partners is "a leading global private equity firm focused on high-growth investments in the technology sector," and GIC is "Singapore's sovereign wealth fund" (iParadigms).

[3] Chris Caren is now the CEO of Turnitin: http://v1.turnitin.com/en_us/about-us/management-team
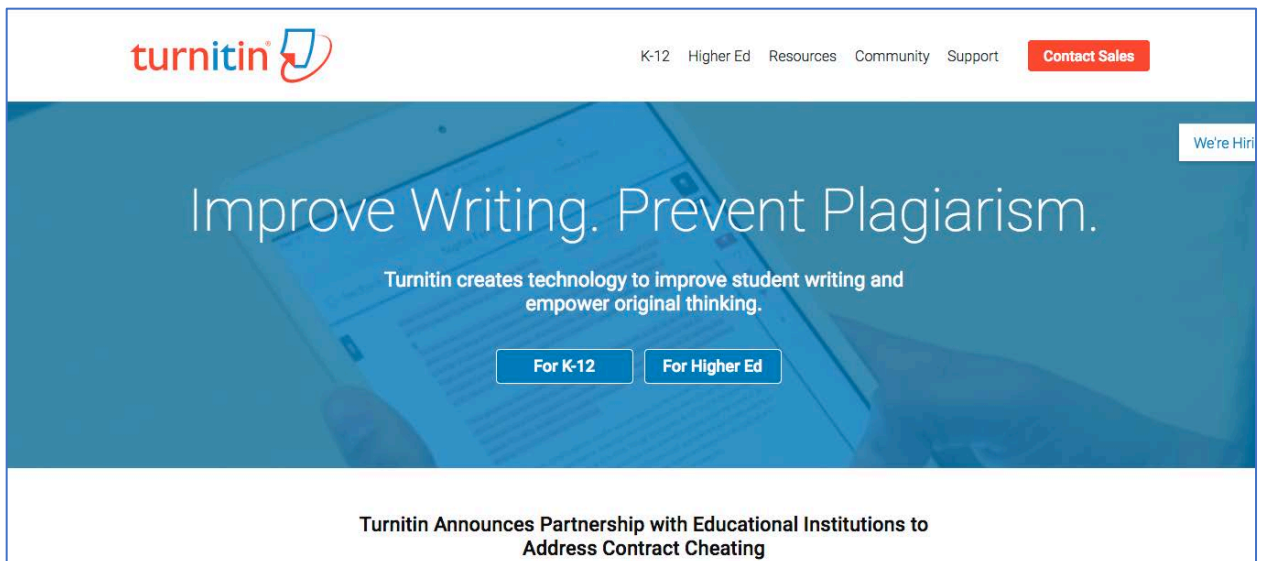
Doug Hesse (University of Denver) points out a more troubling issue when flagging "false negatives" with Turnitin: it creates a "dog-bites-man twist on the usual critique of this software…I'd rather have students slip through the cracks than stand falsely accused" (Ibid). But the bigger question here is less about who stands accused or who slips by, and more about why we continue to use this software in the first place.

One way that Turnitin attempts to resolve this tension is to claim that they don't actually detect plagiarism. In a Turnitin blog post from 2013 titled -- "Does Turnitin Detect Plagiarism?" -- the company takes aim at what they call the "#1 misconception" about their service: "that Turnitin detects plagiarism." To combat this "misconception," they provide the following reasoning:

> Turnitin does not detect plagiarism per se; Turnitin just finds text that matches other sources in the vast Turnitin databases and shows those matches. It is up to a human being to determine whether those text matches are a problem or not. ("Does Turnitin.")

What's interesting is the paradox in the first sentence: on the one hand, it proclaims that Turnitin does not detect plagiarism "per se" (that is, it doesn't detect plagiarism "by itself" or "in itself"), but on the other hand, it asserts that Turnitin "just" finds text that matches other sources (as if that is "only" or "simply" what it does). The second sentence follows up with a more direct interpretation: Turnitin doesn't accuse (or acquit) students of plagiarism, people do.

Still, Turnitin's home page at turnitin.com makes clear that they do some form of plagiarism detection since the homepage banner reads: *Improve Writing. Prevent Plagiarism.*

## Questions of Ownership and Ethics

Turnitin has also been challenged by various stakeholders on questions of ownership and ethics. There has been one major lawsuit in the United States [Vanderhye v. iParadigms, LLC, 562 F.3d 630, 645 (4th Cir. 2009)], where high school students in Virginia and Arizona brought suit against Turnitin for copyright infringement, but the Appellate Court upheld the District Court's ruling in favor of iParadigms, deeming the archiving of the student work as ultimately constituting fair use.

Even before the lawsuit in the United States, there were challenges to the required use of Turnitin at McGill University (Montréal, Québec) where both individual students and, later, the Canadian Federation of Students protested university requirements to submit work to Turnitin; in 2013, McGill University announced that it had ended its licensing agreement with Turnitin and, while they indicated that they would "explor[e] other software options," they also make clear that "students [must be allowed] a reasonable alternative if they choose not to use the technological solution"(McGill).

In addition, professional organizations like the Council for Writing Program Administrators (CWPA), the Conference on College Composition and Communication (CCCC) and the CCCC- Intellectual Property Caucus all published statements that question the ethical and pedagogical soundness of Turnitin and other plagiarism detection services and offer some best practices for teaching (and practicing) academic integrity.

And when you consider that an institution-wide license for Turnitin software is somewhere "in the five figures," it invokes much larger ethical issues. As Schorn says,

> The real ethical question is how you can sell a product that doesn't work to a business — the sector of higher education — that is really strapped for cash right now. We're paying instructors less, we're having larger class sizes, but we're able to find money for this policing tool that doesn't actually work. (Qtd in Straumsheim).

# TURNITIN'S RESPONSES

Over the past 20 years, Turnitin has mounted numerous responses to the challenges and questions they've received. In one (rather controversial) move, Turnitin paid to send instructors to the 2009 Conference on College Composition and Communication (CCCC) to present their (less critical/more positive) research on Turnitin. Deftly covered by Scott Jaschik in *Inside Higher Ed*, the move was met with skepticism, particularly since Turnitin did not work with the National Council of Teachers of English (NCTE, the parent organization for CCCCs) and CCCCs to gain space at the conference. Instead, they emailed individual professors (who work at institutions who had adopted Turnitin) and offered to pay travel expenses for those who would be willing to present about the plagiarism detection service (Jaschik, "Buying"). Beyond the problematic, surreptitious nature of their solicitation, Turnitin was also "not forthcoming" about which panelists were (and were not) funded (Jaschik, "False Positives"). More than just a conflict of interest issue, the question of funding travel to

the conference was "especially sensitive" because "many of the people most knowledgeable about teaching composition are adjunct professors or full timers who are [not on] the tenure track and who frequently don't have the same access as tenured professors to travel budgets and research support" (Jaschik, "Buying").

Turnitin also put together what they labeled an "in-depth literature review "(2010) of "Independently Published Studies on Turnitin Services" made up of "35 publications [15 journal articles, 7 conference presentations and 13 other independent reports] that address the effectiveness of Turnitin services in education in reducing plagiarism and in improving the understanding and attention to academic integrity" (2). The majority of the publications (23 of 35) cited are from countries other than the United States: primarily the UK, Australia, and New Zealand, as well as Malaysia and Botswana. And, interestingly, these rather disparate studies trend toward indicating that Turnitin works best when students retain some agency (e.g., when they are able to upload, view and revise from their "originality reports") and when faculty use transparent and "more traditional" means of educating students about the importance and role of documentation in furthering academic integrity.

## TURNITIN AT 20

Despite these challenges, Turnitin remains extremely popular and is "the standard bearer for plagiarism detection for high schools and colleges" (Roll). More troubling is that the "ethical debate [seems to have] died down as the use of plagiarism detection software has increased" (Schorn, qtd in Straumsheim).

But in an age where questions of privacy, control, and use of big data are at the fore, the questions about Turnitin are also changing. Nowhere is this shift better articulated than in "A Guide for Resisting Edtech: The Case Against Turnitin," by Sean Michael Morris and Jesse Stommel. In their essay, published in Hybrid Pedagogy last year, they reopen and recontextualize the debates about Turnitin over the last 20 years by seizing on the kairotic moment of 2017 and filtering it through the brilliant work that has been done on "critical digital literacies" over the last decade. Morris and Stommel also point out that the context(s) in which we understand Turnitin's business model are changing:

> The internet is increasingly a privately-owned public space. On April 3, 2017, Donald Trump signed into law a bill overturning Obama-era protections for internet users. The new law permits Internet Service Providers (ISPs) to access, without permission, data about our internet use patterns— from the sites we visit to the search terms we use. And this data isn't restricted to the work we do on computers. Thanks to the "internet of things," all our various connections can be monitored by our ISPs — from our physical location to the temperature we keep our homes to the music we ask Alexa to play for us. (In fact, Alexa processes all of our speech when it is on, even when we are not addressing it.) Every day, we participate in a digital culture owned and operated by others — designers, engineers, technologists, CEOs — who have come to understand how easily they can harvest our intellectual property, data, and the minute details of our lives. To resist this (or even to more

consciously participate in it), we need skills that allow us to "read" our world (in the Freirean sense) and to act with agency. ("A Guide")

The "skills" that Morris and Stommel highlight are the development and deployment of critical digital literacies that prompt us to "get under the hood of edtech tools" and to accurately differentiate between "what those tools say they do" and "what they actually do" (Ibid). To guide this exploration, they provide a rubric that asks a range of specific questions – focused on everything from the ownership, politics and operation of the tool to its accessibility and design. This exercise is "not [created] to 'take down' or malign any specific tools or edtech companies" but to encourage users to "think in ways they haven't" about these tools (Ibid).

But beyond just "thinking differently," Morris and Stommel also want to inspire action and empower instructors to the kind of "ethical, activist" work of responding to (and building sites of resistance against) "those institutional demands we find unethical or pedagogically harmful," particularly when we begin to understand that:

> [s]ome platforms are not agnostic. Not all tools can be hacked to good use. Critical Digital Pedagogy demands we approach our tools and technologies always with one eyebrow raised. Some tools have good intentions squandered at the level of interface. Some tools have no good intentions at all. And when tools like these are adopted across an institution, the risks in mounting a resistance can be incredibly high, especially for contingent staff, students, and untenured faculty. ("A Guide")

What is clear in Morris and Stommel's piece is that Turnitin is "one of those" platforms. They support this assessment with a raft of evidence: a close analysis of Turnitin's claims; an even closer review of Turnitin's policies, practices and profits; and a powerful assessment of the way in which Turnitin "supplants teaching" by dehumanizing and mechanizing the ways in which we promote the understanding of authorship, ownership and academic integrity:

> To an issue of academic integrity that has been the project of teaching for decades, educational technology answers with efficiency. Plug it in. Add it up. Point a finger… So, if you're not worried about paying Turnitin to traffic your students' intellectual property, and you're not worried about how the company has glossed a complicated pedagogical issue to offer a simple solution, you might worry about how Turnitin reinforces the divide between teachers and students, short-circuiting the human tools we have to cross that divide. ("A Guide")

The final section of Morris and Stommel's essay offers a template for resistance in the form of a draft letter to be "remixed, re-imagined and revised" so that students and faculty can work to "advocate," "educate" and build sites of resistance on their campus against Turnitin. The letter is informative, clear and "noncombative" in its language and is designed to be a living document (to be revised, reused and shared).

## CODA

In response to a comment posted to "A Guide to Resisting Edtech," which criticized the "dated" nature of their research, Stommel responded:

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> Agreed that many of the points here about Turnitin are dated. Sean and I have been making many of these points since at least 2007 or earlier. The problem: Turnitin's market share keeps growing. Which makes the issues here pretty evergreen in my view. ("A Guide").

Stommel's observation is (if I may re/mix up the metaphor) already "bearing fruit." Later this year, Turnitin will be debuting its newest product – "Authorship Investigation" – which will "monitor and learn the writing styles of individual students and flag content which shows considerable divergence from their previous work" (Warner). Ostensibly, this product is designed to address the problem of "contract cheating," that is "third-party produced work that is turned in for credit" (Ibid).

When I read about this new product, I thought immediately of the final entry included in Turnitin's own Literature Review of "Independently Published Studies on Turnitin Services" – a study by Wright, Owens and Nigel (2008), which offered the following advice about the use of Turnitin:

> [B]oth students and teachers are trained to recognize that Turnitin should be regarded only as a tool to assist in the detection of plagiarism. It is designed to be used in tandem with (rather than entirely replace) traditional measures for assessing academic integrity (*such as identifying abrupt changes in written structure and style*). (11, emphasis added)

What's striking about this advice is that it makes clear that there are some things that should not be mechanized: "traditional [read: *human*] measures for assessing academic integrity." Ironically and poignantly, this is the focus of Turnitin's newest tool, inadvertently presaged by an "independent study" a decade ago, which warned against precisely such developments.

In addition, the argument that Turnitin is "only a tool" tends to oversimplify the ways in which it has been wielded. Morris and Stommel note this brilliantly:

> While not exactly the Luddism of the 19th Century, we must ask ourselves when we're choosing edtech tools who profits and from what? Because so much of educational technology runs on the labor of students and teachers, profiting off the work they do in the course of a day, quarter, or semester, it's imperative that we understand deeply our relationship to that technology — and more importantly the relationship, or "arranged marriage," we are brokering for students. ("A Guide").

As of this writing, individual licenses for Turnitin products are not available. They can only be purchased for school districts, multiple schools or single schools. Thus, in order to understand our relationship to this technology, we have to understand how and why it is (still) being procured, who or what administrative body makes those decisions, and how we might preempt (or push back) on the arrangements that may have already been made on our behalf.

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