

12 RHETORICAL VELOCITY AND COPYRIGHT: A CASE STUDY ON STRATEGIES OF RHETORICAL DELIVERY

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In this chapter, we examine a case concerning a Michigan State University student (Maggie) whose image, taken in 2005 on university grounds during a student protest for fair trade apparel, was unknowingly appropriated and remixed by the university in 2006, 2007, 2008, and 2009. We argue that the appropriation of her image raises serious questions for rhetorical strategies of delivery, as well as emerging issues of intellectual property and copyright. Maggie's case poses a question to legal studies and to rhetoric and composition; in this case, there are no immediate or easy answers, but we argue that the case example itself may serve as a useful pedagogical tool. First, we describe Maggie's case, provide an overview of rhetorical velocity and remix, and then address intersections between copyright, rhetorical velocity, and the commons. Next, we overview legal issues arising from Maggie's case—issues of free speech, privacy, orphan works, the role of the institution as parent, publicity/contractual rights, and fair use. We conclude with a discussion of how composing for re-composition relates to the legal concept of the commons, as well as a discussion of pedagogical implications.

THE MAGGIE CASE

As part of a national effort by United Students Against Sweatshops (USAS), Movimiento Estudiantil Xicano de Aztlan (MEXA), and Students for Economic Justice (SEJ, a local affiliate of USAS), student activists at Michigan

State University (MSU) participated in a social justice campaign from fall 2000 to spring 2005. During this period, they tried to convince the MSU administration to join the Worker Rights Consortium (WRC), a fair labor monitoring body that investigates and certifies college apparel as sweatshop free.

In spring 2005, the SEJ and MEXA anti-sweatshop campaign at MSU underwent a major shift in tactics and strategy due to a change in university leadership. From fall 2000 to spring 2005, the students were unsuccessful in their efforts to convince the MSU administration, led by then-president Peter McPherson, into joining the WRC, and by 2004 the campaign was in a complete deadlock. As a result, from 2004 to 2005, the campaign tactics shifted to event disruption and other forms of direct action that included actions such as dressing up as waiters to surreptitiously attend alumni events and hand out “sweatshop menus” to hungry university donors.

Once President Peter McPherson resigned in spring 2005 and a more responsive and progressive leader, Lou Anna K. Simon, assumed the presidential position, however, the SEJ and MEXA student activists changed their strategy and tactics to better address the new rhetorical situation. On March 3, 2005, the first of approximately half a dozen large, media-centered protests took place. These actions were designed to be what scholar Kevin DeLuca (1999) described as an “image event”—a particular action designed to achieve media coverage through visual display. In this case, the SEJ and MEXA activists’ primary strategic objective for the protest was to obtain broadcast coverage and to continue their strategy of maintaining a consistent presence in the local news. Consequently, they attempted to use the media to continue to exert public pressure on the MSU administration.¹

Maggie Ryan, one of the activists involved in planning the protest, recalls that the action, which took place in front of the MSU Administration Building (a prominent space on central campus), moved the campaign in a new, more creative direction. She explains:

we were trying to integrate new ideas because just having a bunch of people gather with signs was getting a little boring and the media wasn’t really paying very much attention when there was like fifteen students with a sign—[but] the media started paying more attention when there was like fifteen students doing something way different.

The March 3 actions included a far more creative and visual rhetorical appeal, one that moved beyond the simple stand-with-signs protest. In the group’s attempt to involve more activists as well as more media, they took a new ap-

abc 53 News Express Tuesday, March 8, 2005

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STUDENTS HOPING TO GET UNIVERSITY TO JOIN THE WRC

SOME MICHIGAN STATE STUDENT ACTIVISTS ARE TRYING ALL KINDS OF WAYS TO GET THE ADMINISTRATIONS ATTENTION AND TODAY THEY UTILIZED THE SNOW TO HELP GET THEIR MESSAGE ACROSS.

ABC 53 WAS THERE WITH A LOOK AT WHAT THESE SPARTANS WANT TO SEE HAPPEN. THEIR METHODS ARE UNORTHODOX BUT THEIR MAIN GOAL IS WANTING TO SEE THE UNIVERSITY JOIN THE WRC, WHICH IS DESIGNED TO PREVENT SWEAT-SHOP CONDITIONS. WHAT IS UNIQUE IS APPROACH THESE ACTIVISTS ARE TAKING.

THIS STUDENT ORGANIZATION IS HOPING CREATIVE TACTICS WILL GET THE ATTENTION OF THE CURRENT ADMINISTRATION.

IT IS FUN SURE, BUT IS IT EFFECTIVE?

WHAT THEY'RE DOING BRINGS ATTENTION TO THEM, BUT IT'S NOT REALLY CLEAR WHAT THEY'RE DOING UNLESS YOU ALREADY KNOW.

ACTIVISTS SAY THE UNIVERSITY IS LISTENING.

THEY'VE BEEN TELLING THEM THAT THEY WILL JOIN THE WORKERS RIGHTS COSORTIUM BUT WHAT THEY DISAGREE UPON IS THE CODE OF CONDUCT.

THEY WILL CONTINUE THEIR EFFORTS UNTIL THEY REACH AN AGREEMENT.

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Figure 1: Corresponding broadcast and Web news coverage (March 8, 2005).

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Campus Events
+ **Gallery Walk**
Kresge Art Museum. Thursday, March 2; 12:10 p.m.

Figure 2: First instance of university appropriation, main webpage (March 2, 2006).

proach—writing with the tools that winter provided, snow itself. as Maggie recalls: “We got dye to write things in the snow and we wrote with our footprints very large in the snow ‘W. R. C’ so it was visible from very high up.” Arguably, both the broader campaign and this specific action were a complete success, and the rhetorical goals Maggie and the others intended to achieve were reached. Due to a constant and steady stream of protests, media, and publicity, the student activists’ objective was achieved on April 8, 2005, when MEXA and SEJ learned that President Lou Anna K. Simon intended to join the WRC. By the end of the summer, President Simon had kept her promise, and the university formally joined the WRC.

But that is not the end of the story, at least not for one participant in the WRC spring 2005 campaign. In November of 2006, the university used an image of Maggie from the March 2005 protest for advertising purposes (see Figures 1 and 2). According to Maggie, this appropriation wasn’t something she had anticipated when the action was initially conceived. She describes how the image was captured during the action:

I was wearing like a sweatshirt and some other people in Students for Economic Justice were playing in a snowball fight and there was a photographer during the snow fight who was really kind of sketchy scaling up the buildings to take pictures and it was really weird. And then about maybe eight months later the picture appeared on maybe the front page of the Michigan State University and the title of it was “students having fun in the snow.”

Although the protest itself was far from serious, there is no doubt for Maggie what the political intentions of the assembly were. Despite the lack of seriousness associated with the action, the appropriation of Maggie’s image (see Figures 2, 3, 4, 5) without her consent is indeed a strange and unanticipated occurrence with serious consequences.

Maggie Ryan’s image was first used as the main focal point on the MSU Web site in 2006 (see Figures 2 and 3), but this would not be the last time the university would use her image. Even after Jim Ridolfo conducted his interview with Maggie Ryan in 2007, an additional example of appropriation took place in 2008, when the university used her image as part of a major bulk mailing effort (see Figure 5).

Maggie Ryan’s case exemplifies the surprising distance that possible strategies for delivery can travel. Although the desired press coverage of the March 3 action was achieved (see Figure 2), Maggie had no way of anticipating how

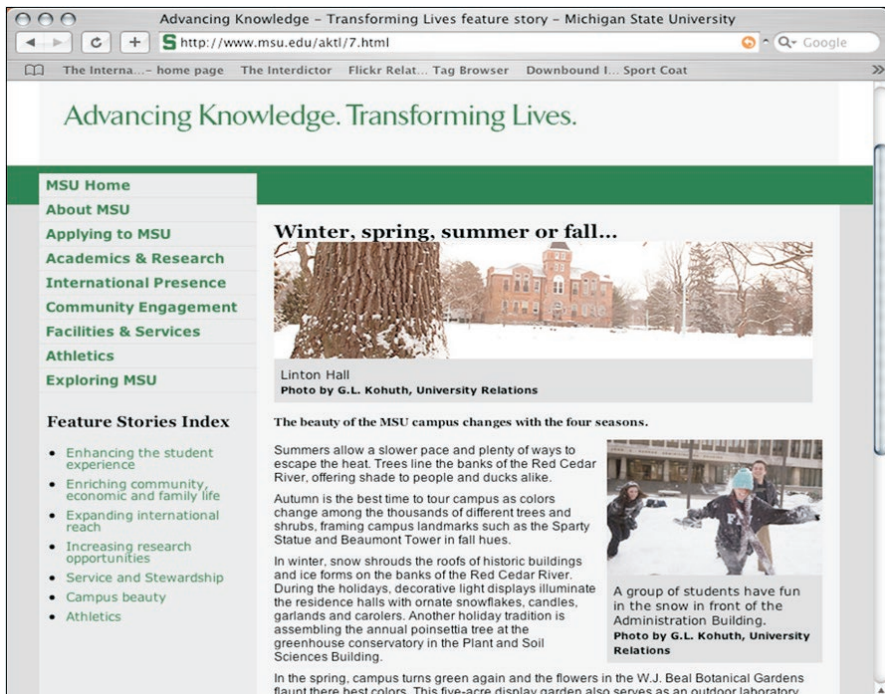


Figure 3: Sub-page of main webpage (March 2, 2006).

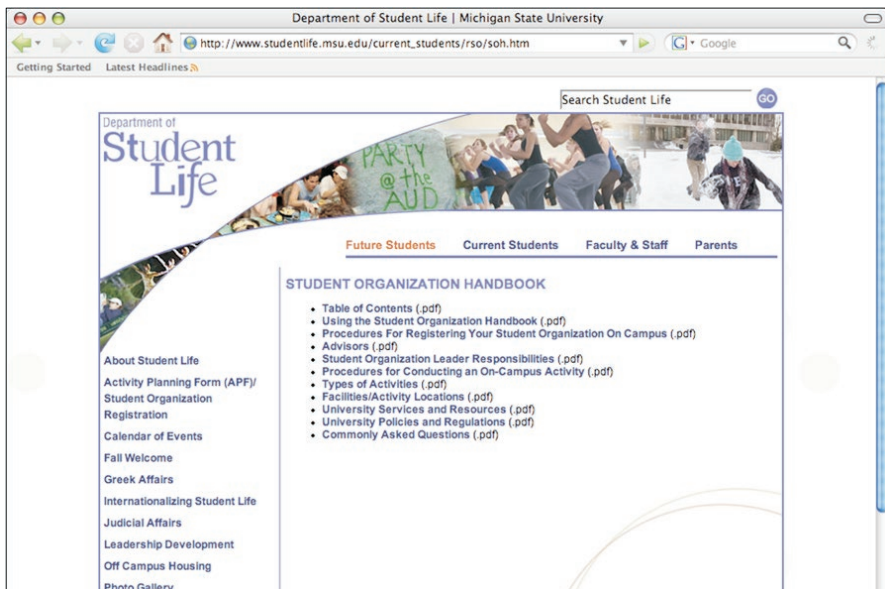


Figure 4: Department of Student Life main webpage (October 24, 2007).

the university would later use an image of her from the event to promote the Department of Student Life and the university itself. In addition to directly appropriating her image, the university also remixed her image. In Figure 2, it's clear that not only did the Web team (staffed primarily by employees of the University Relations department) take a picture of Maggie out of context but they also repurposed it by adding the caption "winter fun learn more." In Figure 1, they also cropped Maggie out of the less-scenic background of the MSU Administration Building, and put her image on a more picturesque and iconic backdrop of a recognizable campus landmark. When Maggie talked about the action after these first two acts of appropriation and remixing had taken place, she called attention to the way the university used her image without any attempt to attribute it to her:

They [the university] didn't contact me. Nobody ever got my name. Nobody ever asked anything. The reporters I don't think even got it but university officials definitely didn't. They didn't get my name or the name of the other person in the picture. And I was like the main person, focal point of the picture.

Although Maggie never consented to or approved of the university using her image for these large-scale advertising purposes, she talked about what she could have done differently to curtail the appropriation of her image. She says that it might have been "a good idea to have more prominent posters or things with you or have things with you so people know what's going on." In articulating the options she didn't initially exercise, Maggie strategized how to resist certain forms of appropriation. These examples raise serious questions about the limitations of how far one can inductively anticipate future recomposition.

RHETORICAL VELOCITY: COMPOSING FOR STRATEGIC RECOMPOSITION

Ridolfo and Dànielle Nicole DeVoss (2009) explored the intersections of rhetorical velocity and theories of remixing. Ridolfo, drawing on his research in rhetorical delivery (see Ridolfo, 2005), and DeVoss, working from her knowledge of remixing and digital delivery, theorized that today's digital delivery is different because:

A new element, however, enters the mix when we situate remix in today's digital culture; more elements and oth-

ers' elements become much more readily available to mix, mash, and merge. And, in fact, processes of mixing are valued across these spaces, where savvy mixers are recognized as their YouTube channels hit the top ten and as their videos become streamed across hundreds of servers. What is obvious here is that composing in the digital age is different than traditional practices of composing. Rhetorical practices in a digital age are different than traditionally conceived. Electronic copying-and-pasting, downloading, and networked filesharing change the dynamics of writing and, importantly, of delivery.

We want to expand on this conversation of examining “mix, mash, and merge” by exploring how elements of rhetorical delivery intersect with copyright concerns.

In the protest plans related to the Maggie example, there was a considerable degree of concern for how the action might be picked up by the press. The event was designed by the student activists to produce other texts; the objective was to facilitate the composition of news coverage. This strategic concern for delivery is best described by the concept of *rhetorical velocity* (Ridolfo, 2005; Ridolfo & DeVoss, 2009). Rhetorical velocity is a strategic concept of delivery in which a rhetor theorizes the possibilities for the recomposition of a text (e.g., a media release) based on how s/he anticipates how the text might later be used. The rhetorician theorizes how certain newspapers, blogs, or television stations may re-compose and re-distribute the release both as and in other media. In thinking about re-composition and re-distribution as a complex multimodal strategy, the rhetorician also considers how the release may be recomposed in ways advantageous or disadvantageous to the rhetor's goals and objectives. For example, how might moving from one media to another affect the message? How might the text of the release be remixed in ways that might harm the rhetor's goals? If the rhetor composes and distributes a video release, what is the optimum format to encourage strategic remixing?²

In Maggie's example, she worked with other student activists to design a visually intensive protest to achieve a particular type of broadcast press coverage. Even though the protest and activist campaign were ultimately successful, in the years that followed, a series of images were used in ways neither Maggie nor the other activists could have plausibly predicted. Although the activists succeeded in their rhetorical goal of achieving third-party media coverage for their campaign, Maggie's ethos was drawn into the spotlight in questionable ways for years after the initial events took place.

Clearly, ethical questions of group rhetorical strategy in the digital age emerge from this case. In the age of remix, to what extent should groups theorize visually intensive campaigns in terms of the potential impact on future ethos for individual participants? To what extent should participants in visually intensive protests be conscious of how the images they co-produce may be used in the future? Should the university have asked Maggie for permission before making her a sort of poster child for the university? Should the Department of Student Life have asked Maggie's permission before using her image? Should the Admissions Office have asked Maggie's permission before mailing her image out as a recruiting tool? How could Maggie have realistically anticipated this latent reappropriation of her work, if at all?

THE LEGAL, ETHICAL, AND CONCEPTUAL ISSUES RELATED TO THE MAGGIE CASE

In this section, we untangle some of the legal, ethical, and conceptual issues regarding the use of Maggie's image by the university. How should one "anticipate" the rhetorical appropriation of their work, and what role should knowledge of copyright play? When leveraging the tenants of Ridolfo's theory of rhetorical velocity, what laws, concepts, or set of ethical considerations might arise as one imagines one's creations, images, or cultural properties being appropriated by others?

The Appropriation of Images and Bodies

To give specific context to our discussion, we need to define exactly what was appropriated by the university: a digital image of Maggie, more broadly speaking, an image of a human body. Admittedly, a concrete and well-defined understanding of propertied ownership is likely unattainable in this instance. Human bodies, as well as products derived from those bodies (such as digital images like the one of Maggie)



Figure 5: Panel from print bulk recruitment mailing (February–March, 2008).

evade ownership in any traditional sense; on the one hand, the question of property rights in the human body lacks a clear answer. On the other hand, the question is over-determined in legal theory: there is a plethora of conceptual and legal regimes that seek to analyze and regulate the function and meaning of “ownership” in this area. (Flessas, 2008, p. 388)

Tatiana Flessas discussed some of the complicated issues surrounding claims to ownership of aboriginal bones (see also Holder & Flessas, 2008). We draw from her work although we admit that the digital image of Maggie and aboriginal bones are in some ways quite dissimilar. However, Flessas’s analysis of the various arguments on the ownership of human bones, we think, is very useful for shedding new light in the area of rhetorical velocity, copyright, and the digital image of Maggie.³ Flessas states that “‘indigeneity’ is an *ongoing discussion* about common values and common identity and a *strategy* for ownership claims” (p. 402). For the purposes of this chapter, we draw on the notion of radical symmetry from actor-network theory (Latour, 1998, 2005; Law, 1992), and posit that the image of Maggie and human bones are in some respects symmetrical: both are bodies over which allegations of appropriation and claims to ownership have arisen. In turn, these allegations of appropriation also invoke issues of free speech and privacy.

Free Speech and Right to Privacy

As TyAnna Herrington (1998) noted, copyright and first amendment issues are intertwined. Issues of free speech arise in Maggie’s case, but not in the way that such issues are normally considered. Of course, at a public university, Maggie has a first amendment right to free speech on campus as she works towards raising awareness of the WRC cause; that’s not disputed here. The right to privacy problem in this case arises from tensions between Maggie’s right to privacy and the institution’s right to free speech.

When someone appears in a public space, as Maggie did, the general legal standard asks whether or not a reasonable person would have a right to privacy in such a space (Rife, 2007)—this is the rationale that photojournalists rely on to report the news. When Maggie engaged in a protest in a public space—a physical commons, open to public view at a public institution—the argument is very strong that she had *little right to privacy*. Because Maggie was aware of the photographer’s presence and continued with her activities nonetheless, the argument that she had any reasonable expectation of privacy would be weak. Furthermore, an argument against the institution’s appropriation based on a

legal right to privacy would likely fail, while an argument supporting the institution's right to "free speech" has some plausible support in this context. The institution's free speech argument is especially strong in the context of the initial appropriation if the intent was to document the protest.

In fact, an argument based on privacy rights and asserted by Maggie conflicts with the purpose of the protest, which was to draw attention to the WRC campaign. As activists, this group of students tried to design their discourse so that it *would be* appropriated to call attention to the political issue in which they were involved. The problem here is that their discourse was appropriated in unanticipated ways. In this sense, a rhetorical understanding of the possibilities for appropriation are complimentary to the legal understanding.

Copyright and Orphan Works

A recently proposed copyright law, the Orphan Works Act of 2008 (S. 2913: Shawn Bentley Orphan Works Act of 2008), was introduced in 2008, and passed the Senate later that year; however, a House vote did not occur. (Bills that have not passed during a session of Congress are cleared; however, it is likely the bill will be reintroduced in the future.) Testimony to the house subcommittee regarding this law took place on March 13, 2008, and is a continuation of a study the U.S. Copyright Office began in 2005. The study examined "issues raised by 'orphan works'—copyrighted works whose owners may be impossible to identify and locate" (Peters, 2009). Because of concern about possible copyright liability, subsequent creators and users like libraries are discouraged from appropriating such orphan works; the fear keeps potential users from making orphan works available to the public.

This proposed law, if ever adopted, attempts to wrangle with some of the issues presented in Maggie's case and provides another example of how problematic it is when a creation becomes disconnected from its origins, which is exactly what happened here. In Maggie's case, she was protesting in the WRC campaign, against the institution, but instead of the protest image event traveling solely in the way she intended, it was appropriated by the institution and subsequently inverted in order for the institution to promote itself in ways directly contrary to the protest's purpose.

The proposed Orphan Works Act, if adopted, will make it easier for users to appropriate texts, images, and sounds that have no owner. Technically they have no creator because their creator cannot be found (Curtis, 2008; Zimmerman, 2009). The concept of orphan works acknowledges that things people make can detach from their creators and take on meaning and power that was never anticipated. The idea that artifacts like Maggie's picture are orphans, and

how such an idea might intersect with our rhetorical theories of production and appropriation, is something worthy of further research and examination in composition and rhetoric. In the case of Maggie's political activity, her photograph was taken. As a simple action, the image taking was a goal of her political activity. There was a desire of the student protestors that their activity would receive media attention to further their cause. However, at some point after the picture was taken and then moved from camera to computer, Maggie lost control in a very real way. And, so, the agency—the power that she engaged in her political protest—was undermined, inverted, and her image took on a life of its own. It became, in a sense, an orphan. (These issues are worthy of further discussion in our field, but due to the limitations of space in this chapter, and the breadth of ideas we wish to cover, here we can only issue a call to others for further exploration in this area.)

In Loco Parentis

One cannot conjure up the image of orphans without conjuring up the image of parents. JoAnne Podis and Leonard Podis (2007) might describe the university's actions here as evidence of the lingering presence of *in loco parentis*. According to *Black's Law Dictionary* (1979), the term means "in the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities" (p. 708). Podis and Podis localized the term, usually discussed at the broad institutional level, and discussed the possibilities of its presence in the composition classroom:

we argue that pedagogical *in loco parentis* is a deeply embedded but often overlooked principle within the teaching of composition, one that merits more attention than it has received, especially since, in one form or another, it is likely to remain an influential pedagogical model. (p. 122)

Although many scholars thought the concept was abandoned during the 1960s, Podis and Podis cited a number of sources invoking the parental authority of the institution with respect to residential life, and argued that the "killing [of] student freedom" (p. 122) is experiencing a resurgence. Prior to the counterculture revolution, academic institutions exerted a parental-like authority by having curfews, regulating dorm visitation, instituting dress codes, etc. More recently, this authority surfaces as regulations or actions related to eliminating binge drinking and illegal substance abuse and regulating student speech, including "hate speech." Podis and Podis focused on how this parental authority

can influence power relations in the writing classroom with respect to form and content of writing. Our concern is with the possibility of an even more subtle exercise of the parental “rights” of the institution. We sense a casual attitude by the university in its appropriation of Maggie’s image, something akin to, “she’s ours—of course we can do whatever we want with her picture.” This is a similar attitude to the kind we imagine parents have when taking and circulating pictures of their child. Of course they can do this; this child is “theirs.”

The ownership of such images of the human body is something we think writing students should take a critical view of, and Maggie’s case study provides fertile ground for discussion. Ownership and control of such images relate to copyright law and the appropriation of Maggie’s image, because copyright law makes intellectual creations “property” with assignable rights, similar to the “rights” parents have over their children. It is undeniable that in the U.S. children are propertied. This becomes extremely visible when a child’s married parents divorce, when parental rights are terminated, or in any kind of custody dispute. In such cases, U.S. courts have to decide who “owns” the child. Let’s say that when these kinds of issues involving children arise, the state’s propertied interest in that child also arises—thus the state ultimately gets to be the arbiter of how the “property” of the child is assigned (in terms of, for instance, visitation rights, tax deductions, primary custodianship, and health insurance). These ownership issues in the case of the child and the case of Maggie’s image drive the relationship between the creation and its owner, and so, ultimately, what such an examination of appropriation entails is an examination of institutional relationships. In this case, the institution has a special relationship with Maggie, because she is its student, and so the appropriation must be understood in that context.

Right to Publicity and Contractual Rights

How can the institution be permitted to take Maggie’s image without her consent and then use that image for profit? According to Lloyd Rich (2008), “The right of publicity is generally defined as an individual’s right to control and profit from the commercial use of his/her name, likeness and persona.” The right of publicity is a matter of state law. The purpose is to protect someone like Maggie from losing the commercial value of her likeness due to an unauthorized appropriation. Cases like this are usually seen in the context of celebrities such as sports stars, whose images are appropriated without authorization by companies in order to sell a particular item. Although the institution’s appropriation of Maggie’s image was unauthorized, because Maggie is not a celebrity it would be difficult to argue that she is losing money due to the institution’s appropriation. The institution’s argument is stronger here because

it features Maggie as “any female student” rather than as “Maggie.” In some of the images her identity is not the rhetorical focus—the focus is instead on any female student playing in the snow.

The level and types of protection in this area vary from state to state. Michigan is the only sixth circuit state that does not have a right of publicity statute (Richardson, 2007). The root of the right of publicity is privacy law, and although Michigan has no statute, the courts developed some rights for the citizens of Michigan. Yet, without a clear statute, the probability of litigation around these matters is great in the event a conflict arises. The development of the right of publicity can be traced in Michigan by tracing its major cases in this area. In 1899, in *Atkinson v. Doherty & Co.*, Colonel John Atkinson’s widow brought suit because a company produced and distributed cigars with her deceased husband’s likeness attached. At that time, the Michigan Supreme Court stated “it is one of the ills that, under the law, cannot be redressed” (Richardson, 2007, p. 27). In a case more similar to Maggie’s, in 1948, *Pallas v. Crowley*, a retail establishment selling cosmetics used a young woman’s portrait photograph. The woman had not given her consent for the publication of her photograph. In this case, the court did recognize a legal claim in that the use of the woman’s photograph might be considered “as an invasion of such person’s right of privacy” (Richardson, p. 27).

An illustration of how the right of publicity often arises when celebrity names or likenesses are used without permission is the 1983 Michigan case of *Carson v. Here’s Johnny Portable Toilets, Inc.* In this case, the court recognized that Johnny Carson’s persona was being used without his permission, and, subsequently, “Carson’s right of publicity was invaded because appellee intentionally appropriated his identity for commercial exploitation” (Richardson, 2007, p. 27). Due to space constraints of this chapter, we will not delve into a deeper analysis of Michigan’s right of publicity law, but we raise these issues as worthy of further exploration in our field, especially with the turn to digital writing, remix, and the power of the Internet to disseminate appropriated images instantly.

We might contextualize Maggie’s political activity as one worthy of a news story, because that was its intent. And with respect to the intersecting considerations of privacy, free speech, and the right to publicity, in news stories, as long as there is a relationship between the image used and the story, the newsmaker will be protected. As Rich (2000) argued: “An individual cannot use the right of publicity to claim a property right in his/her likeness as reflected in photographs that were taken in a public place to illustrate a newsworthy story.” We imagine, then, that the university could plausibly argue that its use of Maggie’s image was not to make a profit, but was instead to illustrate the joys and experiences of campus life.

Students may agree to specific, certain, yet often fine-print clauses when they sign various admission forms for entering a specific college. When students enroll in college, they also commit to institutional policies such as academic honesty, residence hall regulations, regulations for student groups, and university ordinances. A contract is a legal agreement and does not have to be strictly labeled “contract” to be enforceable; as Herrington (2003) informed us, “if you have bought a car, rented a house, or even rented a video, you have entered into a contract” (p. 53). Further, contracts do not have to be written. In the Maggie case, what must be explored is whether students, upon enrollment and agreement to institutional policies, give some type of blanket consent to have their photographs taken for institutional use. Upon examination of the 136-page Michigan State University (2009) *Student Life Handbook and Resource Guide*, we did not locate any contractual agreement that Maggie implicitly agreed to that might provide the institution the legal right to take images of Maggie and use those images in promotional materials. However, this is something to take into consideration when examining practices at other institutions, both public and private, and when discussing these issues with students who will be or are employed. It is possible that their internship, on-campus, or off-campus employment contracts give the employer explicit rights to take pictures and use those pictures in promotional materials.

Section 107 Fair Use

As is evident, the issues that arise regarding this case go far beyond the issue of copyright; copyright is, however, a factor here. U.S. copyright law protects items that are fixed and original, but that fixation must be authorized. To determine whether the institution has the copyright in Maggie’s image, in this case the “fixation” was not authorized by her. It might thus occur that any person or entity could re-appropriate Maggie’s image, as the institution did for promotional materials. If the institution objected to this use, it, in turn, could argue that something about this particular photograph is original and, subsequently, the institution could (ironically, in this case) attempt to stop others from using Maggie’s image. The institution could argue it took this image out of the commons, if we think of the commons as a place where what is or once was owned can be re-owned by another.

The founder of Creative Commons, a Web site that provides pre-drafted licenses for creators to attach to their work in an attempt to control how their work is appropriated by others (in the spirit of rhetorical velocity), Lawrence Lessig (2005) characterized the legal battles over copyright law’s reach to Web spaces to be a battle between old and new. If information is locked down, he ar-

gued, creativity is stifled: “Free cultures are cultures that leave a great deal open for others to build upon; unfree, or permission, cultures leave much less. Ours was a free culture. It is becoming much less so” (p. 30). To illustrate his points, Lessig listed 17 movies where Disney, Inc. took stories in the public domain, or the commons: “In all of these cases, Disney (or Disney, Inc.) ripped creativity from the culture around him, mixed that creativity with his own extraordinary talent, and then burned that mix into the soul of his culture” (p. 24). In Maggie’s case study, the institution stands in the place of Disney: an appropriator of another’s creativity, in this case an innovative protest. Like Disney, the institution took another’s creativity and locked it down in the form of a variety of broadly disseminated promotional materials.

Although it might appear that the institution’s use of Maggie’s image is a fair use, that section of Title 17 does not really apply, because Maggie didn’t create the photograph of herself. In the case of Disney, its use of stories in the public domain were not technically a fair use, because those stories were not copyright protected; the uses were legal, but that is because the stories were in the commons. It would be different if Maggie had taken the picture of herself and then the institution appropriated the image Maggie took. Section 107 applies to items that are copyright protected and, in situations like this, human bodies are not considered original and fixed in the sense that texts and artifacts are. Other laws, such as privacy laws and laws around rights to publicity, protect individuals from having their images appropriated.

But let’s say for the sake of argument that fair use did come into play here. The university could potentially have fair use allowance because of its non-profit status; this is part of its institutional or organizational identity. The master narrative surrounding universities contextualize these institutions as bettering human kind, of promoting good citizenship, and as doing good generally not for profit, but as a good steward in the larger society. Yet, we all know that dollars matter a great deal to universities, like any revenue-reliant business. At the university, profitable ventures are sought after and appreciated just like in any other for-profit corporate structure. But we think, perhaps, universities-as-organizations sometimes “get away” with appropriating the work or image of others—in this case a student—because of their standing in the larger culture as not-for-profit. Rhetorical analysis and examination of the narrative around non-profit organizations in general—an examination containing a more critical stance than that which generally exists in our field—is in order. Research is needed in this area; here, however, we simply provide one small step in the effort to unpack how an organization, like an educational institution, can slide by while appropriating the image of a student and inverting the original meaning of that image.

Deciding What is in the Commons

In the context of illicit trafficking of cultural artifacts, Claudia Caruthers (1998) asserted that the commons provides a unique lens with which to understand the “increasingly inefficient conceptual framework of cultural property protection in this area” (Caruthers qtd. in Flessas, 2008, p. 392). None of the legal or conceptual frameworks we have set forth above fully address the right and wrong of the institution’s appropriation. Flessas (2008) correctly asserted that the aspect of Caruthers’s argument based on aligning cultural properties with natural resources is flawed, because cultural properties—unlike natural resources—are not exhaustible, and in fact depend upon appropriation to survive. But, Caruthers’ idea that the commons debate can only be resolved by norm driven models that “employ a strategy of ethical imperatives and exhortations” rings true (qtd. in Flessas, p. 393). When rhetorical velocity and copyright converge, one has to define the commons, because designing documents or discourse to be appropriated ultimately means placing creations in the commons, which is a place reliant on the appropriation of things with no owners (i.e., orphaned work) and of things previously owned (as in the case of human bones).

The term *appropriation* then needs unpacking, and here we rely on Flessas’ (2008) use of the Lockean concept of labour-mixing, because Maggie’s image, as an object, will have rights somewhere at the intersection of property-based rights and knowledge-based rights (p. 394). Maggie’s image can be an artifact, a religious relic, an ancestor, a documentation of a student protest, an object of scientific study, a political icon, or a representation of the good life on a college campus. Whether her image is in the commons such that the institution’s appropriation is entirely acceptable is a context-specific, norm-driven, value judgment. When the photographer took the picture, s/he mixed labor with the natural, the purpose of which was use. This is the basis for the Lockean understanding of private property as valorized in U.S. law:

This raises the question of commonality generally, and proposes that cultural property analysis, like intellectual property analysis, occurs on a field of endlessly shifting and reforming “commons.” (Flessas, p. 394)

Seeking common values—in this case, the common values between the student protesters and the institution—is crucial in articulating the commons in this case. The commons, as defined in this situation, will depend on how the participants in this debate decide to set the boundaries of the commons, a place of re-appropriation (and this re-appropriation could take place infi-

nately). Creative commons licensing, for example, composes a commons with clearly marked boundaries defined by those who implement these licenses in their creations, and, subsequently, this defined commons offers artifacts that can be appropriated infinitely by others. As Flessas pointed out, the discourse of the commons can be used to argue either for protection of resources or for the legitimate taking of resources. For example, the discourse around creative commons asserts that this regime is needed to protect creativity and the public domain. In contrast, the discourse of the commons is used by museums to argue for the taking of indigenous bones. Ultimately then, when designing discourse in the spirit of rhetorical velocity or when designing for appropriation, the answer to the question of whether or not the institution *acceptably* appropriated Maggie's image will, in effect, define the commons. As we discuss in the last section, we think this kind of analysis—with all of its complexities and entanglements—proves useful in the composition classroom.

IMPLICATIONS FOR PEDAGOGY

We see Maggie's story as one that invites students to interrogate issues of appropriation and copyright with a 360-degree view of major ethical, cultural, and other issues in copyright, intellectual property, and rhetoric. Maggie's story is rich with possibilities for classroom activities and discussion. Here we offer a few suggestions for leveraging Maggie's case study in the writing classroom. Some questions for classroom activities and inquiry—which we invite others to remix, use, and build upon—include:

- If Maggie wanted the university to stop using her image, what action could she take and when? After collaborating and researching this issue, write a document in the proper genre, addressed to the proper university official, requesting that the university stop using the image.
- In her interview, Maggie states that “in innovative actions it might be a good idea to have more prominent posters or things with you.” What could Maggie have done differently when designing this protest that would have possibly prevented the university's appropriation of her image? Design either a protest plan or one document that Maggie could have used to effectuate this change.
- Imagine that Maggie asks the university to stop using her image and they refuse. List one to three legal actions Maggie could take to cause the university to stop using her image. If you decide that she could institute a lawsuit, for instance, be specific about what legal grounds she could use to make her argument. Write a short argument based on one

action you think Maggie could take. Be sure to include an outcome as far as whether you think Maggie would be successful in her argument or not.

- From a moral or ethical perspective, do you think what the university did was wrong or right? Why or why not? Write a short discussion setting forth your stance as well as your reasons.
- Based on Maggie's case as well as class discussions and readings, how would you define the commons? Explain your answers and provide concrete examples of items that are definitely in or not in the commons.
- How should short-term rhetorical concerns (in this case, the campaign goals) be weighed against long-term, more distant, rhetorical concerns of Maggie's ethos over time?
- In Maggie's case, which genres of writing are in use? How does each genre cross medium? How does medium relate to genre?
- How do economics and economies of value factor into Maggie's process of delivery? How do the short-term economic interests of the media relate to the long-term economic interests of the university? \

Studying case examples of intellectual property and rhetorical delivery as situated, local practices is conducive to both areas of study. In the same way lawyers study case law, we advocate for the study of rhetorical delivery as a form of case law, a key question being: How do practitioner examples overlap, compliment, or contradict the legal and rhetorical concerns of all parties involved? This combination of concerns is increasingly important for students, teachers, and practitioners to consider. In addition, the legal delimitations of the commons are learnable and will become an increasingly strategic site for rhetors to compose and deliver into.

CONCLUSION: RHETORICAL VELOCITY REVISITED

Ridolfo and DeVoss (2009) defined rhetorical velocity as "the strategic theorizing for how a text might be recomposed (and why it might be recomposed) by third parties, and how this recomposing may be useful or not to the short- or long-term rhetorical objectives of the rhetorician." In Maggie Ryan's example, even though the protest and activist campaign were ultimately successful, in the years that followed, a series of Maggie's images were used in ways that neither Maggie nor the other activists could have plausibly predicted. Although the activists succeeded in their rhetorical goal of achieving third-party media

coverage for their campaign, Maggie Ryan's ethos was affected undesirably well after the initial events took place.

The rhetorical implications for a case such as this one are complex because they necessarily include the legal realm; equally complex, however, are considerations of how legal concerns will increasingly figure into a rhetor's future practice. The intellectual property implications for Maggie are directly connected to the practice of a rhetorical theory of delivery, and both areas of study have something significant to say to the other. Putting into conversation the intellectual property implications of texts, broadly speaking, and rhetorical theory, particularly stories such as Maggie's, has the potential to provide more illustrative examples, but also more theoretically rich examples for researchers, students, and policy makers.

Such practitioner examples are able to more acutely explain how the commons may be rhetorically theorized as strategic. In other words, we need to stop thinking about copyright law in terms of what isn't possible, but also in terms of what is possible—that is, how rhetors can strategically compose for the recomposition of their own intellectual property. Conversely, for intellectual property law, these examples of how rhetorical practice and intellectual property connect are deeply important examples not only for teaching the potentialities of the commons to students, but also for arguing for better social and legal policy around the commons. A story such as Maggie's has the potential to function as a scary story; the pedagogical challenge for rhetorical theory is to teach these complex legal and rhetorical issues without alarming people so much that they're unable to act (in this case, chilled so much that they might be unable to move activist meeting agendas forward). Rather, we might focused on facilitating informed action. We thus argue that such case examples have the ability to argue lucidly for how copyright can function as a vehicle for strategic rhetorical use, and not simply as pejorative protection against public use.

Although we think that connecting copyright law and its implications to the anticipation element of rhetorical velocity is an important connection for scholars of both areas, we also argue for something we think is more methodologically significant for research and the classroom. The study of rhetorical delivery needs to be more closely connected to the stories and work of practitioners, not simply because such a study produces more illustrative, tangible examples, but also because it presents delivery as a situated practitioner strategy and not simply as an ecology or rhizome of texts. The challenge for rhetoric researchers is to find additional practitioner stories of delivery and longitudinal circulation; we need more contrasting stories to teach.

NOTES

1. An earlier version of this summary appeared in Sheridan, Michel, and Ridolfo (2009).

2. Rhetorical velocity also means anticipating strategic remixing—that is, theorizing how the media (e.g., a video) might be remixed by others in ways ultimately advantageous to the rhetor's goals and objectives. Rhetorical velocity also means theorizing how to release a image (e.g., with a watermark) to curtail the future appropriation of the image.

3. The repatriation debate is filled with arguments developed over many years by indigenous peoples worldwide, and we want to first acknowledge the importance of this issue in general, but also state that our use of Flessas's and others' theories on repatriation are not meant in any way to minimize the importance of the plight of indigenous peoples with respect to retrieving cultural artifacts.

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