Transcript for **IP Law, Legal Issues, and Stories about Them** video

Note: Interview transcripts have been edited for clarity and consistency. Numbers in brackets **[0.00]** indicate timestamps for the video. Ellipses in brackets **[…]** indicate that material has been deleted from the excerpt.

Jim Purdy [00.00]: IP legislation has been changing rapidly in the last two decades, and we in writing studies need to track and attend to those decisions that are pertinent to our work. Participants in the IP Law, Legal Issues, and Stories about Them video reference legal decisions and stories of the law that they use in their teaching. These include the Sonny Bono Copyright Term Extension Act, Robin Thicke vs. Marvin Gaye, Lenz v. Universal Music Corporation, and Cambridge University Press et al. v. Patton. To give additional background on these cases, we provide links to more information about each of these cases in the Video Summary section of the webtext. Following the links will provide fuller descriptions of the cases and the rulings. Participants in this video highlight their implications for teaching writing. In the Pedagogical Takeaways section of this webtext, we summarize their suggestions for engaging the legal dimension of IP with students and colleagues.

John Logie [01.14]: My starting point is always the term of copyright. I ask students, and I say,"I need to talk to only those students who don't know the answer." So in a contemporary classroom, I teach a class titled, "Rhetoric, Technology, and the Internet." That class selects for one or two copyright nerds—and I would describe myself as a copyright nerd—who know the answer, and I say, "you two have to sit on your hands." And let's talk with the remaining 22 and let's get estimates for what the term is. And the term and the responses tend to be way low or way high. Way low in that people intuitively come up with a [number] calibrated to the practical reality of internet circulation, and they guess somewhere in the neighborhood of ten years, plus or minus. Or way high in that they believe the term of copyright is infinite—that somebody completes a work and owns it. And I'm going to say that's way high even though with the Copyright Term Extension Act—The Sonny Bono Copyright Term Extension Act that set the base term at life of the composer plus 70—that's not infinite. It's way too long, but infinity stretches out for a very long way. And I can still see 104 years as shorter than infinity. And so that leads to a discussion about what it ought to be. And I attempt to persuade people that it ought to be much shorter than it is, leaving aside the legislative challenges involved in making that happen. That's an important starting point in our discussions. And then I teach what I referenced earlier: that the 1790 law, its first words are "an act for the encouragement of learning." I ask the students whether they feel encouraged in their experiences of copyright, and the answer is inevitably "no" on that. I teach principles of fair use. I teach how protected the 1976 revisions language suggests scholarship and criticism ought to be. I teach the Sonny Bono Copyright Term Extension Act, how it played out, and what it does to the public domain. It functionally halted the ascension of works into the public domain.

Michael Pemberton [04.16]: Well, I think that in some ways, the horror stories and the scare stories work especially well. I'll give you an example; I've seen things that other people have used where they've shared articles with students about newspaper reporters and other writers who have been caught plagiarizing pieces and that that's ended up with them losing their jobs, but one of the courses that I teach fairly regularly is a course called "Comic Book Writing in American Culture" and it's an historical and rhetorical and analytical look at the comics medium. And one of the things that I talk about it in that course is the issue of work-for-hire, which was the standard contractual arrangement between the writers and the artists and the comic book publishers, and an example that just horrifies them is I show them the original check that Siegel & Shuster were paid for the creation and development of the very first Superman story; they were paid $130. And the tradition was is that that not only entitled the publisher to the rights of that particular story, but also all of the characters that were presented within it. In other words, it was done as work-for-hire meaning; we're paying you this lump sum amount of money and everything that you generate in order to get that amount of money now belongs to us. So this led to lingering, decades-long series of lawsuits between the Siegel and Shuster families and DC Comics over whether or not the original creators had any rights and subsidiary payments for the character of Superman and all of the merchandising and marketing and everything else that's gone on since then. So when I show that check on screen and say, "Here it is. $130 for Superman," suddenly they become very aware of the fact that maybe they don't want to sell their rights to creative properties quite as quickly as they might at first think.

Joonna Smitherman Trapp [06.24]: At Emory we have this "Domain of One's Own" project, where students don't just craft websites, they actually buy domains, and over time, build multiplatform domains that they can take with them, and that they own—the college doesn't. One good thing about that is that there domain then is not connected to the university necessarily, so the university's not liable. I think that's a really good solution, first of all, to the worries universities have when students start creating open websites using their space. So that's been one solution we've had. But then you've got other problems, right? So how do we teach our students publishing guidelines? And we can't really control, except with grades on the websites they've built, what they do. We can offer advice, but then suddenly they want to co-opt an Emory logo to put on their website, which is not legal. So we have to explain those things to them. And Emory doesn't like it, even though they're on the soccer team…and we've got to explain those things to them and teach them the difference between putting something on their website and it's theirs—and they designed it—or linking to it, or attributing it. And I think that's the biggest issue for us. It's OK—we've had discussion about this—to teach our students that taking something that's open access and embedding it in their website with their [information] is perfectly OK. It's not OK to take something and then make it seem like they created it. We want them to have this fluid dialogue in their webtext that they create, but they've gotta do it with a certain kind of intentionality. And then, I think, we have to model that too; so I'm creating my own website at the same time the students are, and I'm showing them, and I'm using it for teaching, and I should

constantly be going, “and see, this is a logo I created using these tools. So I’m gonna show you how you can create your own logo from open access tools, and things that are readily available.”—and not do the same practices that we’re trying to get our students not to do. So I’ll give you an example; recently I wanted to put a meme on my website that used the picture from *Star Wars*. It was all over the web, and my question was, if I put that on my website, I have nothing to attribute it to because it’s everywhere and it is a poster from *Star Wars* that’s been adapted, is that OK? And we had a big discussion about that. And that’s murky; it’s unclear to me if that’s OK. I did it, but when I showed my students, I explained the controversy that surrounded that, and I said why I finally decided to do it and we actually had a mini discussion about it. So I think that’s a useful tool. And also it’s good for them to be obvious and say we’re still working through these issues just so they can know. And so when they make a decision to do something, it’s at least within the context of the conversation. I’m not gonna call it an informed decision because I don’t know that it’s an informed decision. It’s just an aware decision.

Jeffrey Galin [10.12]: What are the limitations of intellectual property on you and your work, whether it’s teaching, or traditional works of scholarship, or service-work that you produce for your institution? So, all those elements, I think, are important. But the very first statement from that discussion is: have you read your intellectual property policy? And, if so, what have you understood of it? And what haven’t you? The next chunk, I would say, is using intellectual property in your own research. And being aware of the highly restrictive policies of publishers for—particularly for creative works. The absurd numbers of words from poems before you have to pay for use. I think awareness of what intellectual property is, and fair use is, is extremely important in our research so that we’re not prevented from publishing works of critical analysis that are clearly…that clearly fit within fair use for critical analysis for higher education. And yet publishers are unwilling to publish because they have too many words quoted from a single source without payment. I would point to cases…a wide range of cases from J.D. Salinger and James Joyce to…I guess Stephen Joyce was the case that was so dramatically lost and so ridiculously pursued by Stephen Joyce. There were…and I would also talk about how to use images, how to license images, how to get permission for images […] in work.

John Logie [12.16]: Well, at the graduate level I assume some of the basics are in place. And once I’m sure that those are in place then the thing I can teach at the graduate level—and I do teach this at the undergraduate level as well, but I can teach it with a little bit more freedom—the thing that I think graduate students need to understand is that there is a bit more play in the law than you might initially think. What tends to make news in the press are the big settlements, the big cases—stories like Robin Thicke allegedly plagiarizing Marvin Gaye—and that tends to suggest that the copyright monster is coming for you. And there is a lot of stuff that happens, and I think that should happen, that flies under the radar of anything that copyright litigation is going to track down. Let’s compare the Robin Thicke example, where there was a big payout—and I don’t even want to get into whether I think that played out in the right way or not—at the same time that that’s going on, there’s a mashup collective out of San Francisco, primarily—they’re international, but they’re centered in San Francisco—the *A*

Plus D community of mashup artists. And they have for a decade been putting out mashups that I would describe as the versus genre of mashup, where we have A versus B; usually the vocals from one song set against the musical backing track of another. Now, relative to Robin Thicke, that is deeply appropriative, and indeed the whole aesthetic of these mashups swings on the familiarity of both parts. It's someone being able to hear Adele's vocal and say, 'My gosh! I never imagined that that would sync up so perfectly with *Nirvana*'s "All Apologies."' I just made that one up. That's not a real mashup. Please don't go looking for it. So that goes on, but the reason why it isn't the subject of a lawsuit is I think a court would refuse to take the case, arguing that it is *de minimis*, which is this legal concept that is often explained with a quotation, "the law does not concern itself with trifles." That dates back to one of the judges who established a clear sense of what *de minimis* is and should be. So *A plus D* is able to do what it does because they don't charge anything. The closest they get to charging anything for the mashups is if you go to one of their events in San Francisco; the first 100 people who walk up to the DJ booth and ask get a free CD copy of their latest compilation. They may not even do that anymore because of digital distribution. But at the time I saw one of their events, that's what they were doing. So, no money exchanges hands directly for the mashups, and they have big dance events, where people come to dance to mashups, but those are I'm sure covered by BMI and ASCAP licenses that the clubs have in place. So they're making money, but not a huge amount, and not worth hiring your expensive copyright attorneys to chase down. And I think that story's instructive because, first, fair use is much stronger than we typically treat it as being. If we look at the language of fair use—scholarship, criticism, journalism—those are all protected areas where the fair use exception to copyright law as codified in our most recent revision to copyright is pretty clear. And then there's the practical reality that most of the uses that scholars are going to make are really either directly protected by fair use or *de minimis*. I'm not saying that someone couldn't climb out on a limb and get into a really bad place, but I am saying I think we underestimate how much of a safe harbor scholarly research is and should be.

Kyle Stedman [18:09]: I know Scott Nelson has specifically had his students do video projects designed to have *YouTube* take them down in some way, to walk through that and decide, to have experienced that—I don't know—copyright literacy almost, which it seems sad that that's part of what we do these days. But I've never had any student actually do it. I've told them—and see this is where I need to read up on the law because this is where I feel uncertain too—but I feel like part of what came out of that Stephanie Lenz case with Prince was that content owners really do have to give you a warning first. And I tell students that. They're not going to—even if they get a takedown notice—they're not going to automatically owe $10,000 for something they did once without any warning. I say, "The worst thing that will happen is someone might say something to you. They might be right. You might be right. And you might have to decide if you want to take it down or not." But it's never actually happened.

Jeffrey Galin [19:16]: The other big conversation is, of course, the whole Georgia State case, which is how do we use…how can we provide materials to our students, considering fair use, in a legal manner, that supplements the materials that we have them buy. I would say that the majority of faculty at universities still violate copyright law claiming—not even claiming fair use, they simply ignore the whole issue by putting up PDFs behind password-protected servers, and ignoring the whole possibility of violating copyright.

Kyle Stedman [20:14]: I think the only thing that I would want to add is that I—how do I say this—like I said earlier, I often find myself feeling like I'm more on, I guess I could say, the liberal side of fair use. I more want people to use that copyrighted stuff in the way that feels right to them. And yet there's always that little nagging fear that I'm not correct in that or that…I will read a court case and I think this is clearly fair use, and I'll say, "Oh wow! A real judge actually disagreed with me. And he's the judge, so he gets to say." So I think that's my overall stance right now; is, yes, go out and do it. Uh-oh, I hope I was OK to say that. And just that, in itself, feels weird that that's my basic stance. I co-led a workshop at 4Cs about a year ago specifically on fair use in a classroom co-led with four other members of the IP Caucus. And I remember even in that room, among attendees, and participants, and the leaders we could see that different ones of us sort of landed a little differently on that. We were a little bit more in the danger zone or a little bit less in the danger zone or comfortable working there. I just think that's weird that we can't have a little bit more clarity than that. And even the experts disagree on where that line is.