POETRY AND NEW MEDIA: A USERS' GUIDE

Report of the Poetry and New Media Working Group
Harriet Monroe Poetry Institute

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DISCLAIMER: Through considering access to poetry issues, we often found ourselves grappling with legal concepts such as copyright law, the fair use doctrine, estate planning, permissions, and licensing. The discussions of these issues in this document are provided as ways to generally describe the issues at hand in relation to access to poetry. *This information is generalized and does not address any reader's specific situation. It is not legal advice. Readers of this document should seek their own individual legal counsel to address their own specific circumstances, wishes, needs, and relevant laws as they relate to any of the items discussed in this report.*

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A CASE FOR ACCESS: NEW MEDIA AND ACCESS TO POETRY

EVEN WITHIN THE CONTEXT OF THE NEW MEDIA EXPLOSION THAT BEGAN IN THE 1980S AND has led to an unprecedented increase in people's access to information and also to various creative works, 2008 and 2009 have been remarkable years for literature, including poetry, and new media. This period marked the rise of the Kindle, which during 2009 rose from obscure curiosity to unremarkable commonplace, a success that prompted its predecessor, the Sony Reader, along with the newcomer iPhone, to challenge Kindle for a piece of the burgeoning e-book market. The period also brought the proposed settlement of the Authors Guild's lawsuit against Google Books, a settlement that some in the literary community praised for its potential to make out-of-print and orphaned works available to new generations and to bring new income sources to some writers, and that others condemned for having excluded independent and literary publishers and for its potential to create an electronic monopoly. Regardless of how one views these and other developments in literature and new media, the poetry community ignores them at its peril.

Within the context of this discussion, it is useful to remember that the first movement of poetry from oral forms into print led to a radical narrowing of access (a result of the labor-intensiveness of making books by hand), but since the invention of the printing press access has steadily increased with each new development in technology. This trend continued with the invention of the first electronic medium, radio, which still provides the ability to bring poetry to large audiences in its oral form.

Digital and online media promise to provide ever more powerful opportunities for audiences to access poetry intentionally as well as to encounter it accidentally. In many cases, a single delivery mechanism—whether a radio broadcast, a podcast, or a website—may provide many readers with access to an entire world of poetry and poetry collections. Such broad access depends not

only on the full movement of poetry into new media, however, but also on the ability of potential readers to reach new media through community-held devices such as library and school computers and through those devices owned and controlled by individuals.

Thus, just as access to books for everyone became an important value in recent decades, access to all varieties of electronic media must become a priority now. We must focus particularly on those groups whose access to all media might be curtailed by disadvantages related to location (whether in rural areas or inner cities), class, nationality or ethnicity, race, disability, language and culture, gender and sexuality, education, or other factors.

In addition to providing audiences of poetry with greater access to new media, we must also work to increase the access of poets as producers. If it was not long ago possible for A. J. Liebling to assert that "freedom of the press is guaranteed only to those who own one," now we might say that the freedom to publish is limited only by one's ability to access and use the Internet. Poets and aspiring poets can suffer the same barriers to access as potential readers. Addressing the ways in which certain barriers may curtail reader access to poetry may simultaneously address the same disadvantages as they apply to poets. These recommendations, then, are meant to apply equally to poets and readers of poetry.

Advocating access for all poems is not to assert that every poem is as good or as valuable as every other. But we do believe that it is good for every poem to have an equal chance to make its case for attention within the poetry marketplace. Readers will continue to use gatekeepers they trust—publishers, independent booksellers, content providers, librarians, educators, bloggers, friends, and others—to winnow the field for them and to match them with poems, but the Internet will also provide potential readers with the opportunity to make accidental encounters that might bring them works they find new and exciting. Thus, even once the infrastructure for content delivery is there, it is important that content, both of the highest quality and of the greatest diversity, be readily available to readers.

The availability of quality content is just as important for those seeking to learn about poetry independently as it is for educators seeking to bring poetry into their classrooms. We believe readers will make good decisions about which poems they wish to read if the poems are readily available to them. But we also believe that it is educated readers, readers who are firmly grounded in our cultural legacy broadly construed, who will make excellent decisions about what to read and about

how that cultural legacy should continue to be shaped and enriched by new work. For this reason, we see investment in education, in the broadest sense of the word, as key to a healthy presence for poetry in our culture.

Finally, while we began by thinking about how to address the movement of poetry specifically onto new-media platforms, we are well aware that most of the recommendations we are making here pertain to access to poetry in any medium, and we relish the idea that the community might be poised to change its thinking about access in that larger sense.

LEGAL ISSUES, BUSINESS PRACTICES, AND TOOLS FOR DEALING WITH THEM

Because we believe that legal tools and an understanding of how they interact with business practices, especially on new-media platforms, are crucial to creating greater access to poetry, we have developed recommendations and examples to help poets and rights-holders think about permissions, licensing, and literary estates and more specifically about contracts, wills, and other legal documents. While we include both more and less restrictive examples, we reaffirm our own commitment to the greatest possible openness that accounts for the needs, values, and other considerations at play within a given situation. Our primary goal, in the end, is to help rights-holders make decisions thoughtfully and consciously instead of merely capitulating to boilerplate contracts or existing conventions.

Outline and Discussion of the Issues

Current U.S. copyright law, which assigns ownership to creative and intellectual works, was initiated with the intention of encouraging creativity by assuring that creators would be able to profit from their creations. Copyright laws not only permit the licensing of intellectual property, including poetry, but also permit its sale, so that copyright may be reassigned from creators to other entities, including corporate entities as well as individuals. In this way, the law is very flexible. U.S. copyright law is also flexible in its fair use provisions, which make it different from the laws of other countries. The intention behind these provisions is also to encourage creativity, in this case by limiting creators' ownership rights in order to permit new thinkers and creators to engage with works that have come before.

In short, copyright law is meant to protect the rights of creators while encouraging the free and open exchange of ideas. Many copyright owners, especially academics and artists, have liberal interpretations of the doctrine of fair use, but those individuals or corporations whose business practices rely on a scarcity model, whose motivation is primarily financial, and/or who lack a commitment to free and open exchange, might in some cases tend toward limiting rather than encouraging access to works, and so may be more vigilant in guarding the use of their intellectual property. Poets have feet in both of these camps: they want their work to be available, but if there is money to be made from their work, they rightly believe they as creators should get a share. A tension arises, then, when vigilance effectively limits access to works that might otherwise be widely available; in some areas, vigilance has also led to increasing limits on fair use in practice if not by legal means. In addition, businesses committed to a strong view of ownership rights over rights of access have successfully lobbied for legal extensions of the period of time for which copyright of a given work may be owned before the work is released into the public domain. Such limits may prevent works that are central to our intellectual and cultural heritage from being widely available either in print or in new media, not only in cases in which copyright owners intentionally limit access to works but also in cases of so-called orphaned works, for which ownership is unclear or untraceable.

As we noted above, U.S. law recognizes copyright ownership as a tool for encouraging creativity by protecting the right of the creator to profit from her work. It has also, in practice and in court decisions, carved out "fair use" exceptions to absolute ownership and control over

creative works. These exceptions are also meant to encourage creativity as well as the free exchange of ideas, so they are especially applicable when the uses create new and distinctly different works from older ones or when they involve either education or scholarly discourse and dissent.

We support the ideals behind copyright law, both its ownership protections and its protections for new expression and creativity, particularly fair use. We have undertaken our work while recognizing that a vigorous debate about copyright and fair use is occurring in the artistic, technical, and scientific communities. We believe poets can learn from this debate and also from statements about fair use that have been developed in other communities.

Sharing versus Ownership

Members of the intellectual community have long relied on the open sharing of ideas as a primary value to protect the integrity of academic discourse, and there has emerged an equally vigorous "open source" movement in the software community. Set against this value are the legitimate rights of creators as well as the increasing pressure many researchers feel, sometimes from within their academic institutions and often in response to financial opportunities represented by the commercialization of intellectual property (especially in biotech and other science and technology industries), to limit access even by other researchers to their discoveries. Similar instincts may cause poets and publishers to limit permissions and licenses for the use of poems—often based not on a current market for a given poet's work but rather on the mere possibility that the work might command high permissions fees down the line. We note that most poetry publishers take on the publishing of poetry out of love for the art rather than a desire to make a profit, and they tend themselves to be overworked and underpaid. A single successful poet or collection of poems might make the difference between survival and failure for a poetry publisher, so some publishers zealously guard the uses of all the works in which they hold rights in hope that some of them might eventually become profitable.

Not everyone believes that limiting access to ideas or artistic works is always the best way either to make money from them or to ensure their proper use. Many creators and businesses, including some publishers, have adopted openness to a greater or lesser degree, recognizing that it can be a powerful tool both in developing products and in cultivating their widespread

adoption by the public. Likewise, poets and publishers can choose any of a range of strategies, and even different strategies for different works, in deciding whether and how to protect a work. **We encourage poets and poetry rights-holders making decisions about access to consider the value of access in creating a market for a given poet's work as seriously as they weigh financial considerations.**

Poets and Their Exercise of Fair Use

Within artistic communities, technologies that allow easy appropriation and remixing of existing creative products into new works, often without remuneration or attribution, have led to lawsuits in which rights-holders are asserting ever more sweeping claims to absolute ownership of works and ideas.

In spite of our commitment to the importance of proper attribution and the preservation of the original poem where appropriate, these claims may present a problem for poets, poetry educators and critics, and others in the poetry community, for whom fair use is an especially important doctrine. Many practices inherent in the creation of poetry mean that poets' interests in protecting fair use are very powerful. While we make no claims that the following examples are in fact fair uses, since these questions are adjudicated case by case by the courts, some areas in which fair use is an issue for poets include the following:

ALLUSION AND REMIXING. What is now called remixing is an extreme version of allusion, which has long been an important part of poetic practice and remains one of poetry's most powerful literary devices. Because the pleasures inherent in allusion arise from its assumption that the reader already knows the work referred to, allusive poems will not include explicit attributions unless the works alluded to are unusually obscure—and perhaps not even then. While most cases of allusion fall clearly into the fair use column, allusion at times shades into remixing or poetic collage.

PARODIES AND SATIRES. Similarly, parodies and satires often do explicitly name the poem or poet being sent up, but the joke depends on where and how the parody or satire exaggerates or departs from the original. Like critics, parody writers are hardly likely to seek (or get) permission to do their work.

EPIGRAPHS.

QUOTING FOR PURPOSES OF DISCUSSION, COMMENTARY, AND CRITICISM. Literary criticism and the literary essay may require for their effectiveness that exemplary poems be reproduced either largely or in their entirety. Misperceptions in both the poetry community and the publishing community about when poets need to get permission for such uses (which may not be granted at all if the rights-holder disagrees with the content of the criticism or essay or has a rigid permissions policy) can and currently does seriously impede the free flow of ideas around poetry and its production.

RECITATION. Whether from memory or from the page, in performance or to support a point in argument or conversation, recitation is an established and honored form of discourse within the community.

SPECIFIC FORMS. Less-used but still important practices relying on fair use involve such forms as "found poetry," which may take its entire content from another source, playing only with context, order, or form (as in adding line and stanza breaks or other typographical alterations).

TEACHING AND SCHOLARLY USES. The strength of poetry as an art form also relies on practices beyond the composition of poems or literary criticism—practices engaged in by many poets as well as others. In addition, many if not most published poets are educators who teach the poems of others in their classrooms or use them as examples of particular techniques. There is uncertainty in the poetry teaching community about whether it is fair use to provide a class with an entire poem from a collection of poems by a single poet without obtaining permission for the use. Poets and other educators also have questions about the kinds of assignments that can be given, including whether assignments fall under fair use when they ask students to use the poems of others to, for example, make videos, comic adaptations, broadsides, or other adaptations that might be displayed publicly.

When considering their rights under fair use, poets should be aware of the ways in which business practices have sometimes worked to shape interpretation of copyright law to favor

for-profit interests rather than creative interests or access. The very lack of clarity in copyright law that makes it flexible and powerful may interact with often disproportionate remedies for infringement to create unacceptable risks for those wishing to assert their rights under fair use. A young Utah photographer, Tom Forsythe, shot a series, *Food-Chain Barbie*, featuring Barbie dolls in unorthodox poses. He survived a lawsuit by Mattel only because legal groups vigorously took up his cause. Likewise, a young poet would be unlikely to have the resources to defend himself if he were sued by a Hollywood studio for publishing a poem composed of lines taken from a film, regardless of the merits of his case. Thus, copyright law seems on a practical level not always to protect fair use or serve the beyond-profit interests and values of the intellectual and artistic communities.

Even more problematic has been the unwillingness of educational institutions and publishers of critical and scholarly works to defend educators and critics engaged in practices that would likely be deemed fair use by the courts because of the special place the fair use doctrine carves out for educational and scholarly uses. Included in this category is the once-common practice of occasionally providing students with handouts containing whole poems, a practice now discouraged by universities not because it has actually been ruled to fall outside of fair use but because the universities do not wish to defend lawsuits.

Likewise, scholars and critics may well be engaged in fair use when they reprint entire poems in the context of critical readings or other commentary, but publishers unwilling to risk lawsuits require their scholars to seek permission for every use, including minor uses. It could be argued that publishers have a conflict of interest in such cases, since they wish themselves to receive fees for permissions and so have a financial stake in perpetuating the system as it is, especially since publishing contracts usually require the scholar rather than the publisher to pay for permissions.

Because permissions are both time-consuming and often expensive to obtain, especially relative to the meager profits a scholarly work might generate, such practices may mean that these works are never published. When Rosanna Warren undertook to obtain permissions for *Fables of the Self, Studies in Lyric Poetry*, she discovered that permissions fees would total well over $17,000, with publishers charging up to $45 per line for uses as small as three lines from a single poet's entire body of work. Even after she received concessions from some publishers and grants to help with permissions expenses, she ended up having to pay $10,000 out of pocket for permissions—twice her advance. Likewise, the distinguished critic Helen Vendler almost had to pull her book on

William Butler Yeats, *Our Secret Discipline: Yeats and Lyric Form*, from publication, first because Simon and Schuster outright denied her permission to use the thirty-five poems she needed (her book covered Yeats's entire career), and then because, when she finally received permission to use the poems, the cost for use, again to come from her pocket, would have been $13,500. It was only when she decided not to go forward with publication that her press agreed to pay for the permissions. And it is not only publishing houses that can be rigid on the subject of permissions for scholarly works; heirs and executors of literary estates may be just as rigid, as various widely publicized accounts of Stephen Joyce's management of the James Joyce estate have shown.

Members of the poetry community should be aware that when fair use is not practiced and defended within a community, the community risks losing the right to fair use in practice. In effect, claims seeking to limit fair use on behalf of individual copyright holders may actually threaten practices at the heart of poetry. Such claims across disciplines have led to a countermovement in which advocates from various intellectual communities are rearticulating and reasserting the doctrine of fair use and developing community-generated best practices statements that provide guidelines for practitioners. While best practices statements do not have the force of law, they may, when they arise from the existing practices and values of a community, empower practitioners to exercise fair use within existing law. Excellent examples of fair use best practices guidelines for specific communities are those generated by the American University's Center for Social Media and the Washington College of Law's Program on Information Justice and Intellectual Property in conjunction with various groups, including documentary filmmakers and media literacy teachers. The discussion of fair use in this document is very much shaped by these guidelines, as well as by the work of Lawrence Lessig, Bill Ivey, and the Creative Commons, among other thinkers and organizations.

We affirm the importance of fair use and, while we recognize the ownership rights of poets and publishers under copyright law, we nonetheless encourage rights-holders to be liberal in their interpretations of the fair use doctrine in order to preserve for the community the rights granted under that doctrine. In addition, we encourage the poetry community to create a community-generated best practices statement for fair use in poetry.

Concerns Particular to Poets as Rights-holders

Financial concerns are not the only ones—or in some cases even the most important ones—that might lead rights-holders to limit access to poetry. Poets have legitimate concerns about fair use issues both as rights-holders and as artists who rely on preexisting literary works in their own practices.

Their concerns as rights-holders involve both those that are common to all rights-holders and those that may be unique to poets:

> The desire to share in any profits made from their work by both new- and old-media content providers and those who might adapt poems for purely commercial uses (to sell products, for example)
>
> In some cases, the desire to share in profits made by artists who use poets' works in remixes or in other ways
>
> The right to have their names attached to their work
>
> The right to have their work reproduced accurately, in a way that preserves not only the words in order but also formatting, line breaks, and other typographical choices inherent in the poem as a work of art

This desire for accurate reproduction is especially intense for poets because an unusual level of attention to linguistic detail and discipline is inherent in the art of poetry. Poets meticulously consider punctuation, line breaks, syntax at the smallest level, and even spelling in the construction of poems, so they are unusually concerned that their poems be reproduced not nearly as they appear but precisely as they appear.

The above concerns prompt us to strongly recommend that when an existing poetic work is either quoted or used to make a new work that is not satire or parody—three examples being collages or remixes, musical settings, and videos—the maker of the new work should reproduce the original as scrupulously as possible, adhere strictly to the principles for proper attribution, and also seek permission for any uses that are not fair uses. At the same time, we recommend that poets, publishers, and other rights-holders take as a default position that they will grant permission for use absent a reason not to, rather than the other way around, and that they will not seek to limit uses that are likely fair uses, even if they are not entirely comfortable with the uses.

Outline and Discussion of the Issues

Legal Issues versus Business Practices

Copyright law gives rights-holders the ability to grant permission for or to license the use of works to other parties as well as to limit the ways in which other parties may use the works. Here, as with fair use, the place where the law and business practices meet can become a bottleneck to access, as permissions can create a difficult problem for rights-holders, be they publishers, poets, literary executors, or others.

In fact, it may be in permissions and how they are handled that the tension between the value of access and the potential for remuneration, sometimes over the long term and in a way that may help keep a publisher in business or an heir in college, is made most visible. In some cases, rights-holders adhere to the scarcity model, hoping that by limiting permission to use poems by charging high fees for inclusion in anthologies, on websites, or elsewhere, they might increase the poems' value. This approach appears to have created profit-making opportunities not only for Simon and Schuster in the case of Yeats, but also for Faber and Faber, which holds the rights to T. S. Eliot's poems and which came into a particularly rich windfall when it licensed the work that became the musical *Cats*.

At the other end of the spectrum, large publishers whose main business is in genres more lucrative than poetry may apply the same permissions model to all the work they publish, whether by established and famous or new and unknown poets, essentially pricing much of their poetry out of the market out of indifference or inattention, often to the frustration of the poets they publish. At other times, poets, publishers, or other rights-holders might be concerned about the company a poem is keeping, believing that a poet's work should be included only in anthologies or other inclusive works that adhere to particular ideological, aesthetic, or other standards; thus, they may carefully tend the reputation of a poet by limiting or regulating that company. Two estates that have exercised this kind of control are the Sylvia Plath and the Robert Frost estates, both of which are very careful about the nature and tone of the projects for which they grant permissions. This is also the practice of many living poets in relation to their own works.

Still other rights-holders care less about payment or requests for permission from those who reproduce poems elsewhere than they care that their work be reproduced as written (preserving,

in the case of poetry, original formatting, punctuation, and spelling as well as the original language) and properly attributed.

Rethinking Traditional Business Frameworks for Permissions

We believe that poets are entitled to be paid for their work and that rights-holders are entitled to control and be paid for the use of their intellectual property to the full extent of their intellectual property rights. We also believe that if anyone receives remuneration for a poet's work, the poet or rights-holder of the poem should also be remunerated if such remuneration is practical.

In addition, we believe that many publishers and poets could benefit from rethinking their approaches to permissions and that members of the poetry community should become more aware not only of the issues of permissions and licensing but also of choices open to them within the law and the potential consequences of those choices.

Often the hope for remuneration from a given poem, which may or may not be realized, may prevent a poet or publisher from considering other, equally important values when deciding how and where to license the poem. **For this reason, we recommend that poets, publishers, and rights-holders reconsider how they balance access and remuneration in their approaches to permissions—with the balance tilting toward openness and access whenever possible.** We believe that the wide availability of individual poems is likely to bring more readers both to individual poets and to poetry as an art and therefore is likely to increase the sales of poetry collections overall.

Recognizing that publishers with financial and other investments in a collection of poems may be reluctant to let those poems into the world for little or nothing when they may bring important revenue to the business, **we recommend that publishers along with other rights-holders take nuanced positions on permissions, possibly including a tiered approach that considers a number of factors when granting permission for use of a particular work.** These factors might include the following:

Whether a particular use will increase access to the poem or poet for a traditionally under-served group or, indeed, for as wide a cross section of the population as possible

Whether the requested fee is so high as to make it unlikely that the poem or poet will become widely known and read

Whether the grantee will reproduce the poem as it was written and give proper attribution to the poet and rights-holder

Whether the poet, if she is not the current rights-holder, supports the use

Whether the use (as in critical and scholarly works) has the potential to increase the public's understanding and appreciation of the art

In addition, we urge publishers to treat permissions as opportunities to find and increase readership for a given poem or poet. In particular, we encourage publishers to be especially liberal in granting permissions for use in formats and media that the publisher itself is not currently using to get poetry before readers.

Reimagining Traditional Business Frameworks for Publishing, Distribution, and Contracts

Because the book requires heavy up-front investment in its physical creation, distribution, and storage, economic risks to publishers and bookstores have traditionally been very high. These expenses have skewed the book business model, causing publishers and booksellers alike to try to guess what the next hot book or trend might be while perhaps ignoring or bypassing books, especially books in specialized niches such as poetry, that might develop devoted audiences and earn money over time. Not only do such books require publishers and booksellers to take a long view, they are notoriously hard to market. They can be difficult as well for their audiences to find and tend to be findable only by those who already know what they want.

Electronic media can significantly reduce some up-front costs to publishers, can let potential readers know at little expense about work that may be of interest to them, and can provide quick and easy ways for readers to access that work, either online if they already know what they want or through trusted booksellers if they don't. We note enthusiastically that, while such devices as the Sony Reader, the Kindle, and the iPhone might appear on the surface to threaten traditional bookstores, the American Booksellers Association (ABA) and many visionary independent bookstore

owners are embracing the potential of these new delivery mechanisms, particularly those, like the Sony Reader, that are working against platform monopolies on literary works. Many booksellers understand that the explosion of choices coming with new media will make them and their expertise even more valuable to their customers, and they believe that these new delivery mechanisms will permit them to use their personalized sales models to provide better service without requiring burdensome, up-front investment in physical stock that may or may not move.

Such changes in the traditional publishing and bookselling business models are already opening the door to different kinds of contracts between poets and publishers, contracts in which current ways of sharing profits might be reshaped. This is one area in which new media might open interesting new possibilities. For example, the introduction of new cost and time efficiencies should allow publishers both to reduce prices on books in all forms (something that will help booksellers as well) and also to share more of the profits on some of those "books" with poets. At the time we are writing this, limited anecdotal evidence, including conversations with writers and a check of the Authors Guild website, suggests that royalty rates for electronic rights on gross receipts are generally hovering between 15 and 30 percent. We see this range as representing the currently unsettled environment in which electronic deals are being made. **We recommend that poets, publishers, and booksellers embrace and explore the possibilities and opportunities represented by electronic media, and that publishers be open to the idea of sharing any cost savings made possible by new media with poets, in the form of higher advances and royalties, and with booksellers, in the form of lower wholesale prices.**

New Licensing Frameworks

Many groups and individuals representing people engaged in creative and intellectual endeavors have already begun to address problems in licensing and accessing creative properties that have only been made more pressing by the advent of electronic media. It may be surprising to note that the Creative Commons has used a very robust interpretation of copyright law to generate "generous" licenses that are free to use and that many artists, intellectuals, and even corporations attach to their work. As with any licenses, Creative Commons licenses flow from rights granted by copyright law to the copyright holder. Because these licenses are based on the assumption that artists have robust ownership rights over their work, they allow artists to permit or deny certain uses of

works under that ownership. Unlike traditional copyright licenses, however, Creative Commons licenses are based on the assumption that many creators would like others to use and build upon their works. In this way, the licenses turn traditional licensing practices and previous uses of copyright law upside down, in that they invoke a right that has previously been exerted to limit use to permit use instead. While the licenses flow from the right itself, then, the Creative Commons goal is for people to be able to license their works generously and easily while allowing them to define and limit the terms of dissemination and use in ways that are commonly desired. The licenses, which can be seen in their totalities at creativecommons.org, permit users to select from among various licensing conditions. The descriptions that follow have been taken from the Creative Commons website with permission:

ATTRIBUTION. You let others copy, distribute, display, and perform your copyrighted work—and derivative works based upon it—but only if they give credit the way you request.

SHARE ALIKE. You allow others to distribute derivative works only under a license identical to the license that governs your work.

NONCOMMERCIAL. You let others copy, distribute, display, and perform your work—and derivative works based upon it—but for noncommercial purposes only.

NO DERIVATIVE WORKS. You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.

It is important to note that there is no money attached to the Creative Commons licenses, so they are not appropriate for use in cases when poets and publishers wish to exchange licenses for money. This does not entirely remove works licensed under the Creative Commons from the realm of commerce, however. Someone who uses a work under a Creative Commons license may sell copies of the book produced under that license; it is only the permission that cannot be exchanged for money. In addition, unlike some commercial license agreements, the licenses clearly state that they are not meant to limit uses permitted under fair use. In other words, these licenses do not supersede copyright law; rather, they are designed to give the artist some control

over how her work may or may not be used under current law by making permission to use work dependent on the user's making legally enforceable promises.

We note that the licenses have not yet been tested in court, and also that in their current forms the licenses may not completely address some concerns or answer some questions poets may have about licensing issues. For one thing, while a license that permits only verbatim use would certainly restrict a user's right to change copyrightable content, which includes certain words in a certain order, a court may not deem content such as formatting and punctuation copyrightable and so subject to limitation by license. What is more, while the description of the license on the Creative Commons website says it permits only verbatim use, the license terms themselves (the underlying legal code, which is the binding piece) are much less clear. It may be possible to register different elements of the poem separately to achieve the desired protection piecemeal, but formatting is a very gray area of copyright law, and the relevant Copyright Office circular suggests that such a registration would likely be rejected if it were clearly an attempt to register formatting elements. If a poet wishes to restrict uses to those that honor line breaks and other formatting decisions, she should forego Creative Commons licenses and instead rely on legal contractual agreements.

We believe that an awareness of the kinds of options and configurations available in the Creative Commons licenses and the reasoning behind them will empower poets in making decisions about what might be the best ways for them to exercise ownership of their work as they consider how and under what conditions to license to others permission to use that work. Even if a poet or publisher decides for a period up to the time permitted by copyright law to maintain and control ownership of a work and to grant licenses and permissions for use only in exchange for money, these licenses provide a flexible framework for considering the kinds of rights that might be exercised in any situation, including a commercial situation.

Thus, we recommend that poets, publishers, and other rights-holders familiarize themselves with both the Creative Commons licenses and the reasoning behind them, whether to use them directly or as guides. We also recommend that poets, publishers, and rights-holders consider either licensing their works generously or releasing their works into the public domain once whatever time period they deem appropriate has elapsed and after they have had the opportunity to publish and profit from the poems as they wish.

Releasing work into the public domain requires only an "overt act" on the part of the copyright holder. The poet may simply write "public domain" at the bottom of the first page or on every page and publish it "openly and notoriously." The poet may also write a document saying, "I hereby place my poem [insert title here] into the public domain." In the past, it has been complicated to notify the world at large that a given work is in the public domain, but electronic media, onto which the poet or rights-holder may place the poem or notification for access, simplify this process as well. Though there is at this point no clearinghouse for public domain works, those interested in learning whether a given work is in the public domain may find Google a useful tool.

Outline and Discussion of the Issues

In our observation, many poets care very deeply about whether their work will outlive them but may be less attentive to the details that might increase their chances of leaving a lasting legacy, unaware that a lack of attention to their legacies while they are still alive may lead to their work's languishing unread after their deaths.

For the purposes of estate law, a copyright to a poem is considered to be a form of intangible property, which the copyright holder may pass like any other property to her heirs. Many poets are not aware, however, that although poems are considered property for the sake of estates, passing on the rights to poems is not as simple as leaving behind a washing machine or a rhinestone tie pin. For one thing, a poet may leave the copyright and the ability to profit from it to one person or set of persons and assign another the power to make decisions about how the property is to be managed. In addition, under current law the heir (and his or her own heirs and/or appointed executors) may control the use of the poems in question for up to 70 years after the poet's death before the poems pass automatically into the public domain. The poet may also be unaware of the ways in which copyright law, which is federal, interacts with estate law, which varies state by state and which is the law under which the ownership of literary rights is passed on, along with other tangible and intangible property.

Even when a poet appoints an executor, someone she trusts to oversee her literary estate, there is no guarantee absent explicit instructions in a legally binding will that the trusted executor will act in what the poet would have seen as the best interests of her literary heritage; nor is there any guarantee that the appointed executor will live long enough to see the body of work into the public domain. Most poets are aware of numerous instances in which an executor or rights-holder has used copyright law to severely limit access to a poet's work, for financial or other reasons, sometimes for decades after the poet's death.

We have already mentioned Stephen Joyce's management of the James Joyce estate. While Stephen Joyce has claimed literary and copyright grounds for limiting permission for various uses of James Joyce's work, he has also said publicly that he wants to protect the Joyce heritage. In 2003, Carol Schloss, author of a book about James Joyce's daughter Lucia, brought a copyright abuse lawsuit against Stephen Joyce, which was settled in her favor in 2007.

Another well-known example of estates gone awry is that of W. H. Auden, who left his

literary estate along with the rest of his property to his partner, Chester Kallman. At Kallman's death, Auden meant the estate to pass to his nieces, but the duly witnessed will expressing this intention was never found. Kallman himself died a short time later, having never altered a will leaving all his property to Auden. Thus, both Kallman's property and Auden's passed to Kallman's elderly father, who had little interest in literary matters and whose feelings toward Auden were reportedly complicated. Though Auden's literary executor, Edward Mendelson, has justly received praise for his work, Auden's nieces received none of the profits apparently intended for them.

Few poets we know would want access to their work to be limited by the indifference or hostility of someone they never meant to control the rights to their poems. Perhaps even fewer would want access to or profits from their work to be controlled by those whose actions may limit the poems' uses based on nonliterary considerations. We believe such limits are unlikely to increase a poet's reputation or contribute to her cultural legacy, even when the poet is famous but especially when, as in most cases, the poet has a more modest literary reputation and reach.

The good news for poets and rights-holders is that they have control over how their poems are disposed of and used, as long as they make legally enforceable wills. Though wills cannot overturn copyright law, they may in some cases prevent its mindless, one-size-fits-all application.

When drafting wills, poets should also remember that their literary estates consist not only of intellectual property but also of physical property—manuscripts, drafts, letters, and so on—which may be disposed of separately and differently. The distinction between the two is subtle but important. A poet may leave the copyrights to her poems in whole or in part to one heir and her actual papers, including manuscripts, drafts, letters, important e-mails (though there is disagreement about e-mails' value, and they must be printed out), and other documents, to another. While only very famous poets will be able to sell their papers to a library or archive, lesser-known poets might be surprised to learn of the scholarly interest that archivists, librarians, and historians have in receiving the papers even of those who are not famous.

Poets interested in giving or leaving their papers to institutions should be aware that different institutions devote different levels of resources to archiving such collections and to making them available to scholars and the public. Poets should also be aware of aspects of tax law peculiar to this kind of property that may affect their decisions about when and how to donate their papers to an interested institution. If the donation is handled properly, a poet's heirs may be able to realize

tax benefits the poet is not allowed to realize herself. To structure her estate properly, a poet should talk to an attorney with tax expertise, being sure to ask about the tax implications of donating documents.

Some institutions will accept papers on deposit while control over their use remains with the poet, with the understanding that at her death full ownership will pass legally to the institution. Institutions that accept such deposits will often decline, however, to commit many resources to archiving the papers until legal ownership is transferred.

However they dispose of their copyrights, poets should consider arranging the disposition of their papers while they are still living. If a poet decides to donate or leave papers to a library or archive, we recommend that he work closely with the institution and an estate lawyer to ensure (1) that the materials are treated in accordance with his values and (2) that the gift or bequest is properly structured. Finally, we recommend that poets choose for such gifts or bequests institutions that understand the papers' historical and cultural value and that will make them available to scholars.

If a poet dies without a will, both his papers and his copyrights will be disposed of along with his other property according to the laws of the state in which the poet resided. In general, property will pass to the poet's spouse or nearest relative. If there is no will and no relative, it will become the property of the state. This prospect alone, in our view, should inspire poets to make wills.

There are many for-profit and not-for-profit websites from which a person can simply download a template for a will that, if it is executed and witnessed properly, will be legal in her state. If the person's wishes are straightforward and there are no unusual circumstances connected with the estate, this is a satisfactory solution for many people. However, anyone with unusual circumstances should probably consult an attorney when making a will. The fees depend on the complexity of the circumstances and requirements. The consultation could cost as little as $150, though fees could be much higher for more complex cases.

In the course of our research, we have come to believe very strongly that the case of every poet with a literary estate, including or not including papers, involves unusual circumstances, essentially by definition. Thus, we urgently recommend that every poet consult an attorney and write a will.

In order (1) to ensure that their wishes and values are reflected in their wills and (2) to minimize expenses, **we further recommend that poets think carefully about what values they wish their wills to reflect.**

Questions Poets Should Consider

With this in mind, we suggest that poets ask themselves the following questions, and that they make note of the answers, before consulting attorneys:

Do I want my papers and my copyrights to be controlled by the same person or entity, or do I want to dispose of my papers in one place and my copyrights elsewhere?

If I leave my papers to a library or archive, what level of access do I want the public or scholars to have? Is the institution willing and able to adhere to my instructions in granting access?

In structuring the transfer of my papers, do I wish my heirs to be able to reap any tax benefits from the gift?

Do I wish to deposit my papers with the institution before my death, and, if so, what level of control do I wish to maintain over their use during my lifetime?

If I leave or sell my papers to a library or archive and leave my copyrights to my heirs, do I want the copyrights to go to the library or archive in question after my heirs have died or after some other designated period of time?

Regardless of whether copyright will be controlled by an institution or an heir or some combination of the two, how do I want the copyright holder to weigh the value of access to the work against potential profits in making decisions about granting rights to use the copyrighted material?

On a scale of 1 to 10, how urgently do I want my poems to be widely available?

On the same scale, how urgently do I want my heir or heirs to profit from my poems if there is profit to be made?

If my heir or executor has to make a decision weighing access versus profits, do I want to leave explicit instructions about what kind of weight she should give to each?

What conditions would I like my heir or executor to attach to such uses? (These could include conditions discussed elsewhere in this document, such as proper attribution or the preservation of line breaks, spelling, and punctuation.)

Do I want my heir or executor to treat nonprofit and educational uses differently from commercial uses, perhaps attaching different fees to each or allowing free use for some or all noncommercial uses?

Do I want to leave instructions about the timing of publication for the work, or to instruct my heir or executor to grant free use if he has failed to make a profit by the end of a certain period?

If my overriding value is that the poems should be widely available with no constraints, do I wish simply to release them into the public domain?

If I do want my immediate heirs (my spouse or children, for instance) to profit from the poems, do I want their heirs (who may or may not be known or related to me) to profit as well? Do I want my children to profit but not my grandchildren, or my grandchildren to profit only under certain circumstances or until they reach a certain age?

Does my heir or executor, whether this is an individual or an institution, share my values as I have articulated them?

Does my intended heir or executor have the time, means, knowledge, and interest to look after my literary estate?

Do I want my literary estate to be controlled or executed by someone who is not an heir and who will not herself receive profits from the estate beyond the stipend granted her as executor? (The executor could be a trusted literary friend or adviser, a publisher or agent, a family member, or a library or archive, for example.) If I name as executor an individual who dies before the estate passes into the public domain,what do I want to happen then? Would I like control to pass to another person, to an institution, or into the public domain?

It is important for poets to remember that not all instructions passed along with legacies are legally binding, and that no such instructions can supersede estate law, copyright law, or the fair use doctrine. But even in cases in which such instructions are not legally binding, they may serve to guide the well-intentioned executor or rights-holder when the poet's wishes might not otherwise have been clear.

Copyright law itself is not necessarily hostile to smaller interests such as those of most poets and poetry publishers—in many cases it is favorable to them. For example, because the rights-holder of a poem has certain articulated rights under the law, she can give a generous license for use as well as a restrictive one, or she can leave her copyright to her heirs with instructions for how it is to be exercised. We believe that many issues of concern to the poetry community can be tackled through a reconsideration not of copyright law itself but of business practices within the structure of existing copyright laws. It is worth noting, however, that a number of people who think about copyright law and intellectual property have begun to work to change specific provisions of copyright law. In particular, we believe that most poets would be helped by—and thus should work toward—a reduction in the length of time it takes for a copyrighted work to move into the public domain after the death of its creator. Another area that should be revisited is the law on orphaned works, which, in not distinguishing them from works for which copyright ownership is clear, essentially eliminates access to works whose copyright holders cannot be identified even after substantial good-faith effort. And finally, in an environment in which some academic institutions are moving to claim ownership rights to theses and dissertations written by their graduate students, we are acutely interested in preserving these rights for graduate student poets so that they can pursue the independent publication so essential to their careers.

Because the above discussion is detailed and complex, we are providing below a set of recommendations for action for the different, heavily overlapping groups within the poetry community. We offer them in addition to the embedded recommendations above.

Who?

PUBLISHERS AND AGENTS

What?

Review and update current permissions policies with an eye to creating access to poetry and to developing wider audiences for poems and poets

Take into account the educational or social value of a particular use as well as whether a use is for profit or not for profit

Streamline permissions procedures to significantly reduce turnaround times

Consider liberalizing permissions policies for requests to use poems in media and formats your own distribution methods are not currently taking advantage of

Understand the fair use doctrine and decline to pursue remedies for uses that might reasonably be considered to fall under fair use, such as educational and scholarly uses

Seek ways internally to use new media to increase distribution and cut production and distribution costs

Review and update contract and royalties practices to pass on some of these cost savings to poets

Who?

POETS

What?

Consider what types of licenses you wish to attach to your poems as a matter of routine

Consider the various options open to you for licensing and granting permissions for less typical

permissions requests, taking into account that you can grant different licenses and request different fees for nonprofit, educational, and commercial endeavors

Make sure that contracts with publishers specifically address electronic rights and that the royalties granted you for those rights are fair and consistent with the different cost structures that electronic publishing entails. Understand how international issues such as split rights can complicate new-media use and can impact the distribution of your work

Understand how your values inflect your decisions both as a content creator and as a content user or teacher, acknowledging how your needs as a participant differ in the two kinds of activities. Take these differences into account in your decisions both when granting permission for use of your work and when seeking to use the works of others

Articulate what you want to happen to your literary estate (including both intellectual and physical property) after your death, then work with your attorney to craft a plan that will preserve your own values and your intentions for the work

Make sure that your heirs and literary executor know and understand your intentions for your literary estate

Understand that your heirs and executor may not outlive you by many years (and may very well not outlive your copyrights), and have and articulate a backup plan for such an eventuality

Who?

PUBLISHERS; EDUCATORS AND EDUCATIONAL INSTITUTIONS; POETS AND ANTHOLOGISTS; AND LITERARY CRITICS, SATIRISTS, AND PARODISTS

What?

Understand how the fair use doctrine helps you in your own practices and place a premium on honoring the fair use rights of others

Be willing to assert your fair use rights on your own behalf and on the behalf of your authors and anthologists (in the case of publishers), students (in the case of educators), and your own work (in the case of poets, anthologists, and literary critics)

Who?

REMIX ARTISTS, NEW-MEDIA POETS, CONTENT PROVIDERS, AND LITERARY ORGANIZATIONS

What?

Understand what rights and responsibilities you have under copyright law and its fair use doctrine.

Be responsible in exercising your rights by asking poets' permission to use their works where necessary or appropriate, by using the works in accordance with the poets' wishes (including preserving formatting choices) when practical, and by giving the original creators of poems full credit and attribution for their work

Set an example of collaboration and access when developing content and programs around content; in the case of content providers and organizations, understand the licensing and permissions process, and enact practices that are rational and nuanced and that create a balance between remunerating creators and rights-holders and providing easy access to diverse poetries

Who?

BOOKSELLERS

What?

Be aware of and participate in American Booksellers Association discussions of how new-media opportunities might enhance rather than detract from your ability to provide personal service to your customers and so enhance your business

Invest in equipment that might help you be an early adopter of evolving technologies

Who?

PHILANTHROPISTS

What?

Devote resources to funding new-media poetry endeavors that serve to provide easy access to diverse poetries

Consider developing programs for funding individual poets, with the goals of both freeing them to pursue their work and easing their perceived need to rely on strict control of copyright and permissions to make a living

Consider developing programs for funding presses and other rights-holders with the goals of both creating more access to diverse poetries and easing their perceived need to rely on strict control of copyright and permissions to stay in business

Consider developing programs to purchase rights to individual poems and to bodies of work with the idea of placing the works into the public domain

Consider funding educational programs, curricula, and materials on fair use in poetry

THE LIFELINE OF POETRY: CREATING OPPORTUNITIES FOR ACCESS TO AND A LIFELONG ENGAGEMENT WITH THE PLEASURES OF POETRY

AS THIS GROUP DEVELOPED OUR RECOMMENDATIONS IN SECTION I OF THIS REPORT FOR increasing and strengthening the presence of poetry in new media, we kept coming up against larger issues having to do with access to and engagement with poetry, which are crucial to maintaining a lively culture and to developing rich and pleasurable intellectual and emotional lives for the culture's participants. Beyond legal issues and business practices, we have identified barriers to education as the most important to consider as we work to broaden and deepen access to and engagement with poetry. Our definition of education is an expansive one: education, and the engagement it fosters, is an every-age, evergreen process. Education must be supported in a variety of sites, not limited to schools and universities, libraries, community centers, arts organizations, media outlets, websites, and public transport.

Educational barriers are linked to barriers of social class, language, culture, sexuality and gender, race, ethnicity, and disability. All these barriers to engagement with poetry are heightened and inflected by institutional barriers, which are themselves tightly linked to economic barriers. The primary difference in the ability to access and engage with poetry between our U.S. president's children and an inner-city child of any race lies in the community's social and educational resources.

The link between levels of access to poetry and childhood opportunities in schools and elsewhere is especially important in light of what most of us intuitively understand, insights that were confirmed clearly by a National Opinion Research Center (NORC) study, *Poetry in America*, commissioned by the Poetry Foundation: poetry lovers most often develop their taste for poetry in childhood, and early encounters with poetry can determine whether a person is likely to develop a lifelong relationship with the art. One especially illuminating finding of the NORC study is that those who encountered a real, living poet as children are seven times as likely as those who did not to read poetry as adults.

While some barriers that keep adults from engaging with poetry may have their roots in negative childhood encounters, including classroom experiences that closed poetry to them forever, even adults who had powerful youthful experiences with poetry may lose their engagement with the art if they don't have opportunities to continue having pleasurable encounters through their adulthood.

When we think of ways to foster and guide encounters with poetry, we must not focus our

attention on people we conventionally think of as lacking or disadvantaged. The dominant culture—whatever it comprises in a specific location, and including its teachers, legislators, business leaders, and poets—needs to understand and communicate the importance and pleasures both of canonical poetry and of poetries that open our senses and intellects to cultures outside the dominant culture.

In this second section of our report, we first present a recommendation for how the poetry community, once it has addressed and become more comfortable with issues surrounding ownership and fair use, might take advantage of new media to develop tools for shaping encounters with poetry for people of all ages and circumstances. In particular, we want these tools to emphasize the pleasures of poetry, including those associated with sensual, elegant, and precise language; with heightened awareness and sensitivity; with the abiding and lively sense of human capacity that comes from understanding poetry both within a culture and its canon and across cultures and canons; and, perhaps above all, with the ability to engage with difficulty creatively. Second, we develop more general recommendations for how poets, the poetry community, and supporters of poetry might work with politicians, policymakers, and educators to create more openings and opportunities for poetry.

We have identified a number of specific barriers to developing and maintaining a lifelong engagement with poetry:

1) Outdated licensing practices and a restrictive view of fair use, which have together led to a lack of current, relevant, flexible, and rich anthologies and resources for teaching poetry (Though we addressed this in detail in Section 1 of this report, we mention it again briefly here because it has profound implications for some of the proposals we make in this section.)

2) A lack of flexible, innovative, up-to-date, and rapidly evolving guides and poetry curricula, representing both the canon as it is currently understood and the diverse poetries currently being produced, that might be tailored by individual and institutional users who wish either to engage with poetry themselves or to create interest and excitement in students and others

3) To the extent that such guides are beginning to be developed on various websites, the lack of collaboration between organizations committed to poetry and excellence in poetry—a collaboration that could take any number of forms, one example being to develop a portal or

aggregation tool—in leveraging existing materials and sites and so increasing the power and reach of all such sites

4) A lack of opportunities for adults pursuing enrichment outside higher education to engage with poetry in a deep rather than either rote or breezily recreational way

5) The divide that separates the poets working in many colleges and universities from the rest of their communities, including primary and secondary schools and arts and educational organizations

6) Disparities in resources available to communities and organizations offering education, enrichment, and literacy both in traditional and in nontraditional settings, disparities that can lead to large class sizes, outdated textbooks and curricula (on which we elaborate below), and lack of access both to poetry books and to poetry in new media, sometimes precisely where resources might have the greatest impact

In addition to these barriers, we have identified some urgent needs:

1) The need for poets and poetry experts to communicate gently, steadily, and firmly to their communities about poetry's crucial role not only in developing critical thinking skills, empathy, and a sense of connection to the larger culture but also in providing, through its textured, manifold meanings, lifelong pleasures of unusual depth and profundity

2) A similar need to communicate the values of poetry to legislators and educational policy-makers and to remind them that the most important educational strides cannot be measured by standardized tests

3) The need to bring poets and other poetry experts into primary, secondary, and community venues, where they might model and present not only writing exercises but also techniques for engaging poetry and its pleasures through reading, discussion, and performance

4) A need for more professional educators who are themselves educated deeply in poetry and its importance

Addressing these barriers and needs effectively will require the coordinated effort of disparate groups, including but not limited to these:

1) Publishers, anthologists (both print and new media), and copyright holders, including literary executors and estates

2) Poetry organizations, including archives of all kinds, organizations involved in independent poetry education, and organizations that provide online and on-the-ground poetry programming

3) Poets, including those who teach at all levels

4) Other educators (including K–12 teachers and educators teaching in adult education, prisons, and other settings), curriculum committees, education policymakers, literacy organizations, and parents

5) Philanthropic leaders, including corporate and private funders, philanthropists, and government granting, funding, and arts organizations

6) Libraries and library organizations

7) Legislators

Because we believe firmly in the importance of a lifetime engagement with poetry, this recommendation is meant to address and help those who seek to begin, nurture, or maintain this engagement, whether independently or through institutions and programs, throughout their lives. We believe that an important key to increasing access to and engagement with poetry will lie in the ability of poets and poetry providers to harness the power of new and evolving media, with their flexibility, adaptability, and resulting potential to deliver poetry and poetry tools essentially anywhere with immediacy and speed. We also believe that such providers will be able to offer better service to poetry audiences, attract more visitors to their individual sites, and develop stronger, more focused materials for their own sites if they collaborate in a way that allows them to leverage their work for the common good of poetry. **Thus, at the center of this section is the recommendation that members of the poetry community join together to create a national study group, made up primarily of poets, poetry scholars, and representatives of poetry organizations, but also with advisers and members drawn from among librarians, educators, arts administrators, and other interested parties, to develop a flexible, modular set of guides meant to help people of all ages engage with poetry in a variety of settings, with new media as central to their delivery.**

Creation of a National Study Group to Develop a Set of Modular Poetry Guides

Who?

NATIONAL-LEVEL MEMBERS OF THE PHILANTHROPIC COMMUNITY, INCLUDING POETRY ORGANIZATIONS AND FOUNDATIONS, THE NATIONAL ENDOWMENT FOR THE ARTS, AND CORPORATE FUNDERS, BRINGING TOGETHER POETS, SCHOLARS, EDUCATORS, LIBRARIANS, AND OTHERS FROM OUR COMMUNITY OF EXPERTS TO CREATE A STUDY GROUP

What?

This group would develop and regularly, perhaps through online tools such as wikis, review and update a set of guides for engagement with poetry that could be accessed and used by people in

many settings, including educational settings. The goal would not be to co-opt nor to duplicate existing excellent resources; rather, the guides would involve participating groups in developing tactics for leveraging those resources, perhaps by directing users through a portal or aggregating site, to sites where the resources already exist, while also offering original material developed to fill in the gaps. Because of the uses we imagine for them and because some vehicles are already available, the guides would be available in several formats and media, especially in immediately accessible electronic media. In addition, they should be modular and adaptable to the needs of those using them individually or in groups as well as in classrooms of every kind. We note again that rethinking licensing and permissions practices as well as fair use as Section 1 of this report outlined will be crucial to this effort.

Why?

Often, people who are interested in poetry find it intimidating and are not confident that they know how to read it, hear it, speak it, or apply it to their own lives and circumstances. Even Academy Award–winning filmmaker Jane Campion, director of *Bright Star*, a film about John Keats, was at first unsure about poetry. The *Wall Street Journal* reported that she "said poems intimidated her; she approached verse as a puzzle to be cracked." The article goes on to say that for Ms. Campion, "getting comfortable with Keats was exciting, like planting a garden in your brain that can be revisited.' " A good experience in engaging a single poem can open a window on the world of poetry, but every good poem presents its own set of challenges to readers, so any poem may require a reader to have a number of approaches at her fingertips. A tool that provides various ways of engaging one poem, then leads users to other poems they may be interested in, can provide the means for such readers to gain a variety of skills and approaches. The same can be said for a tool that does not rely on a singular site with a specific point of view but gives directed access to a number of sites with diverse offerings. Such a tool might also help book groups and other literary groups to connect with poetry.

Likewise, if young people are to develop meaningful, lifelong relationships with poetry, the proper tools for their engagement with the art inside the classroom must be the same as those for engagement outside the classroom—those that invite and engender curiosity, pleasure, and active engagement. Many teachers are already interested in using poetry in their classrooms and work hard

to make the experiences of their students with poetry lively. But many poetry curricula currently available to teachers are outdated, rigid in their approaches, not relevant to students' lives, or otherwise inadequate to their needs. Traditional textbooks and anthologies for literature classes tend to be expensive and so may be rarely replaced. Furthermore, even when teachers do have reasonable materials, they may not themselves know how to engage or teach poetry as a living art.

What the Guides Do Not Seek to Do

We hope that teachers, along with others, will avail themselves of these guides at every opportunity. At this point, however, we recognize the difficulties in developing curricula for formal adoption by school boards. In particular, we recognize the assessment and teach-to-the-test issues presented by such curricula. For those reasons, we are not recommending that the study group work at this point to develop a formal curriculum. Rather, for now we imagine that these guides will present a powerful, alternative model for thinking about poetry and engagement with poetry, both within and beyond the classroom walls—a way of thinking about poetry that will help teachers now and that may influence future efforts in curricular reform being undertaken by the education community.

In addition, we do not imagine that this site will either duplicate or replace the excellent work that has already been done by groups committed to bringing poetry and poetry guides to new-media platforms. Rather, we hope that these groups work together to create what we see as an essential tool.

What the Guides Do Seek to Do:

1) Introduce users to the vital values connected with poetry, including the pleasures associated with elegance, beauty, difficulty, and precise language

2) Provide individual users, group leaders, and teachers excellent poems to select both from the established canon and from living writers, including those working in the spoken word, new media, and other recent forms of expression, who may speak to wide audiences of readers at eye level in their neighborhoods and classrooms

3) Select great poems that are simple enough in their vocabularies and syntax to be accessible to young people and to those who are not yet comfortable with reading poetry

4) Offer in each module poems meant both to reflect the realities of diverse readers and to represent other, different realities

5) Present fresh voices that might appeal to young readers, and provide the opportunity for young readers to consider ways in which one poem speaks to other poems, whether in the poetry canon or on its margins

6) Provide new ways to present older works, using methods and ideas that find energy in the verb of learning rather than simply attacking the noun of content

7) Model ways of reading poems that do not focus on coming up with "correct" and testable readings but rather encourage engagement, discourse, pleasure, and critical thinking

8) Include poems from languages other than English, providing the opportunity for the user to consider how we translate from one culture and language into another and, when possible, to demonstrate and practice translation with the students

9) Include modules designed for English learners and bilingual users and classrooms

10) Provide users, teachers, and group leaders with balanced counsel on the choices the modules offer

11) Exploit available technologies to bring poetry to users in all its formats, spoken as well as written, and to permit seamless and effortless navigation from poem to poem and from format to format

12) Engage all the user's senses by relying not merely on silent reading but on memorization and recitation, listening, and activities connected with poetry's close relatives, such as choral singing and plays

13) Develop new-media tools that users can wield to create poetry and visual interpretations of poetry and provide links to tools that already exist

14) Invite users both young and old to engage with poetry by finding it for themselves, somewhere outside a school text

15) Provide users with the opportunity to read and discuss poems with others, whether at the same physical location or through online discussion groups

16) Use poetry as a tool for developing imagination and deepening engagement with the larger world

17) Encourage teachers, group leaders, and individual users to incorporate into their poetry experiences engagement with living poets by providing guide modules and lesson plans that enable users to make effective use of such engagements

18) Encourage poets to participate in—and teachers to use—existing arts-in-education programs that provide teachers with banks of poets who have already been vetted by peers and other experts

19) Encourage poets during readings or course visits not only to read from their work but also to lead discussions that model for readers, students, and teachers ways of reading and engaging with poems

20) Provide guidelines for librarians interested in developing poetry collections and programs that appeal to children and adults and offer libraries access to selections from the guide's own collection

21) Provide parents with tools for reading and experiencing poetry with their children

22) Leverage the strengths of diverse groups and organizations

23) Both provide guidance to users and allow users a broad range of choices that will allow them to make their own explorations based on their particular evolving interests

A Vision for Engaging Educators, Institutions, and Communities

Schools and other institutions are crucial in bringing people to poetry. In particular, we laud the many teachers who work tirelessly to create pleasurable poetry encounters in classrooms despite forces that militate against their efforts; we also honor librarians and others engaged in adult and community education who are passionate about bringing poetry to readers. We urge the poetry community to engage these professionals and their institutions in an ongoing discussion about poetry and its place in our culture. These passionate experts are uniquely qualified to speak for reform from within their institutions in ways poets and scholars cannot, despite their deep understanding of the art and its pleasures.

Strictly speaking, such broad reform is beyond the purview of the present group, which was brought together to consider how to bring poetry more effectively into new media. But we understand that our work has profound implications for the efforts of anyone who is working to bring poetry to readers, whether inside or outside institutional walls. We hope that future groups might take on some of the following broad suggestions for this wider community to consider.

1) Develop programs for cooperative education for poets and teachers and other professionals
We encourage poets who teach in colleges and universities to develop formal relationships with their colleagues in education, library studies, and arts and public administration, to work with these colleagues to bring poetry into classrooms and other sites and to learn about the on-the-ground realities of teaching and programming poetry within these institutions.

2) Gather and extend research correlating poetry study with success in a broad range of endeavors
Over the years, several studies have linked the arts in general and poetry in particular with the development of important skills. We encourage experts in such research to gather existing research and extend it to make a powerful case for the integration of poetry into education and other cultural efforts.

3) Educate legislators and education policymakers
Once the data have been gathered, we encourage poetry and arts groups to develop and execute a systematic plan to provide legislators and educational policymakers with information and compelling arguments about the necessity of bringing poetry into the curriculum.

4) Undertake curricular and assessment reform
Such an effort should also aim to move national, state, and local educational policy away from "teach-to-the-test" models and back toward models that recognize values not addressed by rote learning, and so to empower teachers, schools, and educational policymakers to rethink and revise poetry curricula and assessment tools whether local or national. In addition, the effort should engage poets in activities similar to those recently undertaken by scientists, who have successfully influenced textbook publishers to redesign their textbooks in ways that produce positive results for students.

5) Help adults to engage or reengage with poetry
We encourage libraries and others involved in adult education or in providing access to the arts to consciously work to incorporate access to poetry and to provide opportunities in which their audiences can explore poetry together.

6) Integrate poets into their communities
We recommend that poets work to create bridges between the academic institutions where many of them are employed and community organizations such as schools, writing centers, arts organizations, and organizations engaged in literacy efforts.

Summary of Poetry and New Media Recommendations

1. **Weigh Financial Considerations against the Value of Access**
2. **Collaborate on a Document of Best Practices in Fair Use**
3. **Reproduce the Original Work Faithfully**
4. **Share Remuneration Fairly**
5. **Balance Remuneration with Access**
6. **Create a Tiered-Fee System**
7. **Take Exposure and Readership into Consideration**
8. **Exploit New Media Opportunities**
9. **Consider Creative Commons Licenses**
10. **Arrange for the Disposition of Papers**
11. **Decide Will and Estate Issues**
12. **Engage in Other Activities Appropriate to Their Roles**
    1) **Publishers and Agents**
    2) **Poets**
    3) **Publishers; Educators and Educational Institutions; Poets and Anthologists; and Literary Critics, Satirists and Parodists**
    4) **Remix Artists, New-Media Poets, Content Providers, and Literary Organizations**
    5) **Booksellers**
    6) **Philanthropists**
13. **Create a National Study Group on Exposing More People to Poetry**
14. **Generate Interest in Poetry among Educators and Librarians**

2009 Poetry and New Media Values Statement

Poetry and New Media Working Group
Harriet Monroe Poetry Institute
February 2009

Project Statement

The Harriet Monroe Poetry Institute (HMPI) has invited a panel of poets, publishers, and experts from the fields of media law, technology, and other pertinent areas to come together both in person and virtually during 2009. Working within the HMPI but independently from the Poetry Foundation, the group is examining issues related to the preparation, distribution, and reception of poetry through existing and evolving media platforms, including the Internet and other electronic forms and devices, with the aim of forging recommendations that both protect the intellectual property of poets and publishers and ensure a vigorous presence for poetry in various forms in all media, including new-media outlets.

Considerations and Definitions

For the purposes of this group, we are using the term "new media" to refer to any extra-book medium, especially electronic media. The term, then, would include not only Internet and digital media but also radio and film. We understand that the underlying issue in relation to new media is really the new ease of reproduction and dissemination—an ease that both presents new opportunities and challenges old ways of encouraging and rewarding investment in creative work. In the sense in which we are employing the term, then, even a book might become a "new media" document the instant it is scanned into a form that may be quickly, even instantaneously, reproduced, disseminated, or altered. During our discussions, we have also come to understand that the primary issue, access to poetry, is important not only when it appears in new media but wherever poetry appears, print media included.

Shared Values of the Poetry and New Media Working Group

That access to poetry, being crucial to the development of and maintenance of cultural literacy an our cultural heritage, should therefore be considered a cultural imperative

That, over the long term, efforts to limit access to poetry and other important artistic and cultural works tend to have negative consequences that outweigh imagined positive consequences

That we want this process to result in at least the following practical outcomes:

- Recommendations that lead to a community best practices document for the fair use of poetry in all media
- Recommendations that help poets, publishers, poetry distributors, and other community members think through legal issues as they pertain to permissions, literary estates, licensing, and other matters arising from the distribution of poetry
- A community to-do list with programming ideas that emerged in our conversation but are beyond the purview of the HMPI

That, as current copyright law provides, absent an explicit work-for-hire contract or an employee-employer relationship under which the ownership of a work is clearly spelled out, a creative product should belong to its creator

That poets and their publishers should be reasonably paid for their work when possible and practical

That poets and publishers should be aware of and prepared to take advantage of the non-financial benefits made possible by new media, such as the following:

- Opportunities for poetry to be experienced in ways it cannot be experienced on the page, for example through video and audio performances, which may bring new audiences to poetry, leading to

- Greater access and exposure to poets and poetry, which may itself lead indirectly to individual opportunities for financial gain as well as to a more vigorous and lively presence for poetry in the culture

That poets and publishers should also be aware of the risks specifically attending new-media opportunities, some examples of which follow:

- Loss of control over what others might do with a poem once it enters the public square, especially in electronic forms
- Loss of control over some potential income associated with a given poem
- The potential for increasing control and centralization of new media by those for whom the highest value attaching to poetry is its financial value
- The potential for increasing control and centralization in and by "centers of money" repsented by large nonprofit organizations

That centralization of power and control over poetry and its distribution may lead to less diversity in poetry and poets and less, not more, access to them

That poetry is an ongoing conversation that has always engaged in the practice referred to traditionally as allusion and in new media as remixing, a practice that continually renews the energy of the genre

That we therefore affirm our support for an open and flexible interpretation of fair use under current copyright law

That, however, remix works, whether respectful or satirical, should provide, when possible, access (through links, citation, or other means) to the original text as it was written, and that, especially in cases of substantive use, those who use the work of others should, if possible and appropriate, seek permission for that use

That where a poem appears or is quoted, used, or remixed in any medium, including new media, it should be properly credited and attributed

That, for the purposes of this document, authorship and ownership are not the same

That we endorse the philosophy and practice of collaboration among poets; literary organizations, institutions, and associations; educators and educational institutions; policy-makers and advocates; publishers; government agencies; donors; readers; and members of the general public

New Media Working Group Panel Members

Michael Collier is a professor of English at the University of Maryland and a poetry editor at Houghton Mifflin Harcourt. His latest collection of poems, *The Ledge*, was a finalist for a National Book Critics Circle Award and the Los Angeles Times Book Prize. He has received John Simon Guggenheim Memorial Foundation, National Endowment for the Arts, and Thomas J. Watson Foundation fellowships, and since 1994 he has served as the director of the Bread Loaf Writers' Conference.

Wyn Cooper is a poet and lyricist whose fourth book of poems, *Chaos is the New Calm*, comes out in May 2010. His poem "Fun" was the basis for Sheryl Crow's Grammy-winning song "All I Wanna Do." He has written songs with David Broza, David Baerwald, Jody Redhage, and Madison Smartt Bell. Songs by Bell and Cooper appear on their two CDs (most recently, *Postcards Out of the Blue*) and can be heard on six television shows. He lives in Vermont.

Photo: Fred Viebahn

Rita Dove is a poet, playwright, and former poet laureate of the United States and the Commonwealth Professor of English at the University of Virginia in Charlottesville. She has received numerous literary and academic honors, including the 1987 Pulitzer Prize in Poetry and the 1996 National Humanities Medal. Dove has also written texts for major musical works and collaborated with John Williams on Steven Spielberg's *Unfinished Journey*.

Photo: Chip Cooper

Cornelius Eady is a poet, playwright, and the director of the Creative Writing Program at the University of Notre Dame. Cofounder of Cave Canem, he has collaborated with jazz composer Diedre Murray, and he wrote the libretto for the opera *You Don't Miss Your Water* as well as *Running Man*, a finalist for the Pulitzer Prize in Drama. His awards include fellowships from the Guggenheim Foundation, the Rockefeller Foundation, and the National Endowment for the Arts.

David Fenza is a poet, professor, and arts administrator. He is currently on sabbatical from his position as the executive director of the Association of Writers and Writing Programs (AWP), an organization dedicated to serving writers, teachers, and writing programs. AWP also publishes *The Writer's Chronicle*.

Kate Gale is a poet and managing editor of Red Hen Press. A teacher at Antioch University Los Angeles, she speaks at universities and writing conferences on publishing, editing, and publicity. She was the 2005–06 president of PEN USA; serves on the boards of Claremont Graduate University School of Arts and Humanities, A Room of Her Own Foundation, and Poetry Society of America; and is president of the American Composers Forum Los Angeles.

Photo: Harold Schechter

Kimiko Hahn is Distinguished Professor of English at Queens College, City University of New York. Her seven collections of poetry include *The Unbearable Heart*, which won the American Book Award. She was the screenwriter for the film collaboration *Everywhere at Once*, based on Peter Lindbergh's still photos, which was narrated by Jeanne Moreau; it premiered at the 2007 Cannes Film Festival and was presented at the 2008 Tribeca Film Festival.

Lewis Hyde is a poet, translator, essayist, and critic. He is the Richard L. Thomas Professor of Creative Writing at Kenyon College. His many honors include fellowships from the National Endowment for the Arts, the National Endowment for the Humanities, the Lannan Foundation, the Guggenheim Foundation, and the John D. and Catherine T. MacArthur Foundation, as well as residencies at the Getty Museum and San Francisco's Exploratorium. His internationally acclaimed book *The Gift* tries to reconcile creative work with a market economy.

Fiona McCrae is publisher and executive director of Graywolf Press, one of the nation's leading nonprofit literary presses and the publisher of numerous award-winning collections of poems. She was previously a director and editor at Faber and Faber and has served on the board of the Council of Independent Magazines and Presses.

Photo: Juliet Van Otteren

Robert Pinsky is the poetry editor of the online magazine *Slate* and a professor at Boston University. A three-time poet laureate of the United States, he founded the Favorite Poem Project; the project's most recent anthology is *An Invitation to Poetry*, which includes a DVD featuring Americans reading and talking about beloved poems. He is the author of the award-winning books *The Figured Wheel* and *The Inferno of Dante* and, most recently, *Gulf Music*.

Claudia Rankine is the Henry G. Lee Professor of English at Pomona College and the author of four collections of poetry. She is coeditor of *American Women Poets in the Twenty-First Century: Where Lyric Meets Language* and *American Poets in the Twenty-First Century: The New Poetics*. Her play *Detour* opened in September 2009 at the Foundry Theater in New York. She has received fellowships from the Academy of American Poetry, the National Endowment for the Arts, and the Lannan Foundation.

Alberto Ríos is the Regents' Professor of English at Arizona State University. Ríos is the author of ten books and chapbooks of poetry, three collections of short stories, and a memoir. His work has been included in more than 200 national and international anthologies and has been translated and adapted to dance and both classical and popular music. His many awards include fellowships from the John Simon Guggenheim Memorial Foundation and the National Endowment for the Arts.

Don Selby is coeditor of *Poetry Daily* (poems.com), which he founded after a career in law publishing. *Poetry Daily*'s mission is to help make contemporary poetry part of everyday life by making it easier for people to discover new poetry and for poets and publishers to bring news of their work to more people. He has served on grant and award panels for the National Endowment for the Arts and the Virginia Commission for the Arts and is coeditor of two *Poetry Daily* anthologies.

Rick Stevens is a professor of computer science at the University of Chicago, associate laboratory director for computing and life sciences at Argonne National Laboratory, and a senior fellow of the Argonne/University of Chicago Computation Institute, a multidisciplinary organization whose purpose is to connect computing to all areas of inquiry at the university and the laboratory. He also heads the Argonne/Chicago Futures Lab, a research group he founded to investigate problems in large-scale scientific visualization and advanced collaboration environments.

Jennifer Urban teaches and studies issues related to intellectual property and technology law and policy at the University of California, Berkeley School of Law, where she codirects the Samuelson Law, Technology & Public Policy Clinic. Previously, she taught at the University of Southern California Gould School of Law, where she founded and directed its Intellectual Property and Technology Law Clinic. At both institutions, she and her students work to support artists and emerging art forms and to advance the public's interest in areas of intellectual property and technology policy.

Monica Youn is counsel in the Democracy Program at the Brennan Center for Justice at New York University School of Law, where she specializes in constitutional litigation. Previously she was in private practice as a media and intellectual property lawyer. Her first book of poems, *Barter*, was published in 2003 by Graywolf Press; a new work, *Ignatz*, is forthcoming from Four Way Books in 2010. She has received poetry fellowships from the Library of Congress, the Rockefeller Foundation, and Stanford University, and she has been an adjunct professor of creative writing at Pratt Institute and Columbia University.

Harriet Monroe Poetry Institute
New Media Working Group Advisers

DIRECTOR

Photo: Kent Miles

Katharine Coles is serving a two-year appointment as the inaugural director of the Harriet Monroe Poetry Institute. Her most recent collection of poems, *Fault*, came out in 2008; she has also published novels and essays and has collaborated with visual artists on projects resulting in both temporary and permanent installations. She is a professor at the University of Utah, where she founded and codirects the Utah Symposium in Science and Literature. In 2006 she was named to a five-year term as poet laureate of Utah.

PROJECT MANAGER

Beth Allen is the project manager for the Harriet Monroe Poetry Institute and has been with the Poetry Foundation since 2004. Before joining the foundation, she served as executive assistant to Stanley Fish at the College of Liberal Arts and Sciences at the University of Illinois at Chicago and coordinated the Field Museum of Natural History's lecture series.

CONSULTANT

Jaune Evans is Director of Donor Services at The Tides Foundation of San Francisco and New York. She works with fine arts programs, human rights and cultural organizations, indigenous and environmental groups, and innovative community projects. Jaune served as the executive director of programs at the Lannan Foundation for ten years, and before that as the executive director of the New Mexico Community Foundation and as the deputy director of public health for the state of New Mexico.

Poetry and New Media: A Users' Guide—Action Items

The action items in Appendix 4 reflect the HMPI New Media Project group members' collective desire that their work have concrete results.

Action

Create a best practices in fair use document for the poetry community.

Progress

American University's Center for Social Media and the Washington College of Law's Program on Information Justice and Intellectual Property, which have developed best practices in fair use documents for documentary filmmakers and others, have agreed to create such a document in collaboration with the poetry community and have undertaken meetings and focus groups to this end.

Action

Write a series of directed opinion pieces for national publications urging the audiences addressed by the document to adopt its recommendations.

Progress

HMPI director Katharine Coles is in the process of drafting such pieces and also of canvassing major organizations and prominent poets to sign the opinion pieces.

Action

Create a national study group composed of poets and the directors and web directors of major national poetry organizations to develop an on-line modular poetry study guide for use by individuals and organizations.

Progress

HMPI director Katharine Coles has met with the directors of the Teachers and Writers Collaborative, the Academy of American Poets, Poets House, and the Poetry Society of America in New York and with Don Selby of Poetry Daily. All have agreed in principle to participate in

preliminary discussions about developing the guide, and all have contributed ideas that have helped to shape the final recommendation. Coles is currently working with Jennifer Urban at the University of California, Berkeley School of Law to launch a clinic addressing copyright and fair use issues as they might pertain to on-line poetry education materials.

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