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Mark A. McCutcheon

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Reading Poetry and Its Paratexts for Evidence of Fair Dealing

MARK A. McCUTCHEON

This is legitimate salvage.

— James S.A. Corey, *Caliban's War* (427)

IN APRIL 2013, TWO THINGS HAPPENED that highlight a curious disjunction and ongoing tension, over a point of copyright law, between post-secondary education and Canadian publishing. Thing one: York University in Toronto was sued by Access Copyright, a royalties-collecting society purporting to act on behalf of English-speaking Canadian authors and publishers. Access Copyright alleged that York University's then recently adopted fair dealing guidelines — guidelines for those uses of copyrighted work that do not need permission or payment — were unfair and were impoverishing authors. Access Copyright alleged that York was not dealing fairly with copyrighted materials in teaching and argued that (together with all Canadian universities) York should instead pay a mandatory tariff to Access Copyright for its copying practices. In its 2017 ruling, the Federal Court sided with Access Copyright (see *Canadian Copyright*), but in 2020 the Federal Court of Appeal overturned the lower court's decision, killing its mandatory tariff ruling but keeping its ruling that York's copying practices were unfair (see *York University*); since then, a further appeal of the case has been decided in favour of York and the education sector by the Supreme 24 Court (Knopf). In the wake of Access Copyright's action and especially in response to the Canadian government's 2017 parliamentary review of the 2012 copyright amendments, organizations like the Association of Canadian Publishers, the Canadian Publishers' Council, the Writers' Union of Canada, and the Book and Periodical Council have issued statements that support the action while reprising Access Copyright's mischaracterization of fair dealing as the legitimized theft, by educators, of Canadian authors' intellectual property (see "Canadian Publishers"; "CPC's Copyright"; "York University"). Thing two: Newfoundland poet Mary Dalton got her fifth book of

poems published by Véhicule Press through its Signal Editions imprint. *Hooking* is a collection of thirty-eight centos — poems composed of lines from other poems, including both copyright-protected and public domain texts. Anticipated by earlier, extensively intertextual poetry books like Nancy Dembowski's *Ninety-Seven Posts with the Heads of Dead Men* (1998) and M. NourbeSe Philip's *Zong!* (2008), *Hooking* has since been followed by more mostly or wholly intertextual poetry books of striking critical power — Jordan Abel's Griffin Prize-winning *Injun* (2016), Ken Babstock's *On Malice* (2014) — with some featuring nervily trademark-encroaching design, as in the title of Sonnet L'Abbé's *Sonnet's Shakespeare* (2019) and the cover and title of Sina Queyras's *My Ariel* (2017).

Injun and *Zong!* emphasize the use of different found-poetry techniques, like erasure, whereas *Sonnet's Shakespeare*, *On Malice*, and *My Ariel* integrate found sources with the author's own writing. But, in their repurposing and recontextualization of other texts, these books all partake of the techniques of the cento, and a focus on centoism anchors this argument because of how directly (and hence instructively) the cento engages with copyright law, particularly its provisions for users' rights.

Composed wholly of judiciously selected and sequenced lines from other works, centos and related forms of found poetry show (if maybe only more self-consciously than other poetic forms) how writing is necessarily a kind of reading; it also shows Canadian poetry's fraught relationship to copyright law. As Northrop Frye observes in *Anatomy of Criticism*, "Copyright pretend[s] that every work of art is an invention distinctive enough to be patented. . . . Poetry can only be made out of other poems; novels out of other novels. . . . All this was much clearer before the assimilation of literature to private enterprise concealed so many of the facts of criticism" (96, 97). As Laura J. Murray and Samuel E. Trosow note of Frye's position, in their *Citizen's Guide to Canadian copyright*, it is a criticism of "copyright law's originality requirement [that] implies an overly individualistic, Romantic idea of authorship" (43). Frye's criticism also recognizes the significant age difference between poetry's ancient traditions and copyright law's modern ones; the sub-genre of the cento itself harkens back at least to Roman antiquity (Okáčová).

A literary form with an august lineage and a dodgy reputation — as dilettantism, as derivative frivolity (McCutcheon, "Cento" 80) — the cento has lent itself to postmodernist perspectives, for which it some-

times serves as a predecessor of postmodern aesthetics (Hoesterey 95) that emphasize pastiche, patchwork, and other appropriation-based methods of composition and cultural production. Relatedly, the contemporary cento's obligation to navigate the globalized regime of intellectual property law points up a shortcoming within postmodernist theory, namely its general neglect of said regime. Postmodernism, as practised by pre-eminent theorists like Linda Hutcheon and Fredric Jameson, has contributed much — as periodizing framework (what Jameson terms “postmodernity” [214]), as aesthetic (what Hutcheon terms “postmodernism” [*Poetics* ix]), and even as ethos — to the critical understanding of cultural production in late capitalism. More specifically, postmodern theory has fuelled a great deal of commentary on intertextuality, appropriation, difference, the redistribution of authorship, and the interrogation of authority in literary and cultural production — all of which illuminate important facets of cento poetry. The present study depends on postmodernism and poststructuralism — for key terms like discourse (à la Foucault) and “intertextuality,” the latter term coined by Julia Kristeva (Okáčová 7) and theorized further by Barthes (160); and for theoretically anchoring my understanding of writing and reading (writing as reading) and of capital and law (capital as law).

Yet postmodern theory has largely ignored intellectual property law and the ways that intertextual works negotiate it. Exceptions to this lacuna pose resonant questions: articles by Peter Jaszi and Steven Shonack discuss how postmodern theory has impacted intellectual property (IP) law (Jaszi 109) and vice versa (Shonack 281); McKenzie Wark searches the “information economy” dialectically for signs of radical, gift-economy promise (152); and Hutcheon's foundational work muses on the implications of postmodern art that provokes the law, especially IP law (189).

Guided by postmodern theory's concerns with irony, intertextuality, complicit critique (Hutcheon, *Poetics* 13), and capitalist disciplinary techniques, the present essay discusses several extensively intertextual poetry books published in Canada in order to advance a method for reading poetry books' front and end matter — the acknowledgement of permissions and citation of sources known as paratext (see Nair, “V.S. Naipaul”) — as de facto evidence of fair dealing in literary publishing. The point of this argument is not only to illuminate how publishers' private enterprise relies on a copyright provision they publicly criticize, but also, more importantly, to promote a more widespread recognition

and vigorous exercise of fair dealing as a right important to creators and consumers alike, as a vital instrument for cultural production and expressive freedom.

It may be helpful at this point to review some basics of copyright law and some particulars of Canadian copyright. The purpose¹ of copyright law is to treat original intellectual and artistic works as a kind of property vested by both private and public interests. The private interest is that of the author, the creator, or another designated “rights holder,” whom copyright affords a kind of limited monopoly on whether and how their work may be reproduced and distributed, in order to optimize the return they can get on their work; the public interest arises in the limitations on this monopoly, limitations that allow the work to be used by others as a resource for the development of future works (Galin 10). Copyright protects original expressions that have been given fixed material form — not ideas or facts but only material works such as literary, dramatic, musical, and artistic products, performances, recordings, and broadcasts. In addition, copyright protects only works that demonstrate “originality” beyond a minimal, necessarily vague threshold: a work must be more than a copy, but it need not be novel or unique (Murray and Trosow 42). And while copyright protects only original expressions given fixed material form, its protection requires no registration; protection applies automatically as soon as a work is produced and lasts whether or not the interest is actively defended (Murray and Trosow 36-37).

But copyright lasts only for a specified length of time, not in perpetuity: in Canada, the term during which a work is protected by copyright lasts from the moment of its material production until fifty years after the year in which its author dies. After a work’s copyright expires, the work joins the public domain, which the World Intellectual Property Organization defined in its 1980 glossary as “the realm of all works which can be exploited by everybody without any authorization, *mostly* because of the expiration of the term of protection” (qtd. in Nair, “Towards” 8). The public domain is widely understood as the total corpus of works whose copyright terms have expired. As Murray and Trosow advise, “Think of copyright term as a moving wall between today’s creators and a shared heritage: the constant renewal of the public domain ensures that creators have a growing mass of resources with which they can work freely — in both senses of the word” (49). However, Canada’s recent agreement to NAFTA’s successor, the United

States-Mexico-Canada Agreement, commits the nation to extending Canada's copyright term from fifty to seventy years; depending on how such an extension gets implemented, it could damage Canada's public domain significantly (see McCutcheon, "TPP").

In addition to works whose copyrights have lapsed, the public domain also encompasses "the fair use of protected works," as argued by Carys J. Craig, whose nuanced reading of the public domain, against its "absolutist conception," asserts that it "contains any use for which permission is not required" ("Canadian" 69-70). As Meera Nair writes, "When copyright-protected material is used in accordance with statutory exceptions . . . the work becomes part of the public domain" ("Towards" 8). The "statutory exceptions" allowing unauthorized use of works are known as *fair dealing* (the analogous statute in the USA is *fair use*). The Supreme Court's 2002 *Théberge* case decision links fair dealing to the public domain thus: "the exceptions to copyright infringement enumerated in ss. 29 to 32.2 . . . seek to protect the public domain in traditional ways such as fair dealing" (*Théberge*, par. 32). Fair dealing is a users' right in copyright law that provides for certain circumstances in which one may use or reproduce a copyrighted work without needing permission from or payment to the rights holder to do so: for instance, the quotation of excerpts from a work for purposes of criticism, study, or parody (Murray and Trosow 73). Through landmark legal rulings (e.g., *Théberge* in 2002, *CCH* in 2004) and amendments made in 2012 to Canadian copyright law, fair dealing has become enshrined as a users' right, but it is still commonly understood as a legal defence against infringement allegations.

Fair dealing and the public domain represent vital checks against copyright's insistent overreach; joining these checks, a counter-discourse of Indigenous cultural property has emerged to contest copyright law's premises in Eurocentric discourses of property and its "imposition of colonial regimes" (Nicholas 219), regimes that historically have treated Indigenous cultural works not unlike the way they have treated Indigenous territories: that is, as if such works and territories were unclaimed and free for the taking. As explained by Gregory Younging, "Traditional Knowledge and Oral Traditions [are] Indigenous cultural property, owned by Indigenous Peoples and over which Indigenous Peoples exert control. This recognition has bearing on permission and copyright, and applies even when non-Indigenous laws do not require it" (101). Murray and Trosow flag the cultural and legal differences

arising in Indigenous cultural property's community-grounded concern with reputation — “not the author's, but rather that of the . . . culture, or nation. And indeed, many Indigenous people emphasize that the ‘author’ of a specific expression is a tradition-bearer, not an originator. . . . Thus, while alienability is foundational to Western ideas of property and intellectual property . . . Indigenous ownership, as many explain it, is based on ideas of custodianship, community, and responsibility” (221-22). These contexts of cultural difference, Indigenous stewardship, and colonial arrogation bear significantly on the discussion of Abel's work below.

Copyright, then, may be a pretense, as Frye says, that a “work of art is an invention distinctive enough to be patented” (96) — but it is a pretense with teeth. Few kinds of work are as jealously protected by rights holders as poems and song lyrics, which publishers routinely discourage authors from quoting or excerpting because of the labour and expense of securing permission (especially for excerpts to be used as epigraphs, which use costs more). Poetry critic David Orr suggestively sketches the confusing grey area between paying for permission and exercising fair use:

A critic who wants to quote a poem in a book has to face a permissions regime that ranges from unpredictable to plain crazy. . . . The difficulty is not so much that the copyright system is restrictive (although it can be), but that no one has any idea exactly how much of a poem can be quoted without payment. Under the “fair use” doctrine, quotation is permitted for criticism and comment, so you'd think this is where a poetry critic could hang his hat. But how much use is fair use?

If you ask publishers, the answer varies — a lot.

Orr recognizes that major literary and cultural organizations (like the Poetry Foundation) explain and advocate for fair use's value to producing new poetry. But Orr also gestures to the entrenched system these initiatives attempt to counter, noting that publishers typically want to “play it safe” and advise authors to quote sparingly — if at all.

In Canada, these stakes have been raised by the government's agreement to the United States-Mexico-Canada Agreement and by the lobbying and misinformation campaigns of book business intermediaries like Access Copyright and the Writers' Union of Canada. Those intermediaries have relentlessly attacked “so-called fair dealing” (Levy),

persistently misrepresenting users' rights as a kind of sanctioned piracy (Levy; see also Geist, "Misleading") and successfully mobilizing publishers and authors to antagonize likewise the very education sector that is — in measurable, material terms — a major promoter, consumer, and supporter of Canadian writers and publishers (Boon 240; Doctorow; Geist, "Fictional"). As Talonbooks proprietor and publisher Kevin Williams told the 2017 parliamentary review of the 2012 copyright law amendments, "65% to 70% of our sales are academic or school course adoptions." Such claims for the continuance of volume book sales to educational institutions sit uneasily next to claims that such institutions' exercise of statutory rights is somehow destroying Canadian publishing.

During that government review of the amended copyright law, publishers' associations and individual presses submitted briefs and evidence in opposition to fair dealing, and educational institutions and associations submitted briefs and evidence in favour of it (Savage and Zerkee). Many of the lobbyists' statements echoed Access Copyright and Writers' Union talking points or cited a 2013 consultant report commissioned by Access Copyright — a report that has been rigorously eviscerated by copyright law experts (see Geist, "Fictional"; Nair, "With Due") — in their claims that fair dealing hurt book sales and was being misinterpreted and misapplied by educational institutions and their copying policies. "We've been damaged by the Copyright Modernization Act," said Glenn Rollans, then president of the Association of Canadian Publishers. "Adding education as a purpose for fair dealing crashed an inexpensive, smoothly functioning system." David Swail, then president of the Canadian Publishers' Council, recognized some of the key factors impacting Canadian textbook sales, like competition from "global firms," but criticized fair dealing as revenue loss: "We would like to see language in the act that reintroduces the importance of the marketplace and the commercial viability of that reproduction as paramount." And Talonbooks' Williams gave evidence articulating the assumption that fair dealing must be non-commercial and suggesting slippage between fair dealing (a Canadian concept) and fair use (an American one): "Fair use implies that there's no commercial damage suffered and that there's no use in terms of commercial purposes. But that is exactly what's going on." Yet some Talonbooks poetry books themselves exercise users' rights: Abel's *Injun* uses the public domain and Joshua Whitehead's *full-metal indigiqueer* quotes copiously from public-domain and protected sources, from Blake to Justin Bieber (49).

A close reading of Canadian poetry books' citational paratexts — such as the copyright page, whose statements hold both intertextual information and legal consequence — suggests that Canadian poetry publishers make extensive unauthorized use of copyrighted works, thus modelling fair dealing on a de facto basis, even while Canadian publishers and publishing lobbyists publicly clamour for fair dealing's curtailment or withdrawal from statute. (Publishers and lobbyists have not campaigned against the public domain; some publishers, notably Broadview Press, have campaigned for it by speaking out against the USMCA's copyright term extension, which would turn recent editions of public domain works into contraband [Le Pan].)

Post-secondary instructors exploit fair dealing for purposes of critical instruction, while poetry publishers do so for purposes of creative expression. Is it fair to compare courseware construction and literary production? Both of these apparently divergent forms and contexts of using published works depend on the same legal statute — even on the same clause. Section 29 of the amended *Copyright Act* articulates the fair dealing provision, and this clause specifies the purposes for which unauthorized reproduction may be deemed fair dealing: “research, private study, education, parody or satire.” Subsections 29.1 and 29.2 enumerate criticism, review, and reportage as additional permitted purposes. This section names education as an allowed purpose for fair dealing; what makes the section applicable to cultural production are the other purposes it enumerates, especially criticism and parody, which (like research and review, for that matter) are practices integrally at work in forms of poetry, like the cento, that quote from and adapt other works. The judicious selection and sequencing of specific lines and excerpts demonstrates the “skill and judgment” that Canadian law requires for originality (i.e., in rendering a new work copyrightable [Murray and Trosow 42]); these processes combine production and reception, involving criticism and parody of their sources.²

If criticism, research, and review are things that creators do, then, these things they share with educators. Both fields of activity engage in literary canon formation (or reformation or deformation); both select and sequence texts as elements of critical practice; both enact writing as reading, whether in centos and sonnets or in lectures, papers, and exams. This conception of writing as reading is what Roland Barthes means by “the death of the author”:

The text is a tissue of quotations drawn from the innumerable centres of culture. . . . But there is one place where this multiplicity is focused and that place is the reader, not, as was hitherto said, the author. The reader is the space on which all the quotations that make up a writing are inscribed without any of them being lost; a text's unity lies not in its origin but in its destination. (146, 148)

Barthes' arguments nurtured the development of literary theories like postmodernism, in part by interrogating the supposed distinction between reading (education) and writing (expression), instead illuminating the interdependence of these acts. As Hutcheon states, building on Barthes, "intertextuality replaces the challenged author-text relationship with one between reader and text. . . . It is only as part of prior discourses that any text derives meaning and significance" (*Poetics* 126). Barthes' arguments also speak to the institutional conditions of literary production and consumption in Canada's cultural economy, where supposedly divergent education and expression materially complement each other.

As Craig told the parliamentary review committee, "The line between creators and users, between authors and the public, is more rhetorical than it is real. Today's users are authors, and authors are users. Authors are students and educators. They are consumers. They are curators" (Evidence; see also Murray and Trosow 73). Education credentials — undergraduate creative writing courses, MFA degrees, publishing programs — provide creators, publishers, and other cultural economy workers with learning, practice, networking, and other professional skills and opportunities, including teaching. "A course of specialized study, often starting at the undergraduate level, is considered a necessary professional qualification for writing," writes novelist and columnist Russell Smith. "It is also a necessary qualification for the teaching of other creative-writing teachers so that they may be qualified to teach other creative-writing teachers, and this is a job that all writers must do." Educational institutions also produce audiences and mechanisms for the reception and consumption of arts and culture. Canada's cultural and educational sectors constitute a complex, inter-related continuum wherein education and expression are not opposed, as publishers' lobbyists suggest, but are mutually constitutive, as many poetry books' acknowledgements sections demonstrate (see Babstock 94; L'Abbé 161).

Furthermore, writing that appropriates and adapts extant works can serve as synecdoche for and subvert these pedagogical and acculturative practices. Avowedly intertextual works enact critical and canon-forming or -redefining functions; in responding to, reinterpreting, and recontextualizing literary texts, such works reproduce literary traditions, in this way teaching them to readers while also commenting critically on them in how they adapt or transform them. Both text and paratext fuel these functions; a bibliography is more than a ledger of credits, it is an invitation to read and to research further. In the notes in her 1998 book, Dembowski invites “readers interested in investigating this [allusory] aspect of these poems . . . to examine them in relation to” a list of texts that follows (61). Abel’s *Un/inhabited* makes no such invitation but the book exerts a powerful pedagogical function, leading the reader on an unsettling tour of the tropes in popular literature that demonstrate the ubiquity and violence of colonialism and anti-Indigenous racism.

Works acknowledging their intertextual debts also teach readers that, as Natalee Caple says, “repurposing text is a tradition in and of itself.” This kind of teaching seems acutely needed, especially for emerging creators, amid a cultural climate chilled by litigation jitters. Meera Nair writes of students and fellow educators who are sufficiently misinformed and spooked about fair dealing that they’ve stopped copying *tout court*, a trend Nair fears interferes with Canada’s capacity “to develop knowledge-based industries”: “If generations of Canadian students are instilled with the view that education and creativity are contingent on permission from others; that every scrap of content (even when employed for something as innocuous as homework) must be paid for, Canada’s future looks bleak” (“How”). One way in which appropriation-based writing practises literary pedagogy is by modelling the exercise of users’ rights, evidence of which becomes legible in published books’ paratextual material.

The method I propose for a strictly text-based reading of fair dealing starts from two premises, one concerning fair dealing’s commercial uses and one concerning the character and consequence of paratext. First, contrary to the assumption that fair dealing protects only non-commercial or non-profit uses (an assumption promulgated by some universities’ copyright guidelines [see “Copyright Guide”]), it is crucial to clarify that fair dealing does apply to commercial cultural production and publishing (just as the public domain affords many commercial applications, for instance in the publishing of new editions of old works). As

a principle of copyright law, fair dealing first emerged in statute and case law in the eighteenth century (Katz 97) and became codified in early twentieth-century legislation, like the UK's 1911 Copyright Act, partly in order to regulate commercial endeavours like book reviews and literary criticism (Nair, Email).³ Canada's copyright law allows fair dealing for several purposes that can be commercial, like reviewing and reporting (*Bill C-11*); furthermore, fair dealing's commercial applicability has been mentioned in case decisions like those of the Supreme Court in *CCH Canadian Ltd. v. Law Society of Upper Canada* in 2004 (see Geist, "Fairness" 176) and *SOCAN v. Bell Canada* in 2012 and like that of the BC Court of Appeal in *Vancouver Aquarium Marine Science Centre v. Charbonneau* in 2017, which plainly states that "fair dealing extends to commercial dealing" (par. 51). Even the Writers' Union of Canada acknowledges that writers "use the fair dealing provision," in a communication that elsewhere sketches a specious "legal consensus" on fair dealing and scolds "users who copy without a licence" ("What Is"). In a parliamentary review statement, David Caron, then president of the Ontario Book Publishers Association, said, "As a publisher, if I use an author's work in another book, I can only use the minimum that I need in order to discuss that writing. Even then, I cannot use an amount that would affect the commercial value of that writing. I cannot affect the revenue of the original book. That is fair dealing for us." Caron's acknowledgement that fair dealing is a consideration in publishing also conveys the very conservative sense, widespread among publishers, of how sparingly other works should be quoted.

Despite legislative history and language that apply fair dealing to commercial endeavours, in Canada the widespread perception of fair dealing not as right but as defence — or as piracy perpetrated by teachers and students (Boon 240) — and the prevalence of clearance-culture assumptions that quotation always requires permission and payment (see "What Is") suggest why fair dealing does not figure in publishers' guidelines and policies. Furthermore, it would be impracticable and inappropriate to conduct human subject-based research (i.e., interviews with authors and publishers) to ascertain whether authors and publishers intentionally exercise users' rights. Statements from creators on the use of fair dealing in publishing could entail real legal risk. And for authors or publishers to make positive statements about the uses of fair dealing for publishing would erode the united front of opposition to users' rights that Access Copyright and similar intermediaries have marshalled. In

Eli MacLaren's analysis of Canadian poets' positions on remuneration and copyright, several poets are quoted as supporting fair dealing's role in producing new work — and one is quoted on the adverse impact of permissions requirements on their own use of quotations (22) — but these poets remain anonymous, with good reason. The legal consequences of copyright enforcement mean that human subject research on users' rights requires the condition of participants' anonymity or else raises significant red flags for research ethics review. But a methodology based strictly on reading published textual evidence mitigates the risk of implicating individual authors and publishers.

The second premise concerns *how* a book cites its sources. I hold that *permissions* language (typically found in front matter like the copyright page) constitutes evidence of authorized, paid licensing, while *notes* (typically but not only found in end matter like acknowledgements, notes, and bibliography) comprise evidence of fair dealing's de facto exercise, whether or not such use is intended or defended as such. If copyright applies automatically, then its user provisions should too; perhaps producing cultural works in general according to the premise that users' rights apply automatically suggests one way to strengthen the ties between users' rights and broader expressive rights, as Bitá Amani calls for: "Rather than assume that the Charter is redundant because of existing internal copyright limits and safeguards such as the defence of fair dealing, we must acknowledge and embrace Charter compliance as a check on copyright's public reach" (51). The reading methodology that I propose seeks to strengthen the relationship between expressive freedoms and users' rights.

Furthermore, to describe poetry publishing as a commercial endeavour is only technically true. Canadian poetry is widely known in publishing to represent loss, not profit (MacLaren 14), and permissions for excerpts from copyrighted poems can run up a prohibitive cost, especially in a book like *Hooking*, which uses lines from hundreds of poems, including several by world-renowned poets. Permissions for a book like Dalton's could conceivably cost a total of tens or hundreds of thousands of dollars, and that's an untenable cost for an unprofitable genre like poetry and for the small presses that publish it. Dalton's publisher, Véhicule, like most Canadian poetry presses, depends on state support (like the Canada Council for the Arts) to subsidize its publications. With the small print runs of most Canadian poetry books (usually just in the hundreds), paid permissions for quotations would exacerbate

the loss a poetry book already poses and could create absurd, alienating situations wherein a rights holder who is neither the new book's author nor its publisher stands to make more money from licensing fees than either author or publisher stands to make from book sales.

Let us turn now to Dalton and to the other poetry books introduced above, to see how their paratextual matter represents their repurposing of other works. Dalton's book uses hundreds of poems, cited in a detailed bibliography. Dembowski's *Ninety-Seven Posts with the Heads of Dead Men*, L'Abbé's *Sonnet's Shakespeare*, and Queyras's *My Ariel* each works mainly with one author's oeuvre — Pound, Shakespeare, and Plath, respectively — while also weaving in numerous other intertextual references. Philip's *Zong!* restricts its poetry's vocabulary to language from one source text; Abel's *Injun* (like his earlier book *Un/inhabited*) also uses only source text, drawn from not one but dozens of pulp novels; and Babstock's *On Malice* integrates extensive citations from three writers in its quartet of long poems, only the last of which is a cento in its strictly intertextual composition.

Dembowski's *Ninety-Seven Posts* makes centos of several of Pound's *Cantos* (most editions of which are still protected by copyright); other poems imbricate a wide array of poetic and scholarly sources, some protected by copyright and some in the public domain. "TEXTS, BY DEFINITION," Dembowski writes metapoetically in the long, cento-esque poem "Weaving Blind," "ARE FRAGMENTS IN OPEN AND ENDLESS RELATIONS / WITH ALL OTHER TEXTS" (26). As mentioned above, Dembowski's notes invite readers to research her sources, but unlike Dalton, who lists sources in order of appearance, Dembowski lists sources alphabetically by author, obliging readers to work harder to identify her lines' sources and transformations. The book mentions no permissions. Like the other books discussed here, the paratext in *Ninety-Seven Posts* not only names sources but also articulates a distinctive poetics and politics.

L'Abbé's ambitious book incorporates the complete text of Shakespeare's sonnets, each of which is subsumed in a prose poem whose title corresponds to that of the sonnet it "aggroculture[s]," such that "Shakespeare will forever subutter my restated colonial legacy" (43). As for paratext, her book includes extensive notes on procedure and sources, but no permissions language. Permissions aren't needed for Shakespeare, a public-domain author, but their absence is more striking given L'Abbé's use of popular music recordings. *Sonnet's Shakespeare*

suffuses its defamiliarizing prose dubs and cuts of the Bard's sonnets with samples ranging from Dire Straits (2) to Dr. Dre (49); some pieces address specific artists and scenes, like David Bowie (94), Prince (105), Leonard Cohen (118), "riot grrls" (73), and Tanya Tagaq (50).

Striking paratext brackets Queyras's *My Ariel*, a pastiche of erasures, centos, and other found poetry drawn mainly from Plath — whose work entered Canada's public domain in 2014 (and remains under copyright in the USA) — but also from Ted Hughes, Anne Sexton, and other authors whose work remains copyright protected. "The Courage of Shutting Up," for instance, excerpts and rearranges lines from Hughes's letters: "I sleep / In a deep lyric house built of gravestones" (104). Queyras complements *My Ariel*'s notes (155-58) with an unusual disclaimer on the copyright page: "These poems offer an engagement with the life and work of Sylvia Plath and Ted Hughes; they do not claim to be the truth of their lives, only the truth of my own engagement." Queyras's disclaimer — pointedly *not* a permissions clause — both asserts the poet's rights and respects the source authors' rights.

Philip's *Zong!* takes as its main source text *Gregson v. Gilbert*, an eighteenth-century legal case concerning a slave ship captain's massacre of some 130 enslaved Africans for insurance purposes. Like *Sonnet's Shakespeare*, Philip's book needs no permissions language for its public-domain source; moreover, *Zong!*'s notes on her source, premise, and process investigate the relationship between law and literature: "My intent is to use the text of the legal decision as a word store; to lock myself into this particular and peculiar discursive landscape in the belief that the story of these African men, women, and children thrown overboard in an attempt to collect insurance monies, the story that can only be told by not telling, is locked in this text" (191). Philip's method thus articulates resonances between literary form and imperial history that amplify the violence each does to Black lives. Materially formed and informed by apprehension of the violence of law and discourse, *Zong!* confines its language to the letter of the law — the legal decision — in order to deconstruct it exhaustively, through spacings, erasures, repetitions, and cento techniques: "suppose the law not / — a crime / suppose the law a loss" (20). As Rachel Galvin says of *Zong!* and of related work in what she theorizes as "cannibalistic poetics" (38), such work "re-theorizes literary tradition as a part of its critique of sociohistorical matrices of power" (20). Philip's radical re-authoring of the legal ruling on the Zong

massacre does not so much appeal that ruling as find it guilty: “the case / / is / / murder” (41).

Like *Zong!*, Abel’s *Injun* reconfigures public-domain sources (as does his prior book *Un/inhabited*, a related discussion of which appears in this article’s companion study [see McCutcheon, “Paratextual”]). Abel mentions the public domain among his notes, which also explain how *Injun* (like *Un/inhabited*) was composed of excerpts from a digital archive of ninety-one old pulp western novels (83). Like Philip, Abel concretely deconstructs the power nexus of racism, imperialism, and capitalism represented by his source materials, and like Philip’s, Abel’s erasures, spacings, and other techniques both echo and answer the exterminations, displacements (Galvin 20), and other kinds of intergenerational, anti-Indigenous violence abetted and legitimized by popular texts from settler-invader traditions, “the angry race / of bl ue eyed prospect struck / fair taints / / that brought their peaceful skin / unthinkingly to the summit” (15). Abel’s *Injun* illustrates the checks of the public domain and Indigenous cultural property on copyright’s overreach; the book enacts a poetic kind of decolonization, appropriating, recontextualizing, and criticizing a popular discourse particularly loaded with pernicious colonial violence.

Babstock’s *On Malice* consists of four long poems: his notes inform us that the first is a suite of sonnets composed using language from Walter Benjamin, the second is a long poem that includes phrases from a William Hazlitt essay, and the fourth is a cento of lines from an essay by John Donne (93). *On Malice* adapts both copyright-protected works (the cited Benjamin edition appeared in 2007) and public-domain ones (Hazlitt and Donne). The Hazlitt-based poem, “Perfect Blue Distant Objects,” poses questions about copying (57) and about “trying to form sense from a shrinking common” (64) — questions that echo in the last poem, “Five Eyes” (81-83), restated therein as questions of “the imperial vastness of the law of distribution” (82): “I give incitatory words to my masters / who require them / under law” (87). Babstock’s book holds no permissions language, and while its notes don’t name the public domain, his poems allude to and embody its “common[s].”

Dalton’s book, likewise, includes detailed notes instead of permissions language. Dalton’s notes describe her book’s procedure: “Each of the centos . . . is made of lines which occur at the same point in the linear structure of the poems they are excised from” (67). This procedure thus prevents any cento from using more than one line from a source

poem (the amount used from a given work is a key factor in weighing fair dealing), and Dalton's notes section specifies which line number every cento uses. The poems themselves occupy about fifty pages in Dalton's book (11-62); her bibliography occupies about thirty more (67-95), citing hundreds of poets and poems; some poets' names recur but very few individual poems are cited more than once.

Related cultural context for Dalton's procedure appears in the book's title and cover, which shows a rug-hooking tool: "hooking" refers to "a traditional Newfoundland craft," according to the back cover, and the cento is likened to "a hooked rug made up of strips of fabric cut from old clothes." Like its textile antecedent, the text draws together diverse, sometimes disparate materials — from historical and contemporary writers, from works in English and in translation — in poems that harbour jarring juxtapositions, surprising harmonies, and disturbing dissonances. *Hooking* also weaves into its poems self-reflexive allusions to its own method and form. In "Filaments," the persona repeats Hughes's line "Let me repeat" followed by a line from Sexton: "I give you permission" (28; see also 78). In "A Line of Blue," Dalton repeats Irving Layton: "to turn up fragments of poems" (58; see also 68). Dalton's aleatory centos model a folksy dialogism; they evoke traditional craft and build on an ancient poetic form while engaging with modern IP law, formally and sometimes conceptually too.

"Ravel" (33), like many poems in Dalton's book, has a title that refers to textile work. The five-tercet poem uses the seventh line of each of its fifteen source poems. Five lines are excerpted from poems that are now in the Canadian public domain (e.g., those of W.B. Yeats). The poem's other ten lines are drawn from copyrighted works (e.g., those of Austin Clarke and Robert Graves). The poem's arrangement of its sources inscribes a movement from public-domain sources to sources that are not only protected but themselves appropriative. The first half of the poem contains its public-domain sources; in the latter half, protected sources predominate. The poem's distribution of quotations rehearses a historical movement of privatization, a move from commons to commodity. The last stanza, ironically, cites lines that themselves assert rights to repurpose other people's works: the thirteenth line cites a Billy Collins poem entitled "I Chop Some Parsley While Listening to Art Blakey's Version of 'Three Blind Mice'" and the fourteenth line cites Richard Blanco's "Tia Olivia Serves Wallace Stevens" (90). This thirteenth line stands out for its brevity: Dalton's citation of Collins

comprises only two words and a comma: “If not,” (33). How does “If not,” satisfy the jurisprudential criterion of creativity that qualifies a work for copyright protection in the first place? Dalton could draw this conjunctive phrase from any number of texts, but she credits Collins with it, leading readers to understand his work as significant to Dalton and her poetics. But citing such a short fragment also points up the absurd overreach of intellectual property’s legal regime, a regime that facilitates the privatization of ever more granular components of public culture and speech.

It might go without saying that the cento tradition long predates the Romantic construction of authorship on which copyright law depends (Rose 91); what might bear repeating in this context is this detail from the 2004 Supreme Court case that helped to establish fair dealing as a users’ right: “It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair” (*CCH*, par. 55). Dalton’s work belongs to a longer literary history in which the publication of centos complicates received notions of “originality” and presents both contradictions and affordances for copyright law and authors.⁴

Moreover, in framing its form with a conceit of domestic textile work, in Dalton’s emphatic reliance on feminist poets (e.g., Margaret Atwood, Plath, Adrienne Rich), and in recontextualizations that emphasize gender (like the gender coding of “the victim” in “Ravel” [33]), *Hooking* — like several other works discussed here — brings a pronounced feminist focus to bear on corporate capitalism as culture’s infrastructure. This commonality arises partly through evidence of “writing in community” (L’Abbé 160), something of which becomes legible amid the aforementioned books’ paratexts (Abel 85; Babstock 94; Dalton 65; Dembowski 64; L’Abbé 160) and relevant critical commentaries (Caple). Acknowledgements of fellow poets and editors; online discussions of authors, forms, and the politics of forms; books’ notes thanking, praising, and mourning (L’Abbé 160) friends, family, and other relations (Queyras 157): such notes and commentaries document discernible community and suggest shared poetics and common concerns, such as querying the available business models for art consolidated by corporate capital and policed by a complicit, corporatizing academy. “This market breaks my heart,” writes L’Abbé (47); elsewhere, her work rhetorically asks the Trudeau government if it “will surely return poesy to its sponsored position” (79). The poet’s got a point, advocating

here for a model of more livable creative living like that recommended by MacLaren, whose study finds both that poets appreciate fair dealing's promotional effects (25) and that book sales aren't as important to poets' income as grants, awards, and other state investments (24-25). MacLaren calls for more government funding of such investment mechanisms (19, 21) in recognition of "contemporary Canadian poetry as possessing a multi-tiered economic structure that combines private and public dimensions compatibly. In this view, writing and publication are supported by the state while reception is encouraged through fair dealing" (25). The insufficiency of royalties for many creators (20) and the broader precariousness of creative practitioners' labour and income (a predicament worsened in many cultural sectors by the COVID-19 pandemic) have occasioned recent calls for another strategy for better supporting artists and writers that would also "mean that artists would not have to be forced to work with institutions that do not treat them well" (Pacheco): namely, a national basic income plan.⁵

The reading and contextualization of *Hooking* and of the other avowedly intertextual works discussed here seek to demonstrate a critical copyright studies methodology — one that is itself strictly textual in character — for gauging the applicability of users' rights and copyright limitations not just to practices of consuming and sharing culture but also to processes of cultural production and creative expression — like publishing, which is both a creative and a commercial endeavour. No less than users or readers do, authors need fair dealing too.

Yet, next to some of the arguments and questions posed by the poems quoted here, my thesis can seem like so much squabbling over mere scraps, conscribing those poems' broader labours of love and bearings of witness for a rearguard fight to hold the inch retaken by users' rights against capital's grasping after even that inch to add to the miles it's already taken during the centuries-long, globalizing aggrandizement of the IP legal regime. Some scholars who argue for a more robust exercise of users' rights also recognize the compromised, complicit paucity of those rights (Coombe et al., "Introducing" 39; Amani 54-55). As Marcus Boon notes of the word *fair*, it "participates in the rhetoric of impartiality that supported British imperialism, as well as capitalist ethics: after the inaugural act of violence with which one imposes a system, one seeks only fair play — i.e., behavior that accepts the newly imposed norms" (241). L'Abbé also critiques the rhetoric of fairness, alternately amplifying and muting the word "fair" (which recurs throughout

Shakespeare's sonnets) in ways that stress its freight of racism, white supremacism, and colonial-capitalist history: "Cette équivalence de pale et juste . . . de 'fair' est unkind and untrue," she writes in "CV" (106); in "CXLVII," she writes of "meaning to sound empathies that unsettle fairness-as-white" and muses, sardonically, that "this text won't earn trust that isn't there. That's fair" (149). Similarly, Boon's broader reminder — that "the legal domains in which copying is framed are themselves mimetic structures" (245) — echoes Philip's lyrical deconstruction of the power relations among law, property, and text, and like her poetry points to the contingent and mutable character of law and property as such.

Like such scholarly and poetic theorizing that reminds us how much greater than a quarrel over copying are the existential stakes for all working in arts, culture, and education, poets in Canada using extensively intertextual forms both show how fair dealing supports cultural production and how much *more* than fair dealing, how much more than criticism or parody happens in found poetry no less so than in other forms. How much more happens in these uncanny concatenations of "a conference call colloquy between ghosts in the sampling machine" (Reynolds 44): in L'Abbé's Bardophagic palimpsests about postcolonial Canada on the cusp of climate catastrophe; in Queyras's queered, Plathological occupations and reanimations; in Babstock's artificial intelligences "practicing dead songs" (24); in Philip's detonations of slaver-favouring legal texts; in Abel's remappings and ruinations of anti-Indigenous violence; in Dalton's patchworks posing impossible questions about "their *Quis*, and their *Quaes*, and their *Quods*" (33). And how much more, then, do writers and teachers have in common than is ceded by special interests that would set them at odds. Far greater threats to arts and culture under disaster capitalism challenge writers and teachers to repair solidarity and to renew a sense of common cause and of the commons.

NOTES

¹ Canadian copyright law technically states *no* purpose, although some purpose may be inferred from the *Copyright Act's* definition of copyright, in section 3 (1), as "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever."

² “Criticism” need not be negative, and “parody” — like burlesque more broadly — can mean more than lampoon or caricature; it can mean homage, tribute, and more, as “a form of inter-art discourse” (Hutcheon, *Theory* 2). For further discussion of criticism’s relationship to appropriation-based art forms, see McCutcheon, “DJ.”

³ Book reviews in nineteenth-century British periodicals sometimes deliberately reprint lengthy excerpts of books under review, directly competing with the books in order to undermine sales of books of which the reviewer disapproved (Rose 187).

⁴ David Shields’s book-length cento *Reality Hunger* essays a manifesto for quotation and collage as transformative, creative acts; his appendix, a list of cited sources (209-21), starts with an invitation for readers literally to cut the appendix out with scissors (209).

⁵ Contrary to the familiar criticism of detractors of basic income policies, such policies do not discourage recipients from working in general (McIntosh and Graff-McRae 5; Jones and Marinescu 28), never mind pursuing creative work; the prospect of income tends not to rate as a reason that writers write (MacLaren 19; Nair, “Canada’s” 1-2).

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