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Reading poetry and its paratexts for evidence of fair dealing

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 postsecondary education and publishing in Canada. Thing one: York University, in Toronto, got sued by Access Copyright, a royalty-collecting society purporting to act on behalf of Canadian Anglophone authors and publishers. Access Copyright alleged that York University's then recently-adopted fair dealing guidelines—guidelines for those uses of copyrighted work which don't need permission or payment—were unfair and impoverishing authors. Access 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 ~~stiff~~, mandatory tariff to Access 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, both parties to the case have filed for leave to appeal the decision to the Supreme Court (Knopf, "Access Copyright and York"). In the wake of Access' 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 been issuing statements that supported 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 urge"; "CPC's Copyright"; Edwards; "York University"). Thing two: Newfoundland poet Mary Dalton got her fifth book of book of poems published by Véhicule Press. *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 1998 *Ninety-seven Posts with the Heads of Dead Men* and Marlene NourbeSe Philip's 2011 *Zong!*, *Hooking* has been since followed by more mostly or wholly intertextual poetry books of striking critical power—Jordan Abel's Griffin-winning *Injun* (2016), Ken Babstock's *On Malice* (2014)—and 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' *My Ariel* (2017).

Some of these works emphasize the use of different found-poetry techniques, like erasure (e.g. *Injun* and *Zong!*); some of these works integrate found sources with the author's own writing (e.g. *Sonnet's Shakespeare*, *On Malice*, *My Ariel*). But, in their repurposing and recontextualization of other texts, these books all partake of the techniques of the cento, and a focus on centonism 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 found-poetry forms 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" (96-7). 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 hearkens at least back to Roman antiquity (Okáčová).

A literary form with an august lineage and a dodgy reputation—as diletantism, as derivative frivolity (McCutcheon, "The cento" 80)—the cento has lent itself to postmodernist perspectives, for which it sometimes 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 practiced by pre-eminent theorists like Linda Hutcheon and Frederic 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 fueled 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 postmodern and poststructuralism: for key terms like discourse (à la Foucault) and "intertextuality," a coinage of Julia Kristeva's (Okáčová 7) and a term 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 how intertextual works negotiate it. Exceptions to this lacuna pose resonant questions: articles by Peter Jaszi and Steven Shonack discuss, respectively, how postmodern theory has impacted intellectual property (IP) law (Jaszi 109) and vice versa (Shonack 281); McKenzie Wark dialectically searches the "information economy" 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 acknowledgment of permissions and citation of sources that Meera Nair calls *citational paratext* ("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, 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.

At this point it may be helpful 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, 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 (Galín 10). Copyright protects original expressions that have been given fixed material form—not ideas or facts, only material works: literary, dramatic, musical, and artistic products,

performances, recordings, and broadcasts. In addition, copyright only protects 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 (36-7).

But copyright doesn't last in perpetuity, only for a specified length of time: 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: "the realm of all works which can be exploited by everybody without any authorization, mostly because of the expiration of the term of protection" (WIPO qtd. in Nair, "Towards" 8). The public domain is widely understood as the total corpus of works whose copyright terms have expired. "Think of copyright term as a moving wall between today's creators and a shared heritage," write Trosow and Murray: "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 US-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 significantly damage Canada's public domain (see McCutcheon, "The TPP").

In addition to works whose copyrights have lapsed, the public domain also "includes copyright-protected material that, by virtue of law, may be used without seeking authorization or making payment" (Craig 80; Nair, "Towards" 9). That is, "when copyright-protected material is used in accordance with statutory exceptions . . . the work becomes part of the public domain" (Nair 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* ¶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 (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" (100). 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" (231-2). These contexts of cultural difference, Indigenous stewardship, and colonial arrogance bear significantly on the discussion of Abel's work below.

Copyright, then, may be a "pretence," as Frye says (96), that art is invention—but it is a pretence 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. (¶3-5).

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 US-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 "guise" for "copying for free" (Levy; cf. Geist, "Misleading") and ~~have~~ successfully mobilized mobilizing publishers and authors to antagonize likewise the very education sector (Boon 240;

Doctorow; Geist, “Fictional” ¶4) that is—in measurable, material terms—a major promoter, consumer, and supporter of Canadian writers and publishers. As Talonbooks’ proprietor and publisher Kevin Williams told the parliamentary review committee: “65% to 70% of our sales are academic or school course adoptions”—and “sales have been relatively steady” (Evidence). Such claims for the “steady” continuance of volume book sales to educational institutions sit uneasily next to claims that such institutions’ exercise of statutory rights are somehow destroying Canadian publishing.

During that 2017 parliamentary review of the 2012 copyright law amendments, 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 (Zerkee and Savage, “Language”). 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” and Nair, “with due respect”)—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” (Evidence). David Swail, then the Canadian Publishers’ Council president, 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” (Evidence). And Talonbooks’ Williams gave evidence articulating the assumption that fair dealing must be non-commercial and suggesting slippage between Canadian fair dealing and US fair use: “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" (Evidence). 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, 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].)

Postsecondary pedagogues exploit fair dealing for purposes of critical instruction, while poetry publishers do so for purposes of creative expression. Is it fair to compare course-pack construction and literary production? Both of these apparently divergent forms and contexts of using published works depend on the same legal statute—on the same clause. Section 29 articulates the fair dealing provision, and this clause specifies the purposes for which unauthorized reproduction may be deemed fair dealing, viz.: "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 adapts other works—~~as are research and review, for that matter~~. The judicious selection and sequencing of specific lines and excerpts demonstrate 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. ("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, *A Theory* 2]. For further discussion of criticism's relationship to appropriation-based art forms, see McCutcheon, "The DJ.")

If criticism, research, and review, ~~then,~~ are things that creators do, ~~then,~~ these ~~aims-things~~ they share with educators. Both fields of activity engage of 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 *la mort d'auteur*:

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 these acts' interdependence. As Hutcheon builds 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 Carys Craig told the committee holding the 2017 Parliamentary Review, "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 and curators" (13; cf. 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" (§13). 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, interrelated continuum wherein education and expression are not opposed, as publishers' lobbyists suggest, but mutually constitutive, as many poetry books' acknowledgments sections demonstrate (e.g. Babstock 94, L'Abbé 161).

Furthermore, writing that appropriates and adapts extant works can both serve as synecdoche for and also 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 research further. In her 1998 book's notes, Dembowski invites "[r]eaders interested in investigating this [allusory] aspect of these poems...to examine them in relation to the following texts:" (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" ("The Pitch" ¶10). This kind of teaching seems acutely needed, especially for emerging creators, amidst 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 Canadian" 7). One way in which appropriation-based writing practices literary pedagogy is by modelling the exercise of users' rights, evidence of which exercise becomes legible in published books' paratextual material.

The method I propose for a strictly text-based reading of fair dealing starts from two premises. 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," ¶16), 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 18th century (Katz 97); it became codified in early 20th-century legislation, like the UK's 1911 Copyright Act, partly in order to regulate commercial endeavours like book reviews and literary criticism (Nair, Interview).² Canada's copyright law allows fair dealing for several purposes that can be commercial, like reviewing and reporting (Canada, *Bill C-11*, sec. 29); 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 (¶21), 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” (¶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 license” (“What is”). In parliamentary review statement, David Caron, then president of the Ontario Book Publishers Association, stated: “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” (Evidence). Caron’s acknowledgment 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. interviewing authors and publishers) to ascertain whether authors and publishers intentionally exercise users’ rights. Statements from creators on fair dealing’s use in publishing could entail real legal risk. And for authors or publishers to make positive statements about fair dealing’s uses for publishing would erode the united front of opposition to users’ rights that Access Copyright and similar intermediaries have marshalled. In Eli McLaren’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 ~~eliminates~~ 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 but not only 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 acknowledgments 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 may suggest one way to strengthen the ties between users' rights and broader Charter 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). According to Amani, Canadian copyright jurisprudence has tended not to consider free speech protections, but it is a "legal imperative," she writes, to "embrace Charter compliance as a check on copyright's public reach" (50-1). The reading methodology that I propose seeks to strengthen the relationship between expressive freedoms and users' rights.

Furthermore, to describe poetry publishing as commercial endeavour is only technically true. Canadian poetry is widely known in publishing to represent loss, not profit (McLaren 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 subvene its publications. With Canadian poetry books' small print runs (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 now turn to Dalton and 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*, L'Abbé's *Sonnet's Shakespeare*, and Sina Queyras' *My Ariel* each works mainly with one author's oeuvre—Pound, Shakespeare, and Plath, respectively—while also weaving in numerous other intertextual references. M. NourbeSe Philip's *Zong!* restricts its poetry's vocabulary to language from one source text; Jordan Abel's *Injun* (like his earlier book *Un/Inhabited*) also uses only source text, drawn from not one but dozens of pulp novels; and Ken 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 Ezra Pound's *Cantos* (most editions of which still remain copyright protected); other poems imbricate a wide array of poetic and scholarly sources, both protected and 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 the reader to research her sources; but, unlike Dalton who lists

sources in order of appearance, Dembowski lists sources alphabetically by author, obliging the reader to work harder to identify her lines' sources and transformations. The book mentions no permissions. Like the other books discussed here, *Ninety-seven Posts*' paratext not only names sources, it 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 "agroculture[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 (XLVIII, 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 Sina Queyras' 2017 book *My Ariel*, a pastiche of erasures, centos, and other found poetry drawn mainly from Plath—who entered Canada's public domain in 2014 (and remains copyrighted in the USA)—but also from Ted Hughes, Anne Sexton, and other copyright-protected authors. "The Courage of Shutting Up," for instance, excerpts and rearranges lines from Hughes' 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: "Please note: 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" (4). Queyras' 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 hundred and thirty enslaved Africans for insurance purposes. Like *Sonnet's Shakespeare*, Philip's book needs no permissions language for its public-domain ~~main~~ 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 related works in what she theorizes as “cannibalistic poetics” (38): “radical re-authoring ... 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; also 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 blue 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.

Ken Babstock’s *On Malice* consists of four long poems: his notes (93) inform us that the first is a suite of sonnets that borrows 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 (Babstock 93). *On Malice* adapts both 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” (81-3), 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 “commons.”

Dalton’s book, likewise, includes no permissions language but rather detailed notes. 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 [the Source Lists](#)[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. The book shows no permissions or licensing language.

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...hooked rug[making from] "a hooked rug made from strips of fabric cut from old clothes" (back cover). 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-reflective allusions to its own method and form. In "Filaments," the persona repeats Langston Hughes' line "Let me repeat" followed by a line from Anne Sexton, "I give you permission" (28, cf. 78). In "A Line of Blue," Dalton repeats Irving Layton: "to turn up fragments of poems" (58, cf. 68). Dalton's aleatory centos model a folksy dialogism; they evoke traditional craft and build on ancient poetic form, while also 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. 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 holds its public domain sources; in the latter half, protected sources predominate. With this movement, the poem 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 peoples' works: the thirteenth line cites a Billy Collins poem titled "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 the reader 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* ¶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.³

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 amidst the aforementioned books' paratexts (Abel 85; Babstock 94; Dalton 65; Dembowski 64; L'Abbé 160) and relevant critical commentaries (Caple and Starnino ¶10-11). Acknowledgments 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. “I still mean to work at art,” writes L’Abbé, “though this market breaks my heart” (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 liveable creative living like that recommended by Eli McLaren, whose study finds both that poets appreciate fair dealing’s promotional effects (25) and that book sales aren’t as [material-important](#) to poets’ income as grants, awards, and other state investments (24-5). McLaren calls for more government funding of such investment mechanisms (19, 21) in recognition of “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 ([see McLaren](#) 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 be forced to work with institutions that do not treat them well” (Pacheco ¶28): namely, a national basic income plan.⁴

The reading and contextualization of *Hooking* and the other avowedly intertextual works discussed here seeks 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.

And yet, next to some of the arguments and questions posed by 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 more robust exercise of users' rights also recognize the compromised, complicit paucity of those rights (Coombe et al 39, Amani 54-5). 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 equivalence 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 "[t]his 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"—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 but also 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 "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' 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 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 law's definition of copyright as "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever" (Canada, *Copyright*, sec. 3 [1]).
2. British book reviews in 19th-century periodicals sometimes deliberately reprinted 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).
3. David Shields' 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 the reader literally to take up scissors and cut out the Appendix ~~out with scissors~~ (209).
4. 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 Gilbert et al 10), never mind pursuing creative work; the prospect of income tends not to rate as a reason that writers write (McLaren 19, Nair, "A Plea" 1-2).

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