Palmer School of Library and Information Science
Long Island University
LIS 901: Copyright and Library Law
Instructor: Greg Cram
Spring 2014

Syllabus

Time and Place
Bobst Library, New York University, Avery Fisher Center West
70 Washington Square South, New York, N.Y. 10012
Tuesdays, January 21 through May 6, from 6:30-8:20 PM

Instructor Contact Information
The New York Public Library
Stephen A. Schwarzman Building
476 Fifth Avenue
New York, NY 10018
Telephone: 212.621.0262
Email: Greg.Cram@liu.edu (always preferable to telephone)
Gchat: GregCram@nypl.org

Office Hours
By appointment

Prerequisites
At least one of the following: LIS 510, LIS 511, LIS 512, or LIS 514; or, with permission of the instructor.

Course Description
This course explores copyright law and gives students a legal framework to analyze the copyright issues faced by librarians and cultural institutions. From the digitization of archives and collections to electronic reference, copyright is now a major consideration for libraries. Copyright issues are prevalent in published, unpublished and born-digital material. Instead of backing away from copyright issues to the detriment of access to content, librarians should understand and interpret copyright law so they can participate in setting institutional policies that take advantage of fair use and other exceptions granted to libraries by the law.

Course Objectives
Upon completion of the course, the students will:
• Be able to identify the types of content protected by copyright, trademark and patent law
• Gain a firm grounding in the theory and language that underlies copyright law
• Be able to analyze whether a copy is an infringement of an exclusive right granted to copyright holders
• Understand potential copyright reforms from different points of view
• Be able to research and make high-confidence determinations of the copyright status of items in collections
• Be able to make well-reasoned arguments as to whether a particular use is a fair use
• Be able to make well-reasoned arguments as to whether a particular use falls within some other exception granted to users of copyrighted works
• Be able to identify main features of mass digitization projects and the copyright complications they invite

Student Learning Objectives
This course addresses all parts of Student Learning Objective (SLO) 1, “Reflect the principles, ethics and philosophy of the profession while serving their patrons, institutions and communities.” Understanding and applying copyright principles is increasingly important to fulfill the mission of the profession. This course also touches on SLO 2(c), 3(d) and 5(a).

Evaluation and Assessment
Students will be assigned five exercises and a final paper that test their grasp of topics taught in class and covered in the readings. Technical aspects, logic, and demonstrations of critical thinking of these written assignments will be evaluated. For full credit, all assignments must be submitted in a timely manner and in a professionally appropriate form. All assignments should be submitted electronically by emailing Greg.Cram@liu.edu. All assignments are due at the start of the class indicated on the syllabus.

Regular attendance is required and class participation is expected. This is an interactive class and students will be asked for their thoughts. Because critical thinking and analytical reasoning are essential skills to librarianship, students will also be asked to take and defend positions on copyright issues in class discussions.

There may be times during class where you will be asked to respond to a question by sending a text message or accessing a website. Although a cell phone is not required for this class, you are encouraged to bring one if you have one already. Other than the times where your responses are requested, there should be no active communication via computers or mobile devices during class. Interruptions will affect participation grades.

Exercises, the final paper, and class participation will be weighed as follows:

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Five copyright assignments/exercises</td>
<td>50%</td>
</tr>
<tr>
<td>Final 6-10 page paper</td>
<td>25%</td>
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<tr>
<td>Class participation</td>
<td>25%</td>
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<tr>
<td>Total</td>
<td>100%</td>
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</tbody>
</table>

Course Credits
This is a three-credit course.
Grading Rubric
Written assignments in this class will be graded according to the following guidelines:

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>GPA</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>4.0</td>
<td>Outstanding achievement. Student performance demonstrates full command of the course materials and shows a high level of originality and/or creativity that far surpasses course expectations; grammatical errors, misspellings, and typos are minimal or non-existent.</td>
</tr>
<tr>
<td>A-</td>
<td>3.7</td>
<td>Very good work. Student performance demonstrates thorough knowledge of the course materials and exceeds course expectations by completing all requirements in a superior manner; grammatical errors, misspellings, and typos are minimal (average one-two per page) or non-existent.</td>
</tr>
<tr>
<td>B+</td>
<td>3.3</td>
<td>Good work. Student performance demonstrates above-average comprehension of the course materials and exceeds course expectations on all tasks as defined in the course syllabus; grammatical errors, misspellings, and typos are present (average two-three per page).</td>
</tr>
<tr>
<td>B</td>
<td>3.0</td>
<td>Adequate work. Student performance meets designated course expectations, demonstrates understanding of the course materials, and is at an acceptable level; grammatical errors, misspellings, and typos are present (average four-five per page).</td>
</tr>
<tr>
<td>B-</td>
<td>2.7</td>
<td>Marginal work. Student performance demonstrates incomplete understanding of course materials; grammatical errors, misspellings, and typos are frequent (average six-ten per page).</td>
</tr>
<tr>
<td>C+</td>
<td>2.3</td>
<td>Unsatisfactory work. Student performance demonstrates incomplete and inadequate understanding of course materials; grammatical errors, misspellings, and typos are very frequent (average 11-14 per page) and adversely affect the structure and flow of the narrative.</td>
</tr>
<tr>
<td>C</td>
<td>2.0</td>
<td>Unsatisfactory work. Student performance demonstrates incomplete and inadequate understanding of course materials; grammatical errors, misspellings, and typos are ubiquitous (average 15 or more per page) and adversely affect the structure and flow of the narrative.</td>
</tr>
<tr>
<td>F</td>
<td>0.0</td>
<td>Failing. Student failed to turn in an assignment or plagiarized.</td>
</tr>
</tbody>
</table>

Late Policy
All work is expected to be completed on time. Assignments turned in late (unless excused) are subject to a five percent (5%) penalty per three days late. The last day assignments will be accepted is 5:00 PM on May 7, 2014. Failure to submit an assignment by 5:00 PM on May 7, 2014, will result in a forfeiture of credit for that assignment.

Required Texts
Peter B. Hirtle et al., Copyright and Cultural Institutions: Guidelines for U.S. Libraries, Archives, and Museums (2009), [http://ecommons.cornell.edu/handle/1813/14142](http://ecommons.cornell.edu/handle/1813/14142) (hereinafter Hirtle)

In addition, a supplemental list of readings is included for each class. Please come to class having read all readings assigned for that class. Judicial opinions are particularly important because they will be the foundation of classroom discussion.

Citation Style
There is no one preferred citation format for this class. You should feel free to select one of the major formats you are most comfortable with (e.g., APA, MLA, Chicago, or Bluebook). However, once you have selected a format, you must continue to use that style throughout the class.

If you have questions about grammar or want to ensure that your style is clear, effective, and readable, see William Strunk, Jr.’s *The Elements of Style*, online through
This succinct work is available cheaply in used copies at many used bookstores or online.

Plagiarism
Regarding plagiarism, see http://owl.english.purdue.edu/owl/resource/589/02/. If you have questions about plagiarism, ask the instructor for help before turning in questionable material. LIU’s policies on plagiarism can be found at www2.liu.edu/cwis/cwp/library/exhibits/plagstudent.htm.

Incompletes
Incomplete will only be given in the case of a dire emergency and only then if the majority of the class is completed and completed successfully. Before the last class meeting, the student must meet with the professor and Palmer staff to discuss the proposed incomplete grade.

Accommodations for Students with Documented Disabilities
If you are a student with a documented disability and need accommodations, academic adjustments, auxiliary aids or other services, please contact the office of Disability Support Services (Post Hall, Lower Level, East Wing) at 516.299.3057 to request services, accommodations or for additional information. Additional information is also available on the DSS website: www.liu.edu/post/dss.

Syllabus Subject to Revision
Because of the ever-changing nature of copyright law, this syllabus is subject to revision during the semester. Please check Blackboard for the most recent version.
Overview of Class Schedule
January 21: *Snow Day*

January 28 (Class 1): Overview of Intellectual Property; Copyright Background

February 4 (Class 2): Scope of Copyright Protection
Assignment 1 (Name That IP) Due

February 11 (Class 3): *No Class*

February 25 (Class 4): Exclusive Rights Granted by Copyright Law; Copyright Ownership
Assignment 2 (Copyright Reform) Due

March 4 (Class 5): Is it Still in Copyright?

March 18 (Class 6): Advanced Copyright Issues; First Sale
Assignment 3 (Register a Copyright) Due

March 25 (Class 7): TEACH Act; Section 108--The Library Exceptions

April 1 (Class 8): *No Class*

April 8 (Class 9): Section 108--The Library Exceptions (cont’d)
Assignment 4 (Patron Requests for Reproductions) Due

April 15 (Class 10): Section 107--Fair Use

April 22 (Class 11): Section 107--Fair Use (cont’d)
Assignment 5 (Fair Use in the News) Due

April 29 (Class 12): Orphan Works; Licensing and Donor Agreements

April 30 (Class 13): International Copyright Issues; Mass Digitization Projects

May 6 (Class 14): Other Legal Issues in Libraries
Assignment 6 (Final Paper) Due
Class Schedule

January 28 (Class 1): Overview of Intellectual Property; Copyright Background

Topics
Why copyright is important to libraries
What is intellectual property? What is a copyright? Trademark? Patent?
When do you infringe a copyright, trademark or patent?
What are the damages for infringement?
Right of publicity and how it can impact digitization
Purpose of copyright
Major changes in copyright law over time

Readings (to be read in advance of class)
1. Carol Henderson, Libraries as Creatures of Copyright: Why Librarians Care about Intellectual Property Law and Policy, AM. LIBRARY ASSN.,
2. HIRTL, 173-191.
3. HIRTL, 1-38.
5. Browse Chillingeffects.org for copyright, trademark and patent cease and desist letters.
6. Right of Publicity of Internet Law Treatise, ELECTRONIC FRONTIER FOUND.,
   https://ilt.eff.org/index.php/Right_of_Publicity (last modified April 7, 2010).
9. William Fisher, Introduction to Copyright for Librarians, BERKMAN CTR FOR INTERNET & SOC’Y,

February 4 (Class 2): Scope of Copyright Protection

Topics
Scope of copyright protection
What is a “work”?
Does a work need to be published to receive protection?
Types of works protected by copyright
Examples of works that are at the edge of protection, including fragrances, choreography, fashion, mixed drinks and software code

Assignment 1 (Name That IP) Due

Readings (to be read in advance of class)
11. MAI Systems Corp. v. Peak Computer, Inc., 991 F.2d 511 (9th Cir. 1993). An abridged version will be made available on Blackboard.

February 11 (Class 3): *Class Does Not Meet*
Work on Assignment 2 (Copyright Reform)

February 25 (Class 4): Exclusive Rights Granted by Copyright Law; Copyright Ownership
Topics
What are the exclusive rights granted by copyright law?
Who owns those rights?
Work for hire doctrine

Assignment 2 (Copyright Reform) Due
Readings (to be read in advance of class)
2. HIRTLLE, 55-86.

March 4 (Class 5): Is it Still in Copyright?
Topics
Duration of copyright protection; Published v. Unpublished works
Copyright formalities and the impact of failure to follow formalities
Copyright renewal under 1909 Copyright Act
Researching copyright status of published works using available information/databases
How international works fit into US copyright law
Federal copyright protection of sound recordings
Discuss recent proposal by Copyright Office to federalize protection of all sound recording copyrights

Readings (to be read in advance of class)
1. HIRTLÉ, 39-54.
9. Estate of Martin Luther King, Jr., Inc. v. CBS, Inc., 194 F.3d 1211 (11th Cir. 1999). An abridged version will be made available on Blackboard.

March 18 (Class 6): Advanced Copyright Issues; First Sale

Topics
Complex works that have multiple layers of copyrights (e.g., movies, dramatic works, music)
Section 109—First Sale Doctrine
What is the first sale doctrine?
How does the first sale doctrine protect library lending?
How does the first sale doctrine function with digital objects?

Assignment 3 (Register a Copyright) Due
Readings (to be read in advance of class)

March 25 (Class 7): TEACH Act; Section 108--The Library Exceptions

Topics
Distance Education--TEACH Act
Background of the TEACH Act
How copyright law makes exceptions for web-based teaching
What is section 108?
What does it cover?
What rules are set forth in section 108 regarding the making copies in response to patron requests?
What rules are set forth in section 108 regarding personal photography in reading rooms?
How does section 108 enable cultural institutions to make copies for preservation purposes?

Readings (to be read in advance of class)
3. HIRTL, 102-3.
8. HIRTL, 107-128.


11. Williams & Wilkins Co. v. United States, 487 F.2d 1345 (Ct. Cl. 1973). An abridged version will be made available on Blackboard.


April 1 (Class 8): *Class Does Not Meet*
For participation credit for this day, describe something surprising that you heard from this panel.

April 8 (Class 9): Section 108--The Library Exceptions (cont’d)

Topics
What is the Section 108 Study Group and what recommendations did it make for reforming section 108?

Assignment 4 (Patron Requests for Reproductions) Due

Readings (to be read in advance of class)
5. Hirtle, 106–7

Section 108 Study Group Report Student-Led Discussion
In an effort to break apart the recommendations made by the Section 108 Study Group into manageable chunks, you will be assigned a group number. Each group is responsible for the sections assigned to the group (below). Your task is to read your assigned sections and prepare to lead an in-class discussion on those sections. For each section you are assigned, please summarize the section
and discuss in-class: 1) the current problem; 2) the recommendations; and, 3) the rationale behind the recommendations. If no consensus around a recommendation was reached, describe the competing arguments. The longer sections may take as much as ten minutes to discuss, while the shorter sections might take only three to five minutes to cover.

**Group 1**
Museum Eligibility Under Section 108: pp 31-33
Replacement Copying: pp 52-60

**Group 2**
Additional Functional Requirements: pp 34-38
Preservation of Unpublished Works: pp 61-68

**Group 3**
Preservation of Publicly Disseminated Works: pp 69-79
Unsupervised Reproducing Equipment: pp 91-92

**Group 4**
Outsourcing of Section 108 Activities: pp 39-42
Preservation of Publicly Available Online Content: pp 80-87

**Group 5**
Television News Exception: pp 88-90
Direct Copies and ILL: pp 98-106

**April 15 (Class 10): Section 107--Fair Use**

**Topics**
- Historical background of the principal of fair use
- Discuss the four statutory factors of fair use
- Discuss disputes that highlight each fair use factor
- How fair use can help libraries and cultural institutions satisfy their mission

**Readings (to be read in advance of class)**
2. HITTLE, 87-102.


Optional: Poke around Columbia’s Copyright Advisory Office’s Website:


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**April 22 (Class 11): Section 107--Fair Use (cont’d)**

**Topics**

Continue fair use review

Specific fair use cases relevant to libraries, including course packs and reserves

Fair use guidelines over time—from 1976 classroom guidelines to today’s “Best Practices” documents

**Assignment 5 (Fair Use in the News) Due**

**Readings (to be read in advance of class)**


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**April 29 (Class 12): Orphan Works; Licensing and Donor Agreements**

**Topics**

- Orphan works
  - What are orphan works?
  - What are some potential solutions to the orphan works problems?
- If no exceptions or limitations protect our desired use, what’s next?
- Relationship between private agreement and copyright law
  - Deeds of gift
- Major collective rights organizations (VAGA, ARS, CCC, Sound Exchange, ASCAP, etc.)
- What are Creative Commons licenses?
  - Why are they important?
  - How can they be used to solve copyright issues?
- Other open access models
- Social media terms of service

**Readings (to be read in advance of class)**


Optional: Welcome to the LIBLICENSE Project, CTR. FOR RESEARCH LIBRARIES, http://liblicense.crl.edu (last visited Jan. 5, 2014). You should poke around this site, especially the “Resources” section.

April 30 (Class 13): International Copyright Issues; Mass Digitization Projects

Topics
International copyright issues
   Section 104A, the restoration of certain foreign works
   WIPO proposal for blind and print-disabled
Identify newest projects (DPLA, HathiTrust, Google Books)
   Discuss library and copyright holder arguments for each project

Readings (to be read in advance of class)
5. [Google Books overview – To be announced]
Optional, but strongly recommended: Lawrence Lessig, Laws That Choke Creativity, TED (March 2007), http://www.ted.com/talks/larry_lessig_says_the_law_is_strangling_creativity.html.

May 6 (Class 14): Other Legal Issues in Libraries

Topics
Document retention policies
DMCA and patron-generated content
DMCA prohibition of content protection systems
DMCA notice and takedown safe harbors for user-generated content
Assignment 6 (Final Paper) Due

Readings (to be read in advance of class)
2. Unintended Consequences: Twelve Years under the DMCA, ELECTRONIC FRONTIER FOUND. (Mar. 3, 2010), [https://www.eff.org/wp/unintended-consequences-under-dmca].
5. HIRTLE, 193-212
Written Assignments/Exercises Overview

1) Name That IP. To determine students’ understanding of the types of intellectual property, students will be given a list of items with descriptions. Students must determine what kind of intellectual property protects those items and explain why. Students will also identify a recent intellectual property dispute that received press.

2) Copyright Reform. To encourage students to think critically about copyright law and reforms, students will write a short 3-4 page paper arguing for a particular reform to copyright law of the students’ choosing.

3) Register A Copyright. To familiarize students with the copyright registration process and the terms commonly used, students will register a work of their own creation and register a hypothetical work based on a description given to them. In both cases, students will stop short of actually registering the work, which would require a registration fee.

4) Patron Requests for Reproductions. To apply knowledge to real-world library copyright questions, students will respond to hypothetical requests from patrons for copies of collection materials. The students will use the rules of section 108(d) and (e) to identify potential issues and determine whether the requests can be fulfilled.

5) Fair Use in the News. To encourage students to stay current on copyright issues, students will research a current fair use dispute and write a 3-5 page summary of the situation, including arguments supporting each side.

6) Final Paper. To measure the result of student learning throughout the semester, students will be required to submit a final paper of 6-10 pages. The paper will take the form of a memorandum written by a librarian to a decision maker about a special collection. Students will be given an inventory of the collection along with the deed of gift. The assignment is to analyze the collection for rights issues and make recommendations for particular uses of certain parts of collection. The proposed uses are typical of those proposed in libraries and cultural institutions today.