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Computers and Composition 25 (2008) 104–122

**Computers  
and  
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## Ethical and legal issues for writing researchers in an age of media convergence

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### Abstract

With the convergence of digital media into ever-widening social and technological networks for creation and distribution, the contexts for writing and the study of writing and writers have certainly changed. Researchers must navigate a dense matrix of ethical and legal issues in all phases of research when studying the ever-changing processes and products of digital communications. In this article, I draw from numerous sources to articulate a few of the challenges facing digital writing researchers in this age of convergence, focusing on issues of representation (researcher, participant, third-party), issues of informed consent, and issues of copyright and fair use.

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*Keywords:* Convergence; Copyright; Ethics; Internet; Methodology; Multimedia; Multimodal; Online; Publication; Qualitative; Representation; Research

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*Whether one welcomes or rues the integration—at times, saturation—of computerized and digital technologies in our lives and in our classrooms, what constitutes writing and what provides for the contexts for writing have indeed changed with these technologies. These changes are, in part, a result of the ways in which digital writing technologies have converged in recent years. Never before, for instance, have writers (of certain economic classes and at particular institutions) had at their fingertips the means to integrate text and graphics (and, for the tech-savvy, animation, audio, video, and other elements) and to publish and widely distribute digital products to virtual spaces.—Heidi A. McKee & Dànielle Nicole DeVoss (2007, p. 6)*

*“Ready or not, we are already living in a convergence culture.”—Henry Jenkins (2006, p. 11)*

The *Oxford English Dictionary*, in a 2003 supplemental definition, defines convergence as “the process by which originally distinct technologies may become more compatible or integrated as they develop, so that an increasing number of devices (esp. in electronics, computing, and telecommunications) are multifunctional and interoperable.” The coming together

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of various technologies and the increased ease of software integration certainly play a part in the creation of what Henry Jenkins (2006) has called the “convergence culture” which now shapes many aspects of life in the United States. But as Jenkins argued, convergence, although intimately connected with digitization and other technological developments, is best understood as a cultural and social phenomenon. Merging technologies may create the conditions for convergence to happen, but it is how people integrate these technologies into their lives, how they create cultures and social networks of use that is the real phenomenon at the heart of convergence. Jenkins focused on media conglomerates and consumers (see Alexander, this volume, for a critique of this binary), but convergence has a far wider impact than just in the pop culture and consumer realm. Individuals, communities, and institutions at local, national, and international levels are impacted by convergence. We, as writing studies teachers and researchers, particularly those of us working in colleges and businesses in the United States, are certainly impacted by the convergence of digital technologies and the changes that have occurred (and are occurring) in the creation and delivery of information. With the affordances of digital technologies, writers in all fields and at all levels of experience can now integrate pictures, video, and audio into texts with unprecedented ease, and they are choosing to do so in ever-increasing ways. Add to this multimedia matrix the myriad of networked spaces for distribution and publication via the Internet (to personal computers, to cell phones, to public digital media displays, to gaming consoles, etc.) and the landscape for writing and the study of writing and writers has certainly changed.

While others in this special issue have examined these changes for teachers, students, and writers in a variety of contexts, in this article I examine how the convergences of digital media impact writing studies researchers, focusing in particular on the ethical and legal issues researchers may face as they consider issues of representation (researcher, participant, third-party), issues of informed consent, and issues of copyright and fair use. To examine these issues, I draw from a number of sources:

- personal experience as a researcher conducting and publishing several person-based and text-based studies of digital communications;
- personal experience as the digital media/Internet specialist for, and member of, Miami’s Institutional Review Board;
- interviews with Internet and digital writing researchers from around the globe about the ethical dilemmas they have encountered in their work (part of a co-researched book project with James Porter on the ethics of digital writing research);
- published accounts analyzing methodological, ethical, and legal issues of digital research, especially drawing from the contributors to the collection I co-edited with Dànienne Nicole DeVoss on *Digital Writing Research: Technologies, Methodologies, and Ethical Issues* (2007).

In this article I focus on both ethical and legal questions, recognizing that while all legal questions are also ethical, not all ethical questions involve a legal component. Also, although I don’t explicitly address methodological issues, I recognize, as have others (e.g., Herrington, 1993; Kirsch, 1999; Sullivan & Porter, 1997), that ethical decisions occur throughout the research process and that every methods-based decision is also an ethical decision. At times I will also make connections to non-digital researchers and research studies as a means both

to highlight the changes digital researchers face in an age of convergence and to acknowledge that many ethical dilemmas digital researchers face have antecedents in non-digital studies.

## 1. Issues of representation in research: Researchers, participants, and third-parties

Representations of research participants and researchers in studies continually evolve.<sup>1</sup> Whether studying in traditional face-to-face (f2f) contexts or in digitized, virtual spaces, researchers have to negotiate in all phases of research the choices they make in representations of self and others. They must, as Michele Fine (1994) has argued, work the hyphen so as to critically interrogate “whose story is being told, why, to whom, with what interpretation, and whose story is being shadowed, why, for whom, and with what consequence” (p. 72). To Fine’s list, I would also add not only whose story is being told (and not told) but *how* it is told (and not told), *in what media* and *in what modes*, increasingly important considerations in an age of convergence and online publishing.

In this section I will address issues of representation, focusing first on researchers’ representations of themselves during their research and in their research reports, then focusing extensively on researchers’ representations of participants, and finally on representations of third-parties, a term I will explain below. I focus most fully upon person-based, qualitative research because that is the research with which I am most familiar (although what constitutes “person-based” research in cyberspace is much disputed—one person’s “text-based” study is another’s “person-based” study—see AoIR, 2002; Banks & Eble, 2007; Buchanan, 2004; McKee & Porter, 2008)

### 1.1. To be the “girl next door” or a “male furry”?: The researcher’s virtual body and building researcher ethos

Let me begin with an example: When conducting an ethnographic study for his book *Goth: Identity, Style, and Subculture*, Paul Hodkinson (2002), an “insider” to goth face-to-face culture, initially struggled when studying online goth communities because of the lack

<sup>1</sup> Compare, for example, the initial descriptions of key participants in two award-winning literacy ethnographies, *Ways With Words* by Shirley Brice Heath (1983) and *The Struggle and the Tools* by Ellen Cushman (1998):

- The widow Mrs. Dee, a plump softly wrinkled woman with fair skin and pale rose-pink fine hair pulled back in a bun, lives in this house with an unmarried daughter” (Heath, 1983, p. 31).
- Lucy Cadens didn’t even give me a chance to sit down that day I walked into her house: “I need to get this to DSS today.” She waved a stack of papers in my direction and headed for the door (Cushman, 1998, p. 1).

Cushman explicitly situated herself as researcher within the text and her positioning of Lucy Cadens reflected on the sentence-level her broader argument that inner-city residents have agency in discursive encounters with institutional gatekeepers. Writing before the turn to the critical and self-reflective in qualitative research, Shirley Brice Heath put Mrs. Dee in the timeless present of author-evacuated ethnographies. In these two small, but telling, examples, I see how a researcher’s options for naming and locating self, others, and the constructed nature of the research narrative have clearly changed. And that’s just in print-based venues. Add digital media to the mix and issues of representation get even more complicated.

of paralinguistic markers in the alphabetic text-based discussion forums where community interactions occurred.<sup>2</sup> As he explained:

Therefore, in such forums, the purple and pink streaks in my hair, my piercings, make-up and subculturally distinctive clothing, which have been so useful to most of my [face-to-face] research became redundant. In such a situation one must establish subcultural capital—insider status—only through what one writes.

(qtd. in Mann & Stewart, 2000, pp. 89–90)

To integrate more of the visual into his research, Hodkinson created a web page where he posted a picture of himself, directing participants in the text-only listserv to read his biography at the specific URL. Hodkinson concluded that having the visual representation of himself helped to facilitate greater trust among the online goth communities he wished to study.

When I read about Hodkinson's research, conducted in the early 1990s, and when I consider his attempts to build researcher ethos, particularly among a subculture that, as so many subcultures do, includes distinctive physical and linguistic markers of membership, I couldn't help but think of what his options might have been now with the increased convergence of audiovisual technologies and their use in online communities. Would Hodkinson have been better served with a video representation of himself? Were web video an option, would he have used a talking head shot, explicitly stating here's who I am, why I'm doing this research, and how I'm an insider? Or would he choose to use a more inductive approach to convince potential participants he belonged, perhaps including a video of him *in situ* so to speak, walking down the street, hanging out at a nightclub, etc.? But would the making of such a video with the sole goal of establishing street cred be ethical? I would surmise that it would be, provided that the video truly was capturing Hodkinson's experiences and was not simply staged in an attempt to dupe potential participants into trusting him. Because of the convergence of audio/video and the increased integration (and expectation for integration) of the audiovisual, researchers working in web environments, even text-based web environments, will increasingly need to consider how to represent themselves to the persons and communities they seek to study.

Media convergence has changed not only Internet researchers' options for representing themselves, but also the types of communities and the contexts in which they study. Whereas MUDs and MOOs in the 1980s and 1990s were text-based, and whereas most online discussion forums and listservs still are, social networking communities such as Facebook or virtual co-created worlds such as *Second Life* (<[www.secondlife.com](http://www.secondlife.com)>) are increasingly multimodal. When studying in these web spaces where multiple media converge, the issues of representation are even more immediate and evident. To join *Second Life*, for example, each user must create an avatar. Among the initial default choices are such things as "the girl next door," "the boy next door," "a female furry" or a "male furry." (The default "furry" is a fox-like creature with a tail that has created a significant sub-culture around it; see [Figure 1](#).)

The choices don't end there. Every detail of the avatar—from clothing to skin color, to hair and shoes and even tattoos—must be selected. Through the use of Linden Dollars (which have an ever-changing exchange rate to the US dollar), users may purchase other skins for the avatar

<sup>2</sup> For an extended discussion of building researcher ethos in online, alphabetic text-based communities, see Ayers (2004) and Sapienza (2007).



Figure 1. Screen captures of two default avatars in Second Life.

or create skins of their own. In short, it is impossible to be *in* Second Life without a virtual material body that will be seen and read by others. This is like f2f readings of the researchers' body except even more complicated because in real-life, no matter how hard I may try, I can't be a male furry. As a researcher, would it be unethical for me to choose some character I'm not, such as a cyber-goth male? Not identifying at all as a researcher while researching, as was the case of the male psychiatrist who pretended to be a woman with disabilities and in the process duped and betrayed the women with whom he communicated online (Van Gelder, 1991), certainly seems unethical, but what if I choose to identify as a researcher role-playing as a male furry? How to present one's virtual body and character is complicated, fraught with ethical implications for both the "real" and the virtual worlds in which the researcher inhabits, particularly as those worlds increasingly converge.

When reporting their research, researchers also face new decisions about how to represent themselves. Because of the convergence of digital technologies and academic publishing, researchers must decide what publishing modes and media to use when representing themselves, their research studies, and their participants. When including video interviews, for example, as Anthony Ellerston (2005) does in a *Kairos* article, researchers have a number of options for representing themselves—to do so not at all, to include their voice asking the questions but only visually representing interviewees, to cut back and forth between them and their interviewees, or to frame both them and interviewees in the shot. Rather than show the interviewee in isolation, Ellerston instead most often chose to film himself sitting next to participants engaged in a conversation with them. The effect of seeing both him and his interviewee together is striking, providing an immediate visual and aural reminder that information

spoken by interviewees is always mediated by and through the researcher. Researchers also have the option to show video footage of a scene, like a classroom, and provide voice-over commentary on the action that occurs, making themselves a bit like a documentary god, a disembodied voice observing all. From that last sentence you can tell where my bias lies—for researchers to try as much as possible to situate themselves in whatever modes they also are representing participants. However, this push I feel for full audiovisual representation may serve as the same sort of restrictive imperative that some qualitative researchers have felt to “tell all” in their print-based research reports (see Brandt et al., 2001, for a more extensive discussion about this).

### 1.2. “Watch full video”: Media convergence and representation of participants

All researchers must make decisions about how to analyze and then shape the data they collect. For qualitative researchers whose “data” involves trying to (re)present and analyze participants’ experiences, these decisions center around how to include—or not—participants’ voices and perspectives (for an extended discussion of this, see Kirsch & Mortensen, 1996). In text-based studies a number of approaches have been tried—use of different font face for quotes from participants (Ivanic, 1998), extensive “interchapters” of interview transcripts (Kirsch, 1993), and invitations to be listed as co-authors on chapters (Selfe & Hawisher, 2004). With the convergence of digital technologies and the changing rhetorics of creation and communication, the choices researchers face for how to represent participants have evolved. And, it’s important to remember, all of the choices of representation are ethical choices, ones that must be made while considering one’s responsibilities to multiple audiences: the research participants, the scholarly community, protocols established by review boards, etc. (see McKee & Porter, 2008).

As Gesa Kirsch (1999) argued when reflecting on an earlier study she conducted (Kirsch, 1993), researchers must balance their desires to give participants voice while at the same time trying to provide interpretative, analytic frames because for the research community, researchers do have a responsibility to provide analysis. With the infinite expandability of the Web, sure it’s possible for a researcher to include the raw, extended footage of all video interviews, for example, but to do so and not also provide selected excerpts with analysis might be viewed as problematic and as an abdication of researcher responsibility (the print equivalent would be to mail all readers of a research report the unedited files—for one study I conducted that was six boxes’ worth). In his *Kairos* article, Ellertson not only included excerpts of the video interviews, as well as a text-menu of the key points in each menu to help readers decide if they wanted to watch the video, but he also included links that read “Watch full video” for people who wished to see the unedited footage. By choosing smaller delivery packets for content, while at the same time providing the full footage for those interested, Ellertson modeled a good approach for how a researcher can seek to balance responsibilities to various constituencies.

In terms of ethical responsibilities to research participants, the convergence of digital and networked media only multiplies the decisions researchers must make and raises the stakes, I think, on the ethical responsibilities researchers have to participants. All representations have potential to harm, whether it’s through more obvious means like getting someone in

trouble with the law (as Laurie Cubbison worried about when she was researching online Anime communities whose members often violated copyright [personal interview, 2006]) or less direct but potentially just as harmful means such as betraying someone's sense of trust or exposing a participants' personal information for all on the Web to see.

The increased integration of audio-video representations in digital publications of research is especially problematic. Scholars publishing solely in alphabetic text may disagree, but I think video representations, for example, are more immediate, visceral representations, carrying more of an impact upon viewing and listening. Upon reviewing a report that includes audiovisual components, a participant doesn't just read his or her words on the page, but instead sees and hears himself or herself on the screen, not "those are the words I used" but "that's *me* there saying that—that's what I look and sound like." For that reason, researchers who seek to use video or other audiovisual multimedia in representing research participants should proceed with extra care, especially if the audiovisual elements will be published and widely (and easily) accessible on the Web.

I experienced the uneasiness of multimodal Web representation firsthand when Brian Houle and I studied undergraduate students' use of multimedia in web compositions. We did not initially envision conducting collaborative research with participants, but when a student, Alex Kimball, gave us permission to study his project "Robin Hood: A Personal Mythography" we realized that because of the focus of the project (a multimodal retelling of Alex's transgendered transformation from Bethany to Alex complete with audiovisual representations) and because we were thinking of publishing (as we eventually did) in *Computers and Composition Online*, we did not feel comfortable with the original research structure we had conceived (we as researchers, Alex as participant), so we asked Alex to co-research with us (see Houle, Kimball, & McKee, 2004). Even as we co-planned, co-researched, and co-wrote the multimodal web article, we all struggled with issues of representation, wondering whether, for example, pictures of all three of us should be included. We ultimately decided to include audio of all of us discussing Alex's project, but the only visual images we included (besides a tapestry interface) were the original images in Alex's project, androgynous pictures when Alex/Bethany was a child dressed in a favorite Robin Hood costume. While I think it important for all researchers to seek (when possible) collaborations with otherwise would-be participants, I think it's especially important and helpful when working in the immediacy of audiovisual representations.

Besides seeking collaborations where possible, researchers also have an obligation to become as software-savvy as possible (or get tech support) so that if fine-cut edits are needed (editing the name of a specific person mentioned in a video interview, for example), they can make such edits. Although audiovisual components of research may carry different impact, they also still need to follow some of the same principles of alphabetic text-only representations, including the ability to present information pseudonymously if necessary. It may be that pseudonymous research is not possible with audiovisual representations, in which case, depending on the study, researchers may have to recognize that not all work lends itself to audiovisual components.

It's also important that, just as with text-based web environments such as MOOs (see Buchanan, 2004; Gurak & Silker, 1997; Turkle, 1997), researchers of multimodal, virtual worlds seek to protect and represent ethically the avatars and game characters created in massively multiplayer online games (MMOGs) or co-created worlds such as *Second Life*.

Phill Alexander (2007), in a participant-observation study of gamers in the MMOG *City of Heroes*, documented in his interviews the incredible amount of time and effort participants put into character creation, not only in designing their avatars, but also in creating extensive back-stories both in-game and in game-related blogs and web sites. While it may be tempting to turn on the videoscreen capture (or increasingly, the audio recorder) and include images (and audio) of such virtual spaces, there are a number of ethical considerations to be addressed—virtual does not mean “not real.” For many participants online characters and communities are just as “real” and as important as “real-world” interactions as the “real” and the “virtual” increasingly converge.

In print-based publications, researchers certainly have to consider these issues of pseudonymity and how to handle what Thomas Newkirk (1996) has called the seduction and betrayal of research (see also Kirsch, 1999; Powell & Takayoshi, 2003), but the convergence of scholarly publishing venues with networked technologies brings greater urgency to issues of privacy and protection that researchers must consider. If I write about a student in *College Composition and Communication*, most likely only a few hundred people, or, if it’s a popular article, a few thousand people will read it. But if I put something on the Web, especially in a non-password-protected space, it’s widely accessible for all to find, read, and even remix.<sup>3</sup> Recently, while co-reviewing a web text manuscript for an online journal, I noticed that the manuscript authors included the full text of a student’s email, which referenced the student’s recent run-in with the law and in which the student had included a link to the newspaper article about the incident. Seeking to protect the student’s identity, the researchers did not include the actual working links that the student had included in the email; instead they included a screen capture of the newspaper article, editing out the student’s last name, the name of the town, and blurring the accompanying photo. However, knowing the title of the article, the newspaper, and the date of publication, in just a few minutes my co-reviewer and I were able to locate the complete text of the newspaper story and learn the student’s real name and see the student’s photograph. Now, if we had encountered the screen capture of the newspaper article in a print journal I’m not so sure we would have bothered to try to find the original, but because we were reading it online we decided to see if we could find it. And find it we did. This is just one small example of how academic publishing is converging with more mainstream media—how we can no longer think that we’re simply writing for a small scholarly audience of like-minded peers. That Google returns 1.2 million hits in less than .03 seconds matters, and

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<sup>3</sup> How quickly remix can happen and the impact of that on research participants can be inferred from the case of Gyslain Raza, who as a boy of 12 in 2002 recorded a video of himself pretending to be a *Star Wars* Jedi. The several minute-long video shows Raza holding a stick and waving it around while he made warrior-like moves and vocalized special effect noises. (Since the case is so public, even with its own Wikipedia entry, I do not feel it’s a violation to bring it up here.) Some classmates of Raza’s found the videotape and uploaded the segment to the Internet. Within a matter of weeks it was downloaded and/or viewed millions of times and numerous remixes were posted. Some simply added special effects, like changing Raza’s stick to a glowing light saber and putting in flying spheres that Jedis use to practice with, but some were more cutting. All of the attention, according to newspaper reports, adversely affected Raza, making him feel harassed, humiliated and depressed. Although Raza was not a research participant and although the video was uploaded against his will, his story is instructive for researchers (and teachers) working with multimedia, particularly video. Anything, absolutely anything that’s publicly available on the Web is open to possible remixing and widespread redistribution.

it's something we as researchers need to be keenly aware of as we move to Web publication of our work. We also need to ensure that our participants are aware of the potential risks of Web publication as well, a point I will return to in the next section after addressing one more issue of representation.

### 1.3. *"Here's a picture of my boyfriend": Representation of third-parties in multimedia research*

Whether working in print-only or digital contexts, all researchers need to consider issues of representation of third-parties, people who are not the immediate subject of study but who are represented in either the works or words of others. Just as audiovisual representations of participants may be more immediate and carry more impact than text, so too for third-parties who may be represented in digital texts being studied. I taught a student whom I'll call Jason who created an iMovie project for class, and in that project Jason interviewed his grandmother. Were I to research Jason's project and republish it for an online journal, I would get consent from Jason, but that doesn't mean my ethical responsibilities around representation end there because in republishing the work I would not only be representing Jason, but Jason's grandmother as well. As a researcher I would have ethical responsibilities, I think, to Jason's grandmother, even if institutional review boards, for example, say I don't need consent from her. In print-based studies the names of third-parties are often changed, and in audiovisual texts they can be edited, submitting beeps or silence, for example, or blurring still images, as I did when researching students' personal web sites and including screen captures in a print-publication (see Edwards & McKee, 2005; McKee & Porter, 2008). But sometimes such edits are not possible, especially when the third-party being represented is integral to the work. Researchers need to be sensitive to times when it may be best not to republish excerpts of another's audiovisual project because of such concerns for third-parties, particularly with online Web publications where files can be downloaded and remixed.

As a teacher, when I first started having students create audio and video files, I just sent them forth with their digital recorders and cameras. What I didn't do, which I now do, is make sure they also go forth with a release form for any person who appears in their projects to sign. Each semester I check with the Human Subjects Research Compliance Officer at my institution to double-check the students' projects, even if involving interviews and publishing on the Web, do not fall under human subjects review. So far the officer has decided that they do not, provided my students and I are following the ethical procedures of media journalists, having any subjects who speak or who are singled out as video subjects sign a release form. I mention this here because were I to choose to research students' multimedia projects it would, perhaps, make ethical decisions easier regarding third-parties in my research (i.e., the subjects of the students' projects) knowing that all people in the audio and video files had released their rights and given permission for their image and voice to be published by the student on the Web where they would be widely and publicly accessible (versus just appearing in a classroom-based assignment for sharing only with the teacher and a few other classmates).

But publishing on the Web is tricky in terms of ethical responsibilities, particularly because I am not so certain that release forms or consent forms are actually adequate for informing

people of potential risks and uses of their words, images, text, etc., as I will describe in the next section.

## 2. How informed is informed consent?: The complications of media convergence

Informed consent—whether it’s needed and, if so, how to obtain it—raises a number of ethical issues, particularly for digital and Internet researchers where the distinctions between person-based and text-based research are often ambiguous (see AoIR, 2002; Buchanan, 2004; Frankel & Siang, 1999; Gurak & Kastman, 1999; Kitchin, 2002; Mann & Stewart, 2000; McKee & Porter, 2008). For the purposes of the discussion here, what most interests me in relation to media convergence is how the use of audiovisual components and networked technologies raise questions about and problematize informed consent, at least as it is often practiced in the United States.<sup>4</sup>

First, some background. Researchers conducting “human subjects” research who are affiliated particularly with medical and educational institutions often are subject to regulatory governance shaped by the *Code of Federal Regulations, section 45, part 46* (OHRP, 2001). Based on the principles of respect for persons (autonomy and choice), beneficence (do no harm), and justice (equitable distribution of risks and benefits) expressed in *The Belmont Report* (National Commission, 1979), 45CFR46 calls on researchers to obtain informed consent from all participants.<sup>5</sup> Informed consent documents must include a great deal of required material, such as statements that the person is being invited to participate in a research study, that participation is voluntary, that the university research office may be contacted, etc. Researchers in the informed consent document often also must state what will happen to the data files collected (e.g., destroyed in a certain number of years, etc.). But having filed informed consent documents at over 20 different colleges and universities and having served on two IRBs, I’ve found that many do not require researchers to include the publishing venue for their research study. In the past when most writing studies research was published in print-based, paper-based journals read by a small, scholarly audience, such a lack of information on the

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<sup>4</sup> The complexities of seeking informed consent for audiovisual recordings is described by the educational researcher Jon Prosser (2002) in his chapter “The Moral Maze of Image Ethics,” where he discussed his image-based educational research which draws extensively from extended videos of classrooms. He explained how in his research he often felt that it was hard for his participants to give fully informed consent because they did not understand the video-editing process, a process he thus tried to explain as adequately as possible. He also tried to explain possible audience receptions to videoed classes because in his research he found that audience reactions to video representations were upsetting to participants. As he explained:

Since it is very difficult to predict outside audiences’ reaction to observational film of classrooms, participants’ awareness of potential hazards of external interpretation is integral to informed consent, and as important as who owns and controls the data is how data are to be used. (p. 129)

Prosser’s efforts to provide a full range of information, beyond what might exist in traditional consent documents, serves as a good model for rhetoric and composition researchers working with multimedia and/or publishing in public venues on the Web.

<sup>5</sup> For more about IRBs in relation to research in rhetoric and composition and technical communication, see Anderson (1996), Anderson (1998), Banks and Eble (2007), McKee (2003), McKee and Porter (2008), Mountford and Hansberger (1998, August), and Powell and Takayoshi (2003).

publishing venue may not have mattered as much. But as more and more publication is moving to more widely accessible online venues, such as *First Monday*, *Kairos*, and *Computers and Composition Online*, including information about publishing venue in an informed consent document is crucial. Requiring such information is necessary not only to inform participants of the potential public and easily-Googleable nature of a research report, but also—and this is where things get problematic—to inform participants just what that wide-spread public availability and networked connectivity might mean in an age of blogging, remix, and increasingly converging communication practices.

Here, for example, are two excerpts from consent forms I have used in studies:

1. *Excerpt from the informed consent document for a current study co-researched with Jim Porter on the ethics of digital writing research where the participants are university researchers:*

The results of this study—including direct quotations from the interview—may appear in published form in conference presentations or in articles written for academic journals such as *Computers and Composition* or the online journal *Kairos*. They may also appear in a book we are writing.

2. *Excerpt from the informed consent document for a video-interview study co-researched with colleagues at Miami University on the impact of wireless laptop computing on student learning where the participants are first-year college students:*

After the semester is over, the raw video footage of all students interviewed (approximately 30 will be randomly selected) will be edited together to form shorter videos capturing students' perceptions of the Digital Writing sections. These edited videos will be shown to instructors, students, and administrators at Miami University to help show the impact of Digital Writing. The edited videos will also be shown at conferences (such as the College Composition and Communication Conference) or presented in web articles (such as for the journal *Kairos: A journal of rhetoric, pedagogy, and technology*). Because the videos are recording your visual and audio likeness it will not be possible to keep your identity anonymous. You may, however, still choose a pseudonym to be referred to by.

Although both examples note possible publication in “online journals” and “web articles,” nowhere in either example is it made clear that the online journals my colleagues and I might publish in are publicly and widely-accessible and searchable by anyone with an Internet connection. In a time when more and more academic journals are going online in publisher-controlled, subscriber-only databases, going “online” or being “web-based” is not a clear designation of how public and accessible one's research (and thus participants' words, images, audio, etc.) might be. I think informed consent forms (and release forms), particularly for multimedia studies that may be published on the Web, should specify the very public nature of the Internet and the possible risks that others may appropriate works.

### **3. Researchers in a remix culture: Legal issues of copyright and fair use**

Perhaps no single legal issue impacts digital researchers more than copyright, yet getting a handle on what copyright law is, particularly in this era of ever-changing regulations, is

difficult to say the least. Because of the convergence of digital technologies and because of the uses to which individuals put these technologies, digital researchers are no longer working in one medium or one context. That is, they're not simply dealing with print-based copyright matters, but also copyright as it applies to music, video, art, etc. And too they are often working online where their scholarship is readily available for reading by the ever-vigilant corporations seeking to protect their copyrights (and their trademarks). Complicating the issue even further are debates among the many stakeholders along the copyright and copyleft continuum.<sup>6</sup> On the one hand there are entities like Disney Corporation and the Recording Industry Association of America who argue for the strictest possible limits on copyright exceptions and on the Fair Use Doctrine (section 107 of U.S. copyright law). On the other hand are organizations such as the Electronic Frontier Foundation and copyright scholars such as Lawrence Lessig (2002, 2004) who advocate for the broadest interpretation of the legal code. Somewhere in the middle are stuck all of us—teachers, researchers, students—trying to figure out what to do in the various contexts in which we research, teach and write.

I don't have the space in this article to overview all (or even many!) of the intricacies of copyright law—including the histories of such key cases as Sony Corp. v. Universal Studios (1984), A&M Records v. Napster Inc. (2001), and MGM v. Grokster (2004) (see DeVoss & Porter, 2006; Rife, 2006, 2007)—but what I aim to do is provide the briefest of overviews of the key provisions of the Fair Use Doctrine and how that impacts researchers who seek to republish digital files of multimedia works. Because so much of our research in computers and writing involves research on students' digital texts and because students are so immersed in the remix culture (see DeVoss & Porter, 2006; Webb & DeVoss, this volume), I will focus in particular on what researchers must consider when studying students' use of others' work in their own classroom-based compositions.

### 3.1. Fair use overview

In 1976 U.S. Copyright Law was revised so that all work, including student writing, was immediately copyrighted, whether labeled by the author with a copyright symbol and date or not. What this meant was that in the United States, rather than being an opt-in copyright system, it became an opt-out copyright system, something Lawrence Lessig (2004) has discussed in detail and which influenced his creation of Creative Commons, a non-profit site-licensing system that enables greater sharing of materials than under traditional copyright (creativecommons.org).

A key provision of U.S. Copyright Law is the Fair Use Doctrine that states four guidelines by which to assess whether the use of another's copyrighted work without obtaining permission is a copyright infringement:

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<sup>6</sup> DeVoss and Porter (2006) articulated the tensions in the copyright and copyleft debate: "The battle has to do with the conditions of copyright, especially electronic copyright. On the side of *open access and distribution* we have small businesses, small web publishers, librarians, and public interest groups such as the Electronic Frontier Foundation. The side of *copyright control and constraint* consists of the Big Ten media CEOs; people such as Michael Eisner, chairman of Disney; Jack Valenti, former president of the Motion Picture Association of America (MPAA); and the conglomerates that own most of the worlds' telecommunications, sports, news, and entertainment industries" (p. 189).

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work. (*United States Code, Title 17, Copyright Law, section 107* “Limitations on Exclusive Rights: Fair Use,” 2003, np).

While these guidelines are short and seem simple, determining what is fair use is anything but simple, especially when applied to digital media. As Porter (2006) pointed out, it is actually only the courts that can ultimately decide if a particular use of another’s work is a fair use rather than a violation of copyright. But since few people want to receive the cease-and-desist letters or be threatened with possible lawsuits, it is important to try as individuals and as professional organizations to develop some sense of what uses seem acceptable.<sup>7</sup> In addition, the scholarly journals in our fields, including the online journals, require that work be used with permission or fall under fair use provisions (Ball, 2007; Blair, 2007).

### 3.2. (Re)publishing of materials: Fair use and multimedia

Because of the Digital Millennium Copyright Act (DMCA) and other legislative actions lobbied for by the movie companies and the recording industry (among others), the digital reproduction of copyrighted video and audio files is complicated and perhaps the most heavily contested area of copyright at the moment (as evidenced by ongoing lawsuits against peer-to-peer file sharing sites and user-created content sites such as YouTube). People composing in public web spaces where files can be viewed, listened to, and downloaded, need to be particularly cautious about their use of copyrighted songs and videos.

For example, it is not generally a good idea to include the entire file of a song because that may not fulfill provision 3 (amount) and provision 4 (effect) of fair use, even if the song is included in a classroom-based project, as was the case, for example, in the student projects Madeleine Sorapure (2003) analyzed in a *Kairos* article (see McIntire-Strasburg, 2007, for more analysis of Sorapure’s article in relation to copyright). But there are ways around this for teachers and researchers, as Kevin Brooks, Michael Tomanek, Rachel Wald, Matthew Warner, and Brianne Wilkening (2006) discussed. They conducted a study of what students listen for as they integrate audio in multimodal compositions. In their online article about their research, Brooks et al. included the complete files of student projects. In previous years they had students use any music, including copyrighted works, but in 2005, the year of their study, IT on their

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<sup>7</sup> Some excellent resources to help researchers who wish to delve further are available at numerous government and education web sites, including the extensive resources provided by the Copyright Management Center (<http://www.copyright.iupui.edu/index.htm>). In addition, a number of professional organizations offer guidelines about copyright, including The Center for Social Media’s “Documentary Filmmakers Statement of Best Practices in Fair Use” (2005) ([http://www.centerforsocialmedia.org/resources/publications/statement\\_of\\_best\\_practices\\_in\\_fair\\_use](http://www.centerforsocialmedia.org/resources/publications/statement_of_best_practices_in_fair_use)).

campus requested that they not violate copyright with university resources. As Brooks et al. explained (and I quote at length because their experience and solution are helpful I think for others),

All three of the videos [made by students] made use of a full song, a feature that caused some frustration and confusion in 2005. The Technology Learning Center on campus, which had provided support for the project in 2003 and 2004, asked us to be more cautious with fair use guidelines in 2005, so we asked student to use one of the following approaches.

- a) A song in the public domain and or a song that was available under an appropriate Creative Commons License.
- b) A song the student received permission to use from the artist or copyright-holder.
- c) Thirty-second loops or splices, in accordance with fair use guidelines.
- d) A song of their own creation—an mp3 from their own band, a song created in Garage Band or other electronic composing software, or other unique compositions for which they would be the copyright holder, albeit an unregistered copyright holder.

This complication of the assignment turned out to create a much richer learning experience for all involved, as we will elaborate below. We provided students with an extensive list of websites that provide free, public domain images, and we gave students a similar list of links to public domain/Creative Commons mp3 or WAV files. (Brooks et al., 2006, np)<sup>8</sup>

When faced with the need to fulfill fair use parameters more rigidly, Brooks et al. found a number of solutions for ways that students could still incorporate music into their multimodal compositions. While these solutions benefited students because they helped them learn more about copyright and about the many public domain and/or user-created resources available, they also benefited Brooks et al. as researchers. Because students had not violated copyright in their works, as researchers they could include those works when they published the results of their study in *Computers and Composition Online*, a web-journal whose use guidelines for images (and I assume that applies to music) state in part, “Also, images need to be either original work, used with permission, or fall under fair use guidelines. In an email to me (which I quote with permission), Kris Blair (2007), the journal’s editor, explained the journal’s policy more fully:

We try as best we can to uphold this policy or presume that authors are securing such rights, though clearly it is important for us and other editors to be more vigilant in this process. In the past, we have asked authors to confirm permission or parameters of use-one video essay made use of Disney lyrics, for instance, and we did ask for verification about Disney policies.

Given these policies, which are similar to those of *Kairos*, had Brooks et al. not had students follow fair use guidelines in their compositions they as researchers might not have been able to include the students’ work in their reports because even if the original copyright infringement

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<sup>8</sup> Another option would have been for Brooks et al. (2006) to ask students to secure copyright permissions from the song’s copyright holders. However, as Bell and DeVoss (this volume) point out, securing copyright is usually an incredibly difficult and time-consuming process, one that students might not be able to complete in the space of a semester or quarter.

falls on the original author (in this case the student) it also is a copyright infringement for someone to republish work that infringes on copyright.

However, provision 1 of the Fair Use Doctrine allows for uses of copyrighted materials for educational purposes. The media corporations, particularly the film and recording industries but also publishing firms, have sought to tighten the interpretation of the educational exception, and in many cases they have succeeded (see Lessig, 2002, 2004). So what each teacher-researcher must try to determine is what uses of copyrighted materials fall under educational fair use and what uses might constitute infringement. If, as instructors and researchers, we adhere to a strict acceptance of copyright maximalists' expectations for copyright, we could be contributing to the erosion of the Fair Use Doctrine, a point Porter (1998; Porter, 2006) has emphasized. So what are researchers and teacher-researchers to do? I have been faced with this quandary in terms of students' use of copyrighted material in my own teaching, a quandary that has also impacted my research. In spring 2006, for the first time, I had students work in teams to report on the use of a particular digital communications technology by students and faculty on campus. In their multimodal web reports, students included video and audio interviews. Some students also chose to make slide shows, setting series of still images to music using the complete songs of popular bands. Another team reporting on Facebook designed their site using many of the trademarked elements of the Facebook interface, such as the logo, color scheme, and font style. Currently the student projects that are on the Web from a section I taught in spring 2006 all exhibit potentially infringing uses of copyright, depending upon the interpretation of fair use and copyright that one applies (<<http://www.users.muohio.edu/mckeeha/english112>>). In my first time teaching the course, while I knew on one level the importance of copyright, I did not discuss it with students, following but not articulating a copyleftist position of "let the corporations come and write the cease-and-desist letters, until then these works, as educational projects, will stand." Even though I'm not too concerned for the corporations (they make enough money) and even though I still believe strongly in educational fair use, what I realized was that that my failure to discuss copyright with students was inappropriate as a teacher because it was not helping to prepare students for considering the complicated issues of copyright. In addition, my failure to ask students to seek other materials to use (self-created, in the public domain, licensed with creative commons share licenses) means that I may face difficulties if I seek to publish a report on these projects in an online journal. This coming semester when students will again complete this project, I will advocate for educational use of copyrighted materials, but I will also require students to try to seek other alternatives first, using many of the recommendations that Brooks et al. list.

Making this a requirement for students is, however, a bit of an uphill battle. As DeVoss and Porter (2006) have articulated in their discussion of remix culture, college students today are part of "an emergent culture of young people (mostly) who live in (and, at times, create) networks encouraging widespread sharing and distribution of digital material" (p. 185) and they view the Internet less as a "mechanism for the delivery of goods to market" and more so a "public living space" (p. 185). As Jenkins (2006) has noted as well, new media technologies have converged, creating social networks of usage that are thoroughly integrated into many people's lives. My requiring students to follow fair use guidelines doesn't just impact their work for a class assignment, but also asks them potentially to change behaviors that are part of their daily lives. An uphill battle indeed.

In addition, the recent research of the Center for Social Media on college students' understanding and use of copyright at YouTube found that students were "universally under-informed and misinformed about the law" and most felt that materials on the Web and in popular culture were available for creative remixing and reuse (Aufderheide & Jaszi, 2007, pp. 1–6). What this means for teachers is we've got to balance cultural expectations of use with legal pressures of copyright in our classrooms. What it means for those of us who engage in teacher-research (or research on users of YouTube, for example), is that we need to argue for the ability of researchers to include in their reports student texts or data-captures of student composing processes, even if these texts may step beyond educational fair use into potential copyright infringement. If we don't do so, we may end up limiting our abilities to report in our research the broadest array of data from which to build richer, more nuanced understandings of writing processes and products in the digital age (McIntire-Strasburg, 2007; DeVoss & Porter, 2006; Rife, 2007).

#### **4. Conclusion: Multiple convergences and researcher reflexivity**

In the singular the term 'media convergence' is misleading—implying as it does a singularity or collective singularity. More accurately we're living in an age of convergences as media, communication technologies, and individuals' social and cultural networks of use become increasingly intertwined. For writing researchers, research has become ethically and legally more complex because of these multiple convergences. Writers can now integrate a wide variety of media in their writing, raising new issues and remediating (Bolter & Grusin, 1999) pre-existing issues of representation, informed consent, and copyright. But it's not just the convergence of media, it's also such convergences as how real-life and virtual life are increasingly inseparable, how people view their avatars and communications in such places as *Second Life* and *World of Warcraft* not as secondary, but as intimately connected to their erroneously termed "first life." And, at the publishing end of research, it's how academic journals, particularly online journals, are potentially available to wider audiences, converging with more popular and public forms of information—turning up in search lists next to *The New York Times* and *CNN*. As researchers, we need to consider the impact of these convergences on our research, not just in the process of planning and conducting research, but also when writing up our research reports. Only by reflecting on and adjusting to the impact on our research of social, technological, and rhetorical convergences will we be situated to pursue the most ethically and legally sound approaches to the various writers, texts, and contexts we study.

#### **Acknowledgments**

I would like to thank many colleagues, students, and research participants who have worked, learned, and researched with me, helping to push my thinking on research ethics and digital writing studies in productive ways. I would also like to thank Jonathan Alexander and James Porter for their feedback on earlier versions of this manuscript.

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