13 FOLLOWING THE FRAMERS: CHOOSING PEDAGOGY TO FURTHER FAIR USE AND FREE SPEECH

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Previously I have written that fair use and free speech are interdependent and necessarily work together to support the functions of the democratic process (Herrington, 1998). In this chapter, I broaden my argument that fair use makes free speech possible and assert that there also exists an interdependency among the precepts of fair use, the First Amendment, and transactional pedagogy in composition classrooms. James Berlin's (1987) philosophical inquiries, extended by Fred Kemp (1984), make clear that this pedagogy can be enacted.

Fair use is a legal mechanism within the U.S. copyright statute that reflects the constitutional support of public access to knowledge, allowing individuals to use other creators' materials for certain purposes without legal violation, even when those materials are copyrighted and would be otherwise unavailable for use. Fair use makes free speech possible, because fair use allows access to the information that embodies the content with which to engage. Although the fair use doctrine, as included in the 1976 Copyright Act, speaks directly to use rather than access to authored works, support for access to intellectual products is implied in that an individual cannot make use of a work without accessing it. I expand this reasoning when I argue that the ability to access content is necessary if a nation's citizens are to participate in democratic endeavors.

My treatment of access in this chapter does not explicitly include discussion of "fair access," and its growing support among those who argue that new laws such as the Digital Millennium Copyright Act should provide fair access provisions that would allow users to reverse engineer digital work protected

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by encryption code. I do not explicitly address other facets of access, such as those regarding limitations on viewing digital work controlled by a third-party provider. Although these and other complex concerns regarding access beg for arguments that support the Framers' intention to maintain a robust public domain, addressing these matters requires extensive treatment more appropriate to a separate work outside the focus of this chapter. My intention here is, nevertheless, to underscore the importance of access, even in its more generic sense, to cultural content in its multiple formats. In this chapter, I further explore the importance of pedagogical choice as a means to support or inhibit a world view that enables free speech and the fair use that accompanies it. I contend that pedagogy supporting fair use goals can be significant both for preparing students to meet the challenges of an information society, and, more important, for helping them develop skills for participating in democratic processes. I examine these hypotheses: Some pedagogical choices foster a learning atmosphere that supports free speech rights provided by the Constitution; students who learn within these pedagogical spaces have greater opportunity to find their voices, learn to interact in democratic processes, and prepare to make well-considered choices regarding intellectual property issues. While Berlin (1987) explained the value of a *transactional belief system* for supporting a negotiated, socially developed knowledge base, rhetorically situated in the midst of interactions among those in dialogue, I argue that without access to the information that is the subject of dialogue, a democratic, egalitarian interaction would be impossible. The inhibition of access to knowledge and information by way of protectionist interpretation and application of intellectual property law hinders and could even eliminate the democratic dialogue made possible by fair use and free speech. Kemp (1984) pointed out that a social constructionist pedagogy is consistent with a transactional ideology; choosing a transactional pedagogy that underscores student legal use of copyrighted work and supports free speech is, I argue, consistent with the general goals of preparing students for engaged citizenship in a democratic society.

Examining the intricacies of the law to connect between free speech and access of intellectual products shows that there can exist a conflict between copyright and the First Amendment (Patterson, 1987; Yen, 1989). Further, fair use has, at times, been employed as a limiting structure to what the constitutional provision creates (Herrington, 1998). Regardless, fair use implies a structure that supports public access to copyrighted work (Lemley, 2000; Travis, 2000) and as the law is developing today, interpretation and application of fair use are strengthening it as a force to provide information access (note Bill *Graham Archives v. Dorling Kindersley, Inc.* and *Kelly v. Arriba Soft Corp.*). I use the term *fair use* to denote an enabling force for access to copyrighted work. In ad-

dition, because most of the intellectual products that composition instructors and their students use and create is copyrighted, and because fair use applies only to copyrighted work, I focus on copyright.

I begin by explaining how the constitutional intellectual property provision provides a foundation for free speech, learning, and access to democratic dialogue. I then provide two summaries: One of the interdependency of fair use and the First Amendment; the other of the interdependency of ideology and pedagogy. Building from this base, the section that follows illustrates how choices in pedagogy and ideology can affect student patterns of learning and interaction, some of which are consistent with constitutional goals enabled by fair use and the First Amendment. I argue that the constitutional intellectual property provision, unique to U.S. law, forms the base for democratic activities. I conclude with an argument that fair use, the First Amendment, and pedagogy can be interdependent, and can support student interaction in the democratic process.

THE CONSTITUTIONAL INTELLECTUAL PROPERTY PROVISION: THE FOUNDATION FOR FAIR USE

Before widespread use of digital communication structures became part of everyday life, intellectual property law was virtually ignored by the average citizen and even by many lawyers and legislators. In the past, intellectual property law had more direct impact on commercial entities than on individuals. But even before the general public began to understand its importance in affecting interchanges through public and semi-public Web communication venues, the intellectual property clause of the U.S. Constitution, when interpreted in favor of the constitutional intent and support for free speech, provided a solid foundation in policy for the lifeblood of democracy. The constitutional intellectual property provision, unique to U.S. law, ensures public access to information with the explicit goal of advancing learning by supporting a public domain of information from which to draw. On this basis, democracy is made possible. At the core of the democratic effort are the rights to free speech, egalitarian access to the democratic process, and the support of self-actualization that enables the pursuit of happiness.

The Framers, in the intellectual property provision, made the benefit to an author secondary to and merely supportive of the primary goal that benefits the public—to advance learning. American law prioritizes society's goals of educational advancement and the correlative need for democratic access to in-

formation. To help ensure that society would have a public domain to further knowledge advancement, the Framers fashioned a means to motivate authors by providing an incentive to benefit from the work they create. But the Framers also mandated a time limit on authors' right to control their work, and, as a result, fashioned a limited monopoly for managing creative products. The provision allows creators to benefit from the work, but also provides public access to the work by means of the time limitation.

To enter a discourse community, members of the public must have access to the information that constructs their world—in essence, their reality. Without that information, free speech would be impossible because there would be no basis from which to draw to enable it. As L. Ray Patterson (1987) argued, "learning requires access to the work in which the ideas to be learned are embodied. Because there can be no access without distribution, encouraging distribution is vitally important" (p. 7).

Students who wish to engage with the materials and ideas that shape their world must be supported in their use of these materials. My students have created interesting statements based on others' original work, and of these, many have made clear and important cultural commentary. A former student, Yury Gitman (1998), used an image of Joseph Stalin depicted on a bookplate as "Boekbinder Stalin" in a parody in which he repurposed the image to depict Stalin "writing" a different reality than that which was shown in the original. Gitman added the statement, "10 million killed, 130 million wounded" in his version of the work. He pointed out in his textual explanation that he understood the original image of Stalin as a bookbinder with power to create the printed word, where his recontextualized version depicts Stalin as one who "binds reality" and "binds the fate of hundreds of millions of people."

Another former student, Leah Mickens, used the premise of L. Frank Baum's version of *The Wizard of Oz* to parody the Walt Disney Company's aggressive protectionist stances in treating intellectual property issues, in part, by appropriating Baum's work. She created the character of Oswald the Lucky Rabbit, whose adventures almost led to his being held captive in a protectionist land called "Disneyana." Other students have used and written about digital video materials, music, art, and other forms of communication and supplied portions of these works as a basis for criticism, illustration, and other forms of parody. And students have also used original work in more standard ways—for instance, as a basis of research from which to develop ideas, to support arguments, and to counter the claims of original authors.

These students' creative contributions were dependent upon the cultural statements made by the original creators of the works they used. Their use and treatment of these original works as a basis for making new statements about

related cultural interests allowed them to converse with the authors of the originals; the students used the original authors' work as a means to enter the cultural discussion, to participate in its conversation. They created new knowledge based on that which came before. The summary below provides the foundation for a structure of learning, using, and speaking about information.

Summary: Interdependency of Fair Use and the First Amendment

Examining the interdependency of fair use and the First Amendment leads to many avenues of complex analysis; this intricate subject is treated at length in other sources. For purposes of this work, which shares a legal and pedagogical emphasis, I summarize the relationship between fair use and the First Amendment. (For more detailed treatment, please see Herrington, 1998; Patterson, 1987; Patterson & Birch, 1996.)

The First Amendment free speech clause is well known to most Americans: "Congress shall make no law ... abridging the freedom of speech, or of the press." Although legal interpretation of free speech is complex and arguments about what free speech is and what it encompasses are broad, most Americans understand that free speech rights are essential to our ability to define ourselves, to shape the course of our country's direction, and to enable us to participate in democracy. Fewer Americans understand the impact of the Constitution's intellectual property provision, reflected in the fair use language of the Copyright Act of 1976. Fair use is the political core of the support of teaching; it grants access to intellectual work that forms the basis for creating new knowledge.

Fair use is an affirmative defense promulgated in the Copyright Act of 1976. A user who employs the fair use defense would admit to using a copyrighted work, but claim the excuse of fair use under guidelines laid out in the doctrine. Much like the support provided for free speech, commonly allowed fair uses include news reporting, critical commentary, parody, research and education, and scholarship. Fair use enables public access to subjects of national dialogue; in turn, the public has a means to speak about the content that it accesses. The Supreme Court has supported fair use and free speech in recent cases in which creators have used parody to comment on those whose works form the base of their own. *Suntrust Bank v. Houghton Mifflin Co.* (2001) dealt with Ann Randall, who created a parody of Margaret Mitchell's classic *Gone With the Wind*. Her version, *The Wind Done Gone*, depicted the slaves' point of view of life at Tara and the "Old South" during the Civil War. In *Mattel Inc. v. MCA Records* (2003), the Court allowed the rock band Aqua to parody Mattel's Barbie brand in their song "Barbie Girl,"

which depicted Barbie in what Mattel claimed was an unfavorable light. The Supreme Court also allowed the rap group 2 Live Crew to use Roy Orbison's song "Pretty Woman" as a basis for their version that, through changed lyrics and musical delivery, provides critical commentary of a banal white society and the music used to represent it (*Campbell v. Acuff Rose*, 1994).

Like fair use, the First Amendment provides no monetary benefit, but instead underwrites the advantages of self-actualization and participation in the cultural construction of the nation. Similarly, although it is possible to benefit monetarily by creating a work that extends from a copyrighted work (a derivative work), the policy benefits intended by the Framers are not economic in nature. Access provided for by the intellectual property provision and by fair use creates a benefit in non-monetary terms—support of and access to knowledge, leading to the ability to participate in the democratic system. When copyrighted works "constitute the expression of ideas presented to the public, they become part of the stream of information whose unimpeded flow is critical to a free society" (Patterson, 1987, p. 5). The First Amendment and fair use work together, Patterson argued, where "the promotion of learning is inherently antithetical to censorship" (p. 13). Hannibal Travis (2000), extended Patterson's arguments by noting that

> the Framers explicitly sanctioned judicial suspicion of laws that inhibit the exercise of constitutional rights to free expression. The Supreme Court has repeatedly held that these "choicest privileges," first and "transcendent" among all our natural rights in the American tradition, are not to be "sacrificed ... for too speculative a gain." (p. 846)

Both the First Amendment and fair use make democratic dialogue possible within a society dependent upon information. Both promote self-realization, knowledgeable participation in self-government, and societal advancement; the former, by creating possibility for people to speak, the latter, by enabling access to cultural content people may want to speak about. Without fair use, there would be no free speech because access to cultural content would be limited. Of course, some materials and information are available in the public domain and do not require fair use for access. Mostly, these include non-current materials and government works. In addition, some copyright holders choose to provide open licenses to their works. And, where possible, users may obtain releases or licenses for use of others' work. But the great majority of materials likely to be significant and meaningful as a basis for critical commentary require fair use by those who desire to enter public dialogue. Public domain

materials provide only a portion of information important for understanding issues as a whole. For dialogue to occur, access to copyrighted work as well as to work in the public domain is necessary. Generally speaking, fair use allows a reach to materials that would otherwise be unavailable for speaking meaningfully to timely and significant issues.

Individuals' epistemological frameworks can influence whether they will accept or reject a law that allows access to copyrighted work or one that supports greater control over works by creators. Instructors making pedagogical choices can influence the efficacy of those choices in their pairing of pedagogy with epistemology. By extension, some epistemologies and pedagogies are supportive of fair use and free speech goals, while others are not. In the following section, I summarize Berlin's (1987) and Kemp's (1984) assessments of epistemology and pedagogy as a basis for relating them to the interdependency of fair use and the First Amendment.

Summary: Interdependency of Epistemology and Pedagogy

Berlin (1987) and Kemp (1984) provide a useful basis for understanding how epistemological framing, combined with pedagogical choice, can have broad effects on student learning processes. Berlin outlined a set of epistemologies that form a base for truth-seeking among composition instructors and students. I focus on three that I find most applicable to this chapter: the objective, subjective, and transactional. Berlin explained that those who follow an objective epistemology believe that truth exists prior to knowledge—that it is determined inductively, exists outside the individual, and is certain. For those who follow a subjective epistemology, truth is located within the individual or within a realm that s/he understands internally; truth transcends the material world, resisting expression. For subjective epistemology adherents, truth can be represented only by metaphor because it cannot exist materially; it must be discovered by the individual in a private act. Alternatively, subscribers to transactional epistemology believe that truth arises from rhetorically situated interactions—that it is contingent, must be negotiated, and is always subject to change. Truth does not exist in an absolute, objective form within the transactional epistemology.

Kemp (1984) applied these epistemological structures to pedagogical choice. He explained that when pedagogical preference is consistent with epistemological choice, a composition instructor is able to support student learning effectively. He describes a structure of consistent pairings: current traditional, foundational teaching supports an objective worldview; expressivist structures support subjective epistemology; and social constructionist actions are consis-

tent with the transactional epistemology. Kemp asserted that when instructors use pedagogies inconsistent with epistemological beliefs, their choices can be counterproductive and lead to breakdown in the learning process. For instance, if an instructor's intent is that students learn rote information and provide a set of correct answers to an exam (an objectivist-oriented activity), then asking them to learn through interaction in blogs and class discussion promoting negotiation of ideas (transactional processes) would likely debilitate the instructor's goals. Or, if an instructor intends that students learn introspection in a search for truth and to express themselves in poetry or creative prose (a subjectivist goal), then using a current–traditional lecture format to provide students with facts (objectivist) rather than letting them explore introspectively would be counterproductive (for further application of Berlin and Kemp, see Herrington, 2005).

Here I focus on transactional pedagogy because it most appropriately supports free speech and fair use goals; I do not, however, discount that there can be an appropriate time and place for each of the other pedagogical choices I described above. I do not intend to claim that other pedagogical choices are not useful, but, instead, I focus on social constructionist pedagogy because it is particularly supportive of fair use and free speech goals. Epistemological and pedagogical choices can be supportive or destructive of the constitutional intellectual property provision and fair use goals; pedagogical choice can either support or inhibit instructors' intent for student learning as it relates to intellectual property issues.

ANALYSIS: EPISTEMOLOGY, FAIR USE, AND PEDAGOGY

Some pedagogical choices can broaden and deepen learning by encouraging students to use and understand fair use, and, in turn, the learning process can help build a foundation that enables free speech. By supporting speech and access, these choices can also sustain the intent of the Framers in their development of the Constitution's intellectual property provision. Other pedagogical choices, in contrast, can hinder fair use as a base for free speech, can inhibit or limit learning processes, and can create a model that encourages students to accept static knowledge rather than pursing a process of learning that enables them to synthesize information and make new knowledge—the primary goal of the constitutional intellectual property provision.

The Framers' objectives of supporting a public domain, knowledge advancement, and egalitarian access to a democratic process are made possible at the intersection of the First Amendment and fair use. These goals—based on

the ideals furthered by dialogue, free speech, and access—are supported by a transactional epistemology. The transactional epistemology mandates interaction in dialogic processes. The copyright clause, reflected in fair use, makes interaction possible by enabling the right to use information and ensuring that free speech about that information is supported. Composition students who learn by way of transactional or social constructionist pedagogy, effective as a means to extend a transactional worldview, are supported in their dialogic interactions. Fair use extends their interactions beyond the classroom when it allows them to use and respond to source materials that might otherwise be outside their realm of access. Their communicated responses in the forms of class papers, blogs, digital films or art, music, and more can also be bolstered by the First Amendment and, in turn, responded to by others who could employ fair use and their own supported speech as a way to further interact.

Employing a contrary structure (such as a current–traditional pedagogy, which is consistent with objective epistemology) would support a culture that does not prize fair use and free speech, but instead intends to organize its citizens through control of information and their access to information; this pedagogy could inhibit processes of seeking truth. For example, a government of dominance would do well to employ an objective epistemology. An authoritarian source would impart "truth" by demanding that its citizens believe what the government desires. The pedagogical choices required for supporting this kind of structure are clear; students would prepare rote answers in line with expectations, relayed by their instructors. There would be no room or support for negotiated searches for truth/s or for democratic interaction within the learning process, because these activities would most likely lead to "wrong" or disallowed answers. As a result, there would also be no need for students to seek new knowledge or pursue free speech efforts.

Although an expressivist pedagogy would support introspection and would allow individuals the freedom to search for truth that could lead to a form of self-realization, it does little to further the democratic interaction reflecting U.S. goals of free speech, the constitutional intellectual property provision, and fair use. In fact, consistent with the subjective epistemology would be a protectionist viewpoint of intellectual property law. As noted above, U.S. intellectual property law encourages educational advancement (and access to the democratic process) as its primary goal. But a focus on expressivist truth leads to a Romantic concept of authorship more consistent with a European "moral rights" view of intellectual property protection, which supports the author's rights to intellectual products as a primary interest (see Howard, this volume). A moral rights approach would lead to a structure in which authors maintain near absolute control of creative works (or, more precisely, one in which pub-

lishers—who hold authors' copyright licenses—would have greatest control of creative works). This configuration would do little to support the interactive use and response to cultural information that the U.S. intellectual property provision and fair use allow and that is required for pursuing a democratic enterprise.

Clearly, a transactional epistemology, furthered by a social constructionist pedagogy, would most closely align with the Constitution's intellectual property provision and fair use. These concepts can be pragmatically applied in three broad forms: teaching about fair use and free speech as a content area in itself, bolstering access to and use of copyrighted work, and providing pedagogical support for fair use and free speech development within composition classrooms. In particular, instructors may use copyrighted materials in educational settings to advance learning, and students may make use of copyrighted work to develop creative products. In addition, instructors and students may also use student work to support activities that develop free speech tendencies among participants within composition classrooms.

PRAGMATIC CONCERNS

Communication, teaching, and intellectual property concerns are often pragmatic in nature; this section offers suggestions for how composition instructors might incorporate more practical activities involved with fair use and First Amendment issues in the classroom.

Teaching Access, Fair Use, and Free Speech

Composition instructors do not expect and are not expected to teach legal content as regular course material. To avoid potential problems stemming from misuse or inhibition of use of copyrighted work, instructors would be aided by understanding basic issues in copyright—just as they are by understanding issues in plagiarism (see Rife, 2007). In the same vein, explaining basic expectations of students as they work with copyrighted materials could facilitate efforts in the composition classroom. Instructors use copyrighted work in their classrooms to support student work, and most research using others' intellectual products. As well, students use copyrighted work in their research and should understand their choices in treating copyrighted work to develop a sense of their expected behaviors as students.

Current pedagogical practice incorporates activities that encourage students to combine multiple sources and modes of communication in their as-

signments. Johndan Johnson-Eilola and Stuart Selber (2007) described their process of "putting two rather conventional terms—*plagiarism* and *originality*—into conversation with a third, potentially controversial term—*assemblage*—in order to comment on the nature of writing in a remix culture" (p. 380), noting that the term *assemblage* can also be substituted with "remix," and "collage." In a parallel move, Dànielle Nicole DeVoss and Suzanne Webb (2008) described an actively synthetic means of communication in pursuing prosumer practices where information consumers are engaged in both the design and creation processes of works they consume. Mathew Barton (2005) noted that composition instructors are regularly embracing the use of blogs, wikis, and online discussion boards, all of which can involve using digital tools to synthesize texts, visuals, audio, and more elements. Even with text materials, as Rebecca Moore Howard (2007) noted, "if both writers and readers have ready access to the same set of texts, textual culture has suddenly become a much more shared phenomenon" (p. 5). These stances are clear acknowledgements that instructional goals should reflect the developing nature of source and idea remix as a basis for composition. Those who remix, incorporate, respond to, and synthesize materials from sources must understand intellectual property law to avoid non-supported uses—and more importantly for the advancement of knowledge—to find support in fair use and free speech for the communicative actions they undertake.

Compositionists have long called for content-area materials treating intellectual property, noting that reviewing and discussing basic tenets of intellectual property law could be helpful both for instructors and students (Herrington, 2001; Rife, 2007). This call is of particular importance in light of developing research by Martine Courant Rife and William Hart-Davidson (2006), which indicates that students misunderstand copyright law. Among issues of importance as a basis of instruction are:

- The constitutional basis for intellectual property law is the goal to advance learning.
- Creators are granted rights to their work as an incentive to encourage innovation and knowledge advancement.
- Without a balance between the public need for access and creators' needs for control of their work, the system will fail.
- Students do have copyrights in their work, even without copyright registration.
- Students and instructors should respect the copyrights of others.
- Notwithstanding the tenets above, students and instructors can access otherwise protected work when supported by fair use, personal use, and the First Amendment.

- Copyright and plagiarism are not the same thing, and must not be conflated.
- Without access to cultural information that makes up society, free speech and engagement in the democratic process would be impossible.

Granted, learning about and understanding the intricacies of the issues noted above is not easy. But knowing about intellectual property and its effects can be important as well as interesting for composition instructors and students.

Sources for learning about the tenets above are plentiful today. The Conference of College Composition and Communication's (CCCC) Intellectual Property Caucus Web site and email list provide up-to-date treatment of intellectual property issues that affect composition instructors, and the Intellectual Property Committee that advises the body of the National Council of Teachers of English examines issues of interest in intellectual property and educates the NCTE constituency. In addition, Web-based sources such as Lawrence Lessig's Creative Commons blog, the Electronic Frontier Foundation's (EFF) site, and the Chilling Effect Web site provide broad resources. Beyond these, there is a growing number of helpful books and articles directed to composition and technical communication.

Using, Not Abusing, Copyrighted Work

Fair use can allow instructors to employ copyrighted work both for teaching and research purposes, and can advance student learning processes. If instructors are afraid to use materials that *can* be used legally as provided by fair use and the First Amendment, not only could they inhibit the potential for learning in their classrooms, but they might, for example, discourage students from making use of materials that would otherwise be legally allowed. It is no minor issue that laws that grant benefits, if unused, are interpreted eventually as prohibitive in nature, at worst, and, at best, fail to function as a basis for providing rights and privileges. When these rights and privileges are so important that they form the basis for democratic interaction, the "use it or lose it" mandate is particularly significant.

Although access to information forms a foundation for education and free speech, students also benefit from understanding the limitations on using copyrighted or otherwise protected intellectual products. The more they understand the balance and the goals within the constitutional provision and fair use, the better they will be able to make judgments regarding their use of others' works, the circumstances under which their use is likely to be supported, and the potential societal impact of choices they make. The composition classroom provides a valuable venue for considering the ways that intellectual

products reflect the characters and efforts of their creators. Although a "moral rights" treatment of intellectual products protects creators beyond the extent that U.S. law provides in support of our democratic system, students who learn the conceptual base could take a step toward understanding the ways that their work represents them as individuals and could draw from that base to value their work as an embodiment of who they are. Students who learn experientially, in this way, to assimilate the concept of authorship, might be more likely to accept a vision of the importance for avoiding plagiarism and might consider carefully the potential to violate copyright as well.

In many instances, neither students nor their professors and academic administrators are aware of or acknowledge that students retain copyrights to their work. Some professors and administrators, thinking that the quality of student work is lower than the work of others at the institution, misunderstand copyright law and treat the work as if it is not copyrightable. Others are unaware that since the Copyright Act of 1976, there is no need to register a copyright to obtain and retain it. Because composition courses, by their nature, demand that students develop copyrightable products, consideration of these aspects of copyright are particularly helpful. (Although this issue is of great importance as students are authoring a wide variety of copyright-protected work, both in hard copy and digital forms, the detail required to explain it is outside the scope of this chapter. For detailed treatment of students' rights and responsibilities in regard to intellectual property, see Herrington, *iProp*.)

CONCLUSION: THE INTERDEPENDENCY OF PEDAGOGY, FAIR USE, AND FREE SPEECH

Composition classrooms can be powerful forums that allow students to exercise speech rights; learn to voice their ideas; interact with the ideas of others; and read and examine issues with critical, analytical insight. The broader inquiry is how epistemological choice and the pedagogy that accompanies it can foster a means to support the Constitution's goals for the country, extended through fair use and free speech structures that support democratic development. The clear directive is a social constructionist pedagogy that supports these efforts most pointedly. This kind of pedagogy—which focuses on student-based interactions, highlights student choices, and validates their work—creates a kind of participatory pedagogy. Pedagogues such as Jean Lave and Etienne Wenger (1991) and Seymore Papert and Idit Harel (1991) have supported teaching practices that allow students to learn experientially, assimilating learning as a participatory event. When students are learning not only communication and writing

skills, but practicing interaction in a dialogic process that eventually leads to competence in participatory democracy, the classroom becomes a powerful forum for supporting the goals of the U.S. Constitution.

Once instructors choose a pedagogy that focuses on student learning, they must have the strength to see it through—participatory pedagogy is not easy and does not hold immediate or clear rewards for the instructor. But this pedagogy's ability to foster and use fair use and free speech goals as a way to further pedagogical intention only underscores efforts in the very activities that form the base for constitutional goals and a democratic effort. Employing fair use—and especially teaching fair use principles to composition students—can help to support dialogic interaction within writing classrooms, and thus affect students' experiential understanding of the dialogic value of their communicative expressions in participatory government. Shuba Ghosh (2003) noted that "the hallmark of democracy is the liberalization of the arts and a movement away from the promotion of a national, uniform culture as in the former Soviet Union or Nazi Germany" (p. 390). And, as noted above, remix of sources and communicative interactions forms a basis for truly interactive democratic practice. Ghosh provided a scenario to explain the benefits of interaction:

> Many cultural products are valuable precisely because they are consumed by other people. While I may enjoy reading Thomas Pynchon or Margaret Atwood by myself, I benefit from knowing that others have also read their works. These benefits include the ability to converse about the works to gain deeper insights, and the possibility of communicating new insights and understandings that I may have missed in my private reading. Sharing does not mean that there is a unity of interest or understanding; my reading of *Gravity's Rainbow* or *The Blind Assassin* may be radically different from yours. It is the communal aspects of reading and consumption that create important values for cultural products. (p. 409)

Information is valuable capital and fair use allows access to it—but free speech is a means by which to use information and reflects what is even more valuable than information capital. That is the skills to use information along with the ability to think, to synthesize, and to adapt to a changing world. Composition instructors can potentially shape the future with the choices they make. We have a choice of pedagogy; we can choose one that supports free speech and fair use, or we can choose another that inhibits it. The power of language and rhetoric to create reality—particularly in a digital world—can be of extreme

importance in communication classrooms. To prepare students to interact in a remix culture requires a pedagogy that allows interaction, encourages fair use, and supports free speech. Teaching from this perspective is effectively supportable by a social constructionist pedagogy and transactional worldview.

Instructors do not only teach, but also provide opportunities and guidance; in doing so, they also participate in creating a future, not just for the students themselves, but for the country in which they interact. This is particularly important today, as we use digital prosumer creations that effectively merge use and speech into one creative product. In these situations, more than ever, speech and use become mixed activities and are tied closely together—in a remix of ideas and sources that help enable participatory democracy. Employing a pedagogy that encourages students to learn within the realm of participatory democracy allows instructors to support a training ground, of sorts, for the country's future, as well.

If we are to prepare students to face the challenges of the 21st century, we cannot ask them to engage only in rote memorization of static "facts," especially when knowledge keeps changing at an ever-quickening pace. The Framers' genius was in creating a set of goals for advancing democracy through learning and access to the dialogic process by reflecting these goals in an intellectual property provision that creates the base of our ability to interact. Democracy requires creativity and innovation; these are made possible through free speech, fair use, and a pedagogy that supports their use. Our democracy is not static, but thrives on fluidity, accommodating change to allow a country that can grow and develop, hopefully, into a smarter, more innovative, more inclusive union. Choosing an appropriate pedagogy to support the mechanisms of fair use in free speech can go a long way to prepare students to engage in participatory democracy and thus to influence the shape of the country.

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