

Private Property of the Caribbean: The C(o)urse of Fair Use

I was recently teaching a class in Educational Media, where we were going through *Harry Potter's World*, (Heilman (2003), RoutledgeFalmer), a book that collects a series of essays that discuss Harry Potter from a number of different critical directions. Our goal was to discuss Potter as a site to develop an understanding of the possibilities that might exist within critical media literacy.

We were discussing a chapter about the notion of civic leadership. Harry Potter is a character who must occasionally break the rules of his educational institution in the larger effort to accomplish the institution's goals. My students were troubled by this. They thought there was



Ralph Beliveau

something suspicious about the idea that, occasionally, someone could get away with bending or breaking the rules.

I suggested they consider where the rules came from in the first place, that we consider the authors' discussion of this issue. Rebecca Skulnick and Jesse Goodman, authors of the chapter on Potter's civic leadership, mention that breaking such rules are a major trait of civic heroism, and that rules may be broken when their rupture serves to uphold rather than subvert the cultural values of the institution. These rules, I added, were a remnant of a previous moment of negotiation, a socially constructed

See "Fair Use" on page six

Reclaiming history from the "collectors"

I exchanged email recently with a student interested in enrolling in my required journalism history course this fall. The student had some questions about the course. First, she wrote, there must be some mistake as the online schedule has the meeting time listed at 8:30 a.m. I replied that the time was correct. She next suggested that there was another discrepancy with the online schedule. The course, according to the Web site, was listed as meeting on Mondays, Wednesdays, and Fridays.



Matthew Cecil

Surely, she said, that must be wrong. Fridays in the Fall are for preparing oneself to cheer for the Sooners on

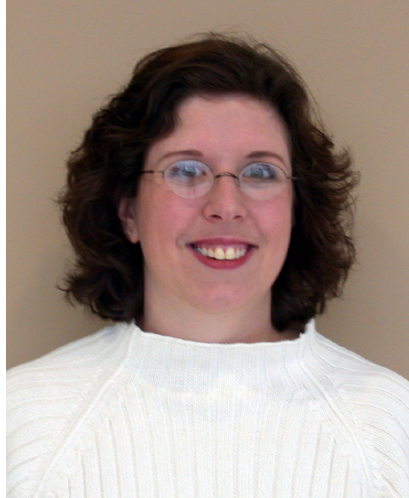
Saturday. I hoped she was joking. No, I responded, the last time I checked Fridays are reserved for education, even at the University of Oklahoma. Finally, she wrote back and asked the question I think she had in mind all along. Why is journalism history a required class in the Gaylord College?

I am sure that many of you have been asked similar questions about the utility of this course or that. Unfortunately, because of the way journalism history has traditionally been taught,

See "History" on page three

2 Alison Plessinger, C&CS Division Head

Well, we are gearing up for a great convention this year. Mary Lynn and I spent a crazy weekend in December finalizing the panels – whoever thought it was a good idea to hold the Mid-Winter planning meeting the same weekend as the SEC championship game in Atlanta, and in the same hotel where the LSU fans were staying?!!!! – and I think we have come up with a slate that represents the diversity of our division and also gives us some good ties to the international location. Here's what we have planned:



Alison Plessinger

1. *"Fulfilling the requirement of sexual orientation in the JMC curriculum"*: Pre-convention workshop co-sponsored with the new GLBT interest group. Tuesday, August 3 from 1-5 p.m.
2. *"Resistance is futile: the ethics and cultural impact of stealth marketing"*: panel co-sponsored with the advertising division. Wednesday, August 4 from 10-11:30 a.m.
3. *"International and Global Dialectic in Journalism, Media and Cultural Production"*: panel co-sponsored with the international division. Wednesday, August 4 from 1:30-3 p.m.
4. *Q&A with JCI Editorial Board*: Meeting for all CCS members to talk to JCI editorial board. Thursday, August 5 from 7-8 a.m.
5. *Poster session* co-sponsored with the advertising and public relations divisions. Thursday, August 5 from 8:15-9:45 a.m.
6. *Scholar to scholar poster session*. Thursday, August 5 from 1:30-3 p.m.
7. *"A Nationwide Endeavor: tackling media literacy in Canada"*: a panel co-sponsored with the ethics division. Thursday, August 5 from 3:15-4:45 p.m.
8. *CCS Annual Members Meeting*, followed by an off-site social. Thursday, August 5, 8:30 p.m. -???
9. *Edward Said and public intellectualism*: panel co-sponsored with MC&S. Friday, August 6 from 8:15-9:45 a.m.
10. *Mini-plenary about parenthood and the academy*. Co-sponsored with CSW, GLBT,

- GEIG. Friday, August 6 1:30-3 p.m.
11. *PF&R Award Winner*. Co-sponsored with the ethics division. Friday, August 6 from 5-6:30 pm
12. *"Myth and media history"*: panel co-sponsored with the history division. Saturday, August 7 from 10 to 11:30 a.m.
13. *"The politics of research: critical scholars face the implications of their choices of methodology"*: sole sponsored panel. Saturday, August 7 from 1:30-3 p.m.

I think that this slate will be a great one for our members, and I am looking forward to the incredible opportunities that Toronto has in store for us.

Shayla Thiel, editor of JCI, has asked me to update you on activities with the journal. She informed me that she has received more CCS submissions this year, with several members having articles in the January issue. She has also been able to successfully recruit about a dozen new reviewers through the division, giving us a much greater stake in the journal. JCI has also selected a new editor for next year. Yu Shi is an ABD graduate student at Iowa whose research centers on critical-cultural studies. She will begin her work with the journal on June 1.

You may have noticed a scheduled meeting with JCI on our agenda for August. Over the past few years, there has been a lot of discussion about the role JCI plays for our division. Some have questioned its true connection to the division or expressed concern about how the journal is run. This meeting is an opportunity for members to hear about the operation and to ask questions. It is also a chance for CCS members and the board to talk about how the journal can better serve the division. The board has expressed an interest in having this conversation, and I encourage as many of you to attend as possible. The only way the relationship between the division and the journal can work is if we all communicate openly about what we want the relationship to be.

See "Plessinger," continued on page 4

History, continued from page one

explaining its utility is not always easy.

In my experience as a student and educator, journalism history has received the classic “collector’s” treatment by historians and many of our colleagues. History is relevant, they suggest, because it happened. After all, look at all the heroic stories we have collected — stories of the triumph of capitalism and [please stand and salute] the infallibility of the First Amendment, a monolithic and unchanging ideal that always protects speech and enhances democracy. Each story is more heroic than the last, and all provide us with “model” human beings [all men, mostly white] to pattern our lives after. How is it that anyone can suggest history lacks utility and relevance, the “collectors” say, when all one has to do is recognize the fact that media has at all turns enhanced democracy? History is relevant, we have been told, because it happened. Journalism history is relevant, we have also been told, because it is the whiggish story of an ever-expanding democracy with the unchanging and formidable [hand on hearts, please] First Amendment leading the way.

As employed in many contexts, journalism history is a lovely set of stories that ultimately tell us very little about the ongoing struggle involved in maintaining democracy. It is little wonder that, confronted with an upside-down world and trapped between terrorists and craven politicians, many students see little utility in the easy dichotomies and happy-endings of journalism history. Even more disturbing, I am convinced that many of my colleagues in journalism and mass communication education would happily replace a history requirement with yet another thought-free, computer software tutorial class. The easy response to these challenges would be to declare that the anti-historians merely don’t understand the value of history. The problem is that the collectors of our field have, through their adherence to progressive history and devotion to the presumption of First Amendment protection for everyone, failed to communicate a case for the utility of history.

One case that might be made is the assertion of history as a cautionary tale, particularly in relation to the shifting protection of the First Amendment in American society. Authors of journalism history

texts have neglected, in most cases, to explore and foreground instances when the First Amendment failed. The most commonly employed journalism history text, for example, is now in its ninth edition and includes little mention of anyone who has, because of their ideology, found themselves unprotected by the First Amendment. Socialist, anarchist, counterculture, and other dissident presses operating outside of the mainstream were subject to repression by the government along with its adjuncts in the mainstream press. In those instances, people whose ideas fell outside of “acceptable” were not included under the umbrella of the First Amendment. The collectors and authors of most history texts somehow missed those instances.

The shifting protection of the First Amendment provides a basis for a critical history of journalism in the U.S. — a history that I would suggest carries more potential hooks for students (and educators) to recognize utility in the exploration of the past. The collector’s history of journalism, on the other hand, fails to invite students to question the assumptions of American society. I find that students carry a vastly overblown belief in the mythology of America into my classroom. Collectors’ histories of western journalism may be less risky and controversial, since they meet a receptive audience ready to believe. In journalism history we have too often sacrificed meaning and criticism for progressive tales of the mainstream. In place of thinking skills and relevance to the reality of the American experience, we have chosen to recount the mythology of journalism and the infallibility of the First Amendment. Is it any wonder that our students and colleagues see no utility and relevance in journalism history?

There are excellent resources available for anyone who wishes to help students explore the failings of the First Amendment in order to communicate the relevance of protecting it. Some of my colleagues who teach journalism history have, like me, moved away from the collector’s texts towards histories of dissident presses and case studies exploring instances where the bounds of debate narrowed, leaving some journalists on the outside. The answer to those who question the

See “History” on page four

Plessinger, continued from page two

A couple other notes. We have a new division listserv. If you got notification of this email, you are on the list. It is a send only list that officers will use to communicate with members. You cannot reply to this list. The Yahoo list will continue to exist as a discussion forum, and members need to ask to be added to that list. The official listserv includes all members.

The convention is shaping up, and we are starting to get some information. Right now, the hotel will be about \$150 a night for a single, about \$170 a night for a double. These rates can change a bit as they are based on the current exchange rate each day.

Registration this year is up to \$115 for a member for early bird registration (by July 5) and \$155 after July 5.

If you are planning to attend the convention, please make sure you take care of getting your ID together. It is advisable to have a passport to get into Canada these days. US citizens can also use an expired passport, birth certificate, or certificate of naturalization or citizenship, in addition to a driver's license or other photo ID. You need to expect 4-6 weeks to get a new passport.

See http://travel.state.gov/passport_services.html for more information on obtaining a passport.

History, continued from page three

utility of history lies not in the collector's heroic stories of media enhancing democracy. The answer lies in the stories of the U.S. government and mainstream press failure to discourage lynching. The answer lies in the government's efforts to withhold birth control information. The answer lies in the government's efforts to jail, execute, and deport leaders of dissident

presses throughout American history.

The key idea in describing the utility of history is that history is relevant because protecting and enhancing democracy has always been, is now, and will always be, a matter of struggle and vigilance.

Matthew Cecil
University of Oklahoma

Journal of Communication Inquiry moves to APA style

The *JCI* Editorial Board has voted to change the journal's required manuscript style from Chicago (15th Edition, B) to that of the American Psychological Association or APA style, effective immediately for newly-submitted manuscripts.

The change was made, according to *JCI* Editor Shayla Thiel to help the journal maintain consistency with the other top communication journals in the field. It is also hoped, she said, that that the change will encourage more scholars to submit their manuscripts to *JCI*.

For more information about APA style, please visit:

<http://www.apastyle.org>

JCI seeks reviewers

JCI is always looking for qualified volunteer manuscript reviewers. If you have an expertise in communication studies — and in particular an expertise in critical-cultural studies or historical research — and you would be interested in working as a peer reviewer, please contact jci-editor@uiowa.edu.

The *Journal of Communication Inquiry* emphasizes interdisciplinary inquiry into communication phenomena and particularly welcomes manuscripts that consider alternative perspectives in theory and method. The journal is blind-reviewed, widely circulated and read, and abstracted in relevant bibliographic indexes.

Well-known scholars who have published articles in past *JCI* issues include Janice Radway, Stuart Hall, Ien Ang, Lawrence Grossberg, Stanley Deetz, Edward Said, Angie McRobbie, Dick Hebdige, and Hanno Hardt, as well as many upcoming scholars of varied disciplines.

Call for papers

Critical Studies in Media Communication

Critical Studies in Media Communication provides a home for scholarship in media and mass communication from a cultural studies and critical perspective. It particularly welcomes cross-disciplinary works that enrich debates among various disciplines, critical traditions, methodological and analytical approaches, and theoretical standpoints. CSMC publishes scholarship about media audiences, representations, institutions, technologies, and professional practices. It includes work in history, political economy, critical philosophy, race and feminist theorizing, rhetorical and media criticism, and literary theory. It takes an inclusive view of media, including newspapers, magazines and other forms of print, cable, radio, television, film, and new media technologies such as the Internet. Manuscripts should be analytical and interpretive (i.e., not merely descriptive) and should make an important, substantive contribution to existing or emerging bodies of knowledge.

CSMC adheres to a policy of blind, peer review. In order that authorship remains completely blind, author name(s) must appear only on the title page, references to any author's prior work must be masked, and internal identifications in the text must be avoided. Manuscripts that have already appeared in any other published form or are under review at any other journal cannot be considered.

Manuscript and reference style must adhere to the fourth edition (1994) of the *Publication Manual of the American Psychological Association* and should not exceed 9,000 words including references, notes,

figures, and tables. Upon notification of acceptance, authors must—by NCA policy—assign copyright to NCA and authors must provide copyright clearance for any copyrighted materials. Authors must provide camera-ready copy of any artwork, tables, or figures.

Four copies of each manuscript must be submitted, in double-spaced, 12-point font. The title page must list the article's title, professional identification and address of the author(s), and phone, fax, and e-mail of the corresponding author. The title page should also include a history of the manuscript, indicating whether it has been presented at a conference or is derived from a thesis or dissertation; and acknowledgments of all contributors to the manuscript. Please also submit a second page containing the title and an abstract of no more than 200 words.

Manuscripts should be submitted to Linda Steiner, editor-elect, *Critical Studies in Media Communication*, Department of Journalism and Media Studies, Rutgers University, 4 Huntington St., New Brunswick, NJ 08901-1071. The editor can be reached by e-mail at csmc@scils.rutgers.edu; and by phone at 732-932-7500, ext. 8169.

The associate editor-elect is Jack Lule. Inquiries about symposia or themed sections may be directed to Jack Lule, Department of Journalism & Communication, 33 Coppee Drive, Lehigh University, Bethlehem, PA 18015; he can be reached by e-mail at jack.lule@lehigh.edu.

C&CS News Seeks Your Contributions

C&CS News, newsletter of the Cultural & Critical Studies Division of AEJMC, requests contributions for its Summer 2004 issue. Contributors are urged to forward relevant calls for papers, opinion pieces, teaching tips, etc. Teaching tips are particularly wel-

comed and should include links or lists of relevant resources.

Send your contributions and ideas to the newsletter editors:
matthewk@truman.edu, matthew-cecil@ou.edu

Fair Use, *continued from page three*

process. These rules need to be reproduced in each new generation, and are thus open to critical scrutiny.

My students remained skeptical. What good are the rules, they mentioned, if they are subject to such variations?

I was at a loss. What should I make of such a position, more secure following the path the rules lay out, rather than face the dangers...and the anarchy...of considering the negotiation process to be ongoing?

This, I would offer, is perhaps an opening to urge further thinking on the current status of copyright law for those of us in classrooms, and particularly those of us who have a critical turn. Is it not our civic duty to reopen this issue, to negotiate in good faith? What is fair in fair use?

We find ourselves in these battles in many different ways. Some of us are caught in the negotiation over the limits of “plagiarism,” which are being renegotiated through the (perhaps unanticipated) shape and dimension of internet access. We want our students to plug into the ongoing conversations and arguments of importance to our culture...but we insist that they do their own thinking, and their own arguing.

But these arguments happen in a culture that moves in fragments, in associations and samples, in the allusion and the echo and the homage. We attempt to police the intended and unintended practices where

the intellectual version of this borrowing shades off into cheating, which we believe works against the foundations of our institution. Can Hogwarts State University survive among these dark satanic paper mills? Can Western culture survive the protection of intellectual property rights?

Inside the Institution

We have seen the frontier of this negotiation. The controversy over file sharing continues, from a center in the music industry to the associated realm of video files and the motion picture industry. Students by and large have received the threat of legal action, supported by local decisions to limit bandwidth access.

I think as educators in communication, however, we have an obligation to bring our students into the conversation, to legitimately place them in the negotiation before the “rules” further erode the institution of our culture.

What do I mean by this erosion? The answer starts from the threats to the actual application of “fair use” and ends when we no longer have the public will to sustain the struggle for the content of the Public Commons.

Consider the kinds of work done by the Media Education Foundation. They offer some of the most focused and dedicated material to advance the cause of critical media literacy. Their ability to develop their critical approach is dependent on “fair use” of material otherwise covered by copyright.

If we are going to teach our students to do research, and if we believe that in some great measure that the circulation of ideas and arguments leads to better ideas and arguments, then the details of copyright, fair use—and especially their “others”—needs to be included in our curriculum. If we are clever about this inclusion we can perhaps consider the various dimensions in the re-negotiation of our cultures rules on the interaction of ideas.

Information about the importance of fair use would be fairly easy for student to find on the net. They might want to spend some time, for example, with the material put together by the [Working Group on Ownership, Legal Rights of Use and Fair Use of the CSU-SUNY-CUNY Joint Committee](http://www.cetus.org/fairindex.html) (<http://www.cetus.org/fairindex.html>). The organization clearly states the important relationship between universities and fair use. Here is how they outline their position:

“The law’s flexibility is an opportunity and a challenge. It is an opportunity to expand and apply the fair-use doctrine to diverse and changing requirements in an effort to be fair to all parties. It is also a challenge to apply fair use amidst relative uncertainty, and new interpretations often do not favor educational needs. The four principles stated below serve to focus attention on these needs.

- “Higher education’s legitimate right to use copyrighted works must be

Continued on page seven

Fair Use, *continued from page six*

protected. The fundamental mission of higher education is to advance and disseminate knowledge. This mission is realized through the use of various information formats, learning environments, and modes of delivery without unreasonable copyright restrictions. The goals and objectives that we set in order to accomplish our mission require the ability to explore, analyze, and exchange information. The effectiveness of our work depends on our right to make creative and balanced fair use of copyrighted works. To succeed, all members of the college and university community must have reliable access to a wide variety of materials for teaching, learning, scholarship, and personal study. The materials also need to be stored and retrieved across the full range of the ever-richer diversity of useful electronic and traditional formats. Fair use in the electronic era must allow those processes when and where they are needed, without burden of myriad negotiated transactions, and consistent with the constitutional objective that copyright “promote the progress of science.”

- “Freedom of access to

information, regardless of its format, is essential for the creative and learning processes. Higher education must make use of the full range of means for accessing and utilizing various works which are protected by copyright law in both electronic environments and in traditional environments. Fair use is a historically important doctrine which is essential to fulfilling our higher education objectives. Fair use allows the academy to respond to the dynamic nature of the educational process and to the evolving formats of information resources. Fair use allows an otherwise rigid copyright system to respond to the fluctuating volume of available information and to the changing demands for its use. Fair use allows all members of the university community to sample the broadest possible range of ideas, to build new works upon the old, and to facilitate equal access to copyrighted works within the reasonable limits of the law.

- “Higher education's right of fair use in the electronic era must continue unencumbered by terms of licenses or transaction fees. Fair use is the crucial legal provision that allows

our educational system to be assured of enriching the student experience and of realizing its research objectives with the widest array of knowledge and insights. It provides the necessary educational opportunity that enables our institutions of higher education to prepare students for success in the world economy. Colleges and universities have supported, and will continue to support, the economic and creative incentives of copyright owners. But higher education also must support an expansive and flexible view of fair use in order to assure the fullest possible sharing of knowledge and to meet the unpredictable demands of teaching, learning, and scholarship, regardless of information format, learning environment, or mode of delivery.

- “Higher education has an obligation to educate its constituencies about intellectual properties and about the lawful uses of copyrighted material.”

Outside the Institution

When we teach about the notion of fair use and copyright, I believe we are obliged to move with our students to as basic a level as we can

Continued on page eight

Fair Use, *continued from page seven*

sustain regarding the philosophical motivations that support the current structure of the “rules,” and to invite them into the negotiation as part of the process of civic engagement.

One of the strongest advocates for developing a new understanding of the “rules” is Lawrence Lessig. This past March, Lessig released his new book *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity Information*. As reported in: http://infocult.typepad.com/infocult/2004/03/new_lessig_book_1.html,

“Lawrence Lessig’s new book, [Free Culture](#), is out in print at last. It’s also [downloadable](#) as a big pdf and [bitorrent](#): Lessig putting his money where [his mouth is](#).”

I would direct your attention to the download version and have a look at the story told about fair use and the production of a documentary that starts on p. 107 ([http:// free-culture.org/get-it> 106](http://free-culture.org/get-it>106)). Here we have the scenario of a documentary producer working on a piece about the people who work behind the scenes at a Wagner opera production. He taped them sitting backstage, watching *The Simpsons* and thought he could use the brief shot because of the ironic

appropriateness. Eventually, he finds that he cannot—not because of the concerns of the artist, but because officials of the parent company, Fox, want to charge tens of thousands of dollars...which they claim is their “educational rate.” The filmmaker talks to lawyers, who agree that the shot would be covered already under “fair use,” but that the threat of endless litigation would prevent the completed film from most of its distribution channels. In other words, despite the exception that exists in the law for fair use, the threat of litigation is enough to derail its intent and its spirit. We have an example here of the exact inverse of the rules being bent for the sake of the cultural institution. The rules extend beyond even their own territory, becoming rules that enforce provisions that are not even within the rules. In that proposition rests a notion of civic leadership that would please even the racial purists of the Magic world; the train to Hogwarts always runs on time and there are no mudbloods allowed.

I believe that students are in a good position to consider how this happens, and to participate in the re-negotiation of these practices. Lessig argues that companies like Disney take ideas from the public domain of the past,

reconfigure the material for their own purposes, and then copyright the results. In other words, Lessig argues, Disney will not allow others to do to it what it did to the cultural inheritance of the West. (See Lessig’s Web site, <http://www.lessig.org/>, for more on this point.)

To whatever extent we wish to re-define or reinforce—or refute—the notions of private property in our culture, we need to negotiate the relationship between these ideas as they connect from inside to the outside of our institutions. We need to offer our services in the interests of protecting the spirit of public communication as embodied in “Fair Use.” We ought to work to see, at the very least, that fair use be honestly applied in the face of coercive pressure from copyright holders and their familiars. At best, we might hope to see a redefined notion of public commons, a notion that serves a complex web of communication that connects artists, creators, and thinkers to citizens...rather than just connecting producers to consumers.

Ralph Beliveau
University of Wisconsin Oshkosh
University of Oklahoma

**Contribute to
 C&CS News**

We welcome longer contributions and commentary that aren’t usually part of traditional publishing. Graduate student contributions are particularly welcomed. If you are interested, email the editors at: matthewk@truman.edu or matthew-cecil@ou.edu

Call for Applicants

2004 Barrow Minority Doctoral Student Scholarship

Applications are now being accepted for the 2004 Barrow Minority Doctoral Student Scholarship. The scholarship includes a \$1,400 award and a free one-year membership in the Communication Theory and Methodology Division (CT&M) of the Association for Education in Journalism and Mass Communication (AEJMC). The scholarship honors Professor Lionel C. Barrow of Howard University in recognition of his pioneering efforts in support of minority education in journalism and mass communication. The award is sponsored by the CT&M Division and made possible in part through contributions from the Minorities and Communication Division, the Commission on the Status of Minorities and personal donations, as well as royalties from Guido H. Stempel and Bruce H. Westley's *Research Methods in Mass Communication*.

Minority students (U.S. citizens or permanent residents) enrolled in a Ph.D. program in journalism and/or mass communication are encouraged to apply. Applicants need not be members of AEJMC

or the CT&M Division, nor does their work need to address issues of race. Applications will be judged on the promise the candidate's work shows for making a significant contribution to communication theory and methodology. To be considered for this scholarship, please send:

- a curriculum vitae
- a letter outlining research interests and career plans
- and two letters of recommendation to:

Patrick C. Meirick
 Dept. of Communication
 University of Oklahoma
 610 Elm Ave.
 Norman, OK 73072

(Questions may be addressed to Prof. Meirick at meirick@ou.edu or 405-325-1574)

Submissions must be postmarked no later than June 1, 2004.