

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 Copyright issues are prevalent in published, unpublished and born-digital material.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:

Five copyright assignments/exercises	50%
Final 6-10 page paper	25%
<u>Class participation</u>	<u>25%</u>
Total	100%

Course Credits

This is a three-credit course.

Grading Rubric

Written assignments in this class will be graded according to the following guidelines:

Letter Grade	GPA	Definition
A	4.0	<i>Outstanding achievement.</i> 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.
A-	3.7	<i>Very good work.</i> 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.
B+	3.3	<i>Good work.</i> 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).
B	3.0	<i>Adequate work.</i> 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).
B-	2.7	<i>Marginal work.</i> Student performance demonstrates incomplete understanding of course materials; grammatical errors, misspellings, and typos are frequent (average six-ten per page).
C+	2.3	<i>Unsatisfactory work.</i> 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.
C	2.0	<i>Unacceptable work.</i> 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.
F	0.0	<i>Failing.</i> Student failed to turn in an assignment or plagiarized.

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> (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

<http://www.bartleby.com/141/>. 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 ASS'N, <http://www.ala.org/advocacy/copyright/copyrightarticle/librariescreatures> (last visited Jan. 5, 2014).
2. HIRTLE, 173-191.
3. HIRTLE, 1-38.
4. William W. Fisher III, *The Growth of Intellectual Property: A History of the Ownership of Ideas in the United States* (1999), <http://cyber.law.harvard.edu/people/tfisher/iphistory.pdf>. Note that the duration of copyright protection was extended after this article was published.
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).
7. *Copyright and Wrongs*, ECONOMIST, <http://www.economist.com/debate/overview/144> (last visited Jan. 5, 2014).
8. William M. Landes and Richard A. Posner, *An Economic Analysis of Copyright Law*, 18 J. LEG. STUD. 325 (1989), available at <http://cyber.law.harvard.edu/IPCoop/89land1.html>.
9. William Fisher, *Introduction to Copyright for Librarians*, BERKMAN CTR FOR INTERNET & SOC'Y, <http://cyber.law.harvard.edu/copyrightforlibrarians/Introduction> (last visited Jan. 5, 2014).
10. 17 U.S.C. § 101 (2006), available at <http://www.copyright.gov/title17/92chap1.html#101>.
11. 17 U.S.C. §§ 501-506 (2006), available at <http://www.copyright.gov/title17/92chap5.html#501>.

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)

1. U.S. COPYRIGHT OFFICE, CIRCULAR 1: COPYRIGHT BASICS (2012), *available at* <http://www.copyright.gov/circs/circ01.pdf>.
2. 17 U.S.C. § 102 (2006), *available at* <http://www.copyright.gov/title17/92chap1.html#102>.
3. Orin S. Kerr, *How to Read a Legal Opinion*, 11 GREEN BAG 2d 51 (2007), *available at* <http://www.volokh.com/files/howtoreadv2.pdf>.
4. Feist Publications, Inc. v. Rural Telephone Service, 499 U.S. 340 (1991). An abridged version will be made available on Blackboard.
5. U.S. COPYRIGHT OFFICE, FACT SHEET 122: RECIPES (2011), <http://www.copyright.gov/fls/fl122.html>.
6. U.S. COPYRIGHT OFFICE, CIRCULAR 31: IDEAS, METHODS, OR SYSTEMS (2012), *available at* <http://www.copyright.gov/circs/circ31.pdf>.
7. U.S. COPYRIGHT OFFICE, CIRCULAR 34: COPYRIGHT PROTECTION NOT AVAILABLE FOR NAMES, TITLES, OR SHORT PHRASES (2012), *available at* <http://www.copyright.gov/circs/circ34.pdf>.
8. Bleistein v. Donaldson Lithographing Company, 188 U.S. 239 (1903). An abridged version will be made available on Blackboard.
9. Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884). An abridged version will be made available on Blackboard.
10. 17 U.S.C. § 103 (2006), *available at* <http://www.copyright.gov/title17/92chap1.html#103>.
11. MAI Systems Corp. v. Peak Computer, Inc., 991 F.2d 511 (9th Cir. 1993). An abridged version will be made available on Blackboard.
12. U.S. COPYRIGHT OFFICE, CIRCULAR 14: COPYRIGHT REGISTRATION FOR DERIVATIVE WORKS (2012), *available at* <http://www.copyright.gov/circs/circ14.pdf>.

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)

1. 17 U.S.C. § 106 (2006), *available at* <http://www.copyright.gov/title17/92chap1.html#106>.
2. HIRTLE, 55-86.
3. 17 U.S.C. §§ 201-202 (2006), *available at* <http://www.copyright.gov/title17/92chap2.html#201>.
4. 17 U.S.C. § 204 (2006), *available at* <http://www.copyright.gov/title17/92chap2.html#204>.

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. HIRTLE, 39-54.
 2. 17 U.S.C. § 303 (2006), available at <http://www.copyright.gov/title17/92chap3.html#303>.
 3. U.S. COPYRIGHT OFFICE, CIRCULAR 22: HOW TO INVESTIGATE THE COPYRIGHT STATUS OF A WORK (2013), available at <http://www.copyright.gov/circs/circ22.pdf>.
 4. Peter Hirtle, *Copyright Term and the Public Domain in the United States*, CORNELL COPYRIGHT INFO. CTR., <http://copyright.cornell.edu/resources/docs/copyrightterm.pdf> (last updated 1 January 2013).
 5. Poke around: *Stanford Copyright Renewal Database*, <http://collections.stanford.edu/copyrightrenewals/bin/search/simple>.
 6. *Welcome to Copyright Records*, INTERNET ARCHIVE, <https://archive.org/details/copyrightrecords> (last visited Jan. 5, 2014).
 7. Review: *Digitization and Public Access*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/digitization/> (last visited Jan. 5, 2014). Be sure to read the *Project Goals* section.
 8. *Copyright, the Duration of Protection and the Public Domain*, EIFL HANDBOOK ON COPYRIGHT (2006), http://www.eifl.net/system/files/201101/handbook_term.pdf.
 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.
 10. 17 U.S.C. § 104A (2006), available at <http://www.copyright.gov/title17/92chap1.html#104A>.
 11. 17 U.S.C. § 301(c) (2006), available at <http://www.copyright.gov/title17/92chap3.html#301>.
 12. Review: *Federal Copyright Protection for Pre-1972 Sound Recordings*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/docs/sound/> (last revised April 2, 2013).
 13. The Executive Summary of U.S. COPYRIGHT OFFICE, FEDERAL COPYRIGHT PROTECTION FOR PRE-1972 SOUND RECORDINGS (2011), available at <http://www.copyright.gov/docs/sound/pre-72-exec-summary.pdf>.
 14. Poke around: *Copyright for Music Librarians*, MUSIC LIBRARY ASS'N, <http://copyright.musiclibraryassoc.org> (last visited Jan. 5, 2014).
- Optional: Golan v. Holder, 565 U.S. ____ (2012), available at <http://www.supremecourt.gov/opinions/11pdf/10-545.pdf>.

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)

1. Barry M. Massarsky, *The Operating Dynamics Behind ASCAP, BMI and SESAC, The U.S. Performing Rights Societies*, COAL. FOR NETWORKED INFO., <http://www.cni.org/docs/ima.ip-workshop/Massarsky.html> (last visited Jan. 5, 2014).
2. Chapter 2 of EDWARD SAMUELS, *MUSIC AND SOUND RECORDINGS* 31-56 (2000), available at <http://www.edwardsamuels.com/illustratedstory/isc2.htm>.
3. Chapter 3 of EDWARD SAMUELS, *MUSIC AND SOUND RECORDINGS* 57-73 (2000), available at <http://www.edwardsamuels.com/illustratedstory/isc3.htm>.
4. 17 U.S.C. § 109 (2006), available at <http://www.copyright.gov/title17/92chap1.html#109>.
5. *Bobbs-Merrill Co. v. Straus*, 210 U.S. 339 (1908). An abridged version will be made available on Blackboard.
6. 17 U.S.C. § 602 (2006), available at <http://www.copyright.gov/title17/92chap6.html#602>.
7. *Quality King Distributors, Inc. v. L'anza Research Int'l, Inc.*, 523 U.S. 135 (1998). An abridged version will be made available on Blackboard.
8. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. ____ (2013). An abridged version will be made available on Blackboard.
9. The Executive Summary of U.S. COPYRIGHT OFFICE, *DMCA SECTION 104 REPORT* (2001), available at <http://www.copyright.gov/reports/studies/dmca/sec-104-report-vol-1.pdf>.
10. *Capitol Records, LLC v. ReDigi Inc.*, No. 12-0095 (S.D.N.Y. March 30, 2013). An abridged version will be made available on Blackboard.

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)

1. The Executive Summary of U.S. COPYRIGHT OFFICE, *REPORT ON COPYRIGHT AND DIGITAL DISTANCE EDUCATION* (1999), available at http://www.copyright.gov/reports/de_rprt.pdf.
2. 17 U.S.C. §§ 110(1)-(2) (2006), available at <http://www.copyright.gov/title17/92chap1.html#110>.
3. HIRTLE, 102-3.
4. Georgia K. Harper, *The TEACH Act*, COPYRIGHT CRASH COURSE (2007), <http://copyright.lib.utexas.edu/teachact.html>.
5. Kenneth Crews, *The TEACH Act and Some Frequently Asked Questions*, AM. LIBRARY ASS'N, <http://www.ala.org/advocacy/copyright/teachact/faq> (last visited Jan. 5, 2014).
6. 17 U.S.C. § 121 (2006), available at <http://www.copyright.gov/title17/92chap1.html#121>.
7. 17 U.S.C. § 108 (2006), available at <http://www.copyright.gov/title17/92chap1.html#108>.
8. HIRTLE, 107-128.

9. MARY RASENBERGER AND CHRISTOPHER WESTON, OVERVIEW OF THE LIBRARIES AND ARCHIVES EXCEPTION IN THE COPYRIGHT ACT: BACKGROUND, HISTORY, AND MEANING (2005), available at [http://section108.gov/docs/108BACKGROUNDPAPEr\(final\).pdf](http://section108.gov/docs/108BACKGROUNDPAPEr(final).pdf).
10. "I. Background" and "V. A Review of Several Possible Solutions" from ROBERT L. OAKLEY, COPYRIGHT AND PRESERVATION: A SERIOUS PROBLEM IN NEED OF A THOUGHTFUL SOLUTION (1990), available at <http://www.clir.org/pubs/reports/oakley/index.html>.
11. Williams & Wilkins Co. v. United States, 487 F.2d 1345 (Ct. Cl. 1973). An abridged version will be made available on Blackboard.
12. Browse: HOWARD BESSER ET AL., VIDEO AT RISK: STRATEGIES FOR PRESERVING COMMERCIAL VIDEO COLLECTIONS IN LIBRARIES (2012), available at http://www.nyu.edu/tisch/preservation/research/video-risk/VideoAtRisk_SECTION108_Guidelines_2013.pdf.
13. Georgia K. Harper, *Making Copies: Interlibrary Loan*, COPYRIGHT CRASH COURSE (2007), <http://copyright.lib.utexas.edu/l-108g.html>.

April 1 (Class 8): *Class Does Not Meet*

Watch Session 2 of Columbia Event: <http://web.law.columbia.edu/kernoachan/symposia/section-108-reform>

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)

1. The Executive Summary of SECTION 108 STUDY GROUP, THE SECTION 108 STUDY GROUP REPORT (2008), available at <http://www.section108.gov/docs/Sec108StudyGroupReport.pdf>.
 2. The Overarching Themes section (pp 27-30) of SECTION 108 STUDY GROUP, THE SECTION 108 STUDY GROUP REPORT (2008).
 4. Poke around: Michael Brewer and The ALA Office for Information Technology Policy, *Section 108 Spinner*, COPYRIGHT ADVISORY NETWORK, <http://librarycopyright.net/resources/spinner/> (last visited Jan. 5, 2014).
 5. HIRTLE, 106-7
- Optional: Laura N. Gasaway, *Values Conflict in the Digital Environment: Librarians Versus Copyright Holders*, 24 COLUM.-VLA J.L. & ARTS 115 (2000), available at <http://www.unc.edu/~uncclng/Columbia-article3.htm>.

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)

1. 17 U.S.C. § 107 (2006), available at <http://www.copyright.gov/title17/92chap1.html#107>.
2. HIRTLE, 87-102.
3. Rich Stim, *Fair Use*, COPYRIGHT AND FAIR USE, <http://fairuse.stanford.edu/overview/fair-use> (last visited Jan. 5, 2014).
4. Rich Stim, *What Is Fair Use?*, COPYRIGHT AND FAIR USE, <http://fairuse.stanford.edu/overview/fair-use/what-is-fair-use> (last visited Jan. 5, 2014).
5. Rich Stim, *Measuring Fair Use: The Four Factors*, COPYRIGHT AND FAIR USE, <http://fairuse.stanford.edu/overview/four-factors> (last visited Jan. 5, 2014).
6. Rich Stim, *Summaries of Fair Use Cases*, COPYRIGHT AND FAIR USE, <http://fairuse.stanford.edu/overview/fair-use/cases> (last visited Jan. 5, 2014).
7. Rich Stim, *Disagreements Over Fair Use: When Are You Likely to Get Sued?*, COPYRIGHT AND FAIR USE, <http://fairuse.stanford.edu/overview/fair-use/disagreements-over-fair-use-when-are-you-likely-to-get-sued> (last visited Jan. 5, 2014).

8. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984). An abridged copy will be made available on Blackboard.
9. Pierre N. Leval, *Toward a Fair Use Standard*, 103 HARV. L. REV. 1105 (1990), *available at* <http://docs.law.gwu.edu/facweb/claw/LevalFrUStd.htm>
10. Watch: Eric Faden, *A Fair(y) Use Tale*, CENTER FOR INTERNET AND SOC'Y (March 1, 2007), <http://cyberlaw.stanford.edu/blog/2007/03/fairy-use-tale>.
11. 17.18 *Copyright—Affirmative Defense—Fair Use*, NINTH CIRCUIT MODEL CIVIL JURY INSTRUCTIONS (approved Oct., 2013), <http://www3.ce9.uscourts.gov/jury-instructions/node/276>.
12. Campbell v. Acuff-Rose, 510 U.S. 569 (1994). An abridged copy will be made available on Blackboard.
13. Bill Graham Archives v. Dorling Kindersley Ltd., 448 F.3d 605 (2d Cir. 2006), *available at* http://fairuse.stanford.edu/primary_materials/cases/GrahamKindersley.pdf.
14. Castle Rock Entertainment, Inc. v. Carol Publishing Group, 150 F.3d 132 (2d Cir.1998). An abridged copy will be made available on Blackboard.
15. COPYRIGHT ADVISORY OFFICE, FAIR USE CHECKLIST (May 14, 2008), *available at* <http://copyright.columbia.edu/copyright/files/2009/10/fairusechecklist.pdf>.
Optional: Poke around Columbia's Copyright Advisory Office's Website: <http://copyright.columbia.edu/copyright/fair-use> (last visited Jan. 5, 2014).
Optional, but strongly recommended: Kirby Ferguson, *Everything is a Remix*, <http://www.everythingisaremix.info/watch-the-series> (last visited Jan. 5, 2014). Watch all four videos.

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)

1. Association of American Publishers, *Frequently Asked Questions about E-Reserves*, CAMPUS GUIDE TO COPYRIGHT COMPLIANCE (2005), http://www.copyright.com/Services/copyrightoncampus/content/library_aap.html.
2. American Library Association, *Fair Use and Electronic Reserves*, AM. LIBRARY ASS'N, <http://www.ala.org/advocacy/copyright/fairuse/fairuseandelectronicreserves> (last visited Jan. 5, 2014).
3. Kenneth Crews, *Georgia State and Fair Use: Copyright on Appeal*, COPYRIGHT ADVISORY OFF. (Jan. 22, 2013), <http://copyright.columbia.edu/copyright/2013/01/22/georgia-state-and-fair-use-copyright-on-appeal>.
4. Brandon C. Butler, *GSU Fair Use Decision Recap and Implications*, ASS'N OF RES. LIBRARIES (May 15, 2012), <http://www.arl.org/storage/documents/publications/issue-brief-gsu-decision-15may12.pdf>.
5. ASS'N OF RES. LIBRARIES, CODE OF BEST PRACTICES IN FAIR USE FOR ACADEMIC AND RESEARCH LIBRARIES (2012), *available at* <http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>.

6. Matthew Sag, *Predicting Fair Use*, 73 OHIO ST. L.J. 47 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1769130.
7. Mary Minow, *How I Learned to Love Fair Use*, COPYRIGHT AND FAIR USE (July 6, 2003), http://fairuse.stanford.edu/2003/07/06/how_i_learned_to_love_fair_use.
8. The Authors Guild, Inc. v. Hathitrust, No. 11-6351 (S.D.N.Y. Oct. 10, 2012). An abridged version will be made available on Blackboard.

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)

1. Jennifer M. Urban, *How Fair Use Can Help Solve the Orphan Works Problem*, 27 BERKELEY TECH. L.J. 1379 (2012), available at http://btlj.org/data/articles/27_3/1379-1430_Urban_031013_WEB.pdf.
2. Orphan Works and Mass Digitization Notice of Inquiry, 77 Fed. Reg. 64555 (Oct. 22, 2012), available at <http://www.copyright.gov/fedreg/2012/77fr64555.pdf>.
3. The New York Public Library, *Reply Comments to Orphan Works and Mass Digitization: Notice of Inquiry* (March 6, 2013), http://www.copyright.gov/orphan/comments/noi_11302012/New-York-Public-Library.pdf.
4. The Authors Guild, Inc., *Notice of Inquiry Concerning Orphan Works and Mass Digitization* (Feb. 4, 2013), http://www.copyright.gov/orphan/comments/noi_10222012/Authors-Guild.pdf.
5. HIRTLE, 129-172.
6. Sample deeds of gift from NYPL, available on Blackboard.
7. *A Guide to Deeds of Gift*, SOC'Y OF AM. ARCHIVISTS, <http://www2.archivists.org/publications/brochures/deeds-of-gift> (last visited Jan. 5, 2014).
8. Poke around: VAGA RIGHTS, <http://vagarights.com> (last visited Jan. 5, 2014).
9. *About Artist's Rights Society*, ARTISTS RIGHTS SOCIETY, <http://www.arsny.com/about.html> (last visited Jan. 5, 2014).
10. *About Us*, COPYRIGHT CLEARANCE CENTER, <http://www.copyright.com/content/cc3/en/toolbar/aboutUs.html> (last visited Jan. 5, 2014).
11. *About*, SOUND EXCHANGE, <http://www.soundexchange.com/about> (last visited Jan. 5, 2014).
12. Peter B. Hirtle, Anne R. Kenney & Judy Rutenberg, *Digitization of Special Collections and Archives: Legal and Contractual Issues*, RESEARCH LIBRARY ISSUES, June 2012, available at <http://publications.arl.org/rli279>.

13. Poke around: CREATIVE COMMONS, <http://creativecommons.org> (last visited Jan. 5, 2014). In particular, read “About CC.”
 14. Watch: *Wanna Work Together?*, CREATIVE COMMONS, <http://creativecommons.org/videos/wanna-work-together> (last visited Jan. 5, 2014).
 15. Peter Suber, *Open Access Overview*, <http://legacy.earlham.edu/~peters/fos/overview.htm> (last revised Dec. 16, 2013).
 16. *Statement of Rights and Responsibilities*, FACEBOOK, <http://www.facebook.com/legal/terms> (last revised Nov. 15, 2013).
 17. *Terms of Use*, INSTAGRAM, <http://instagram.com/legal/terms> (effective Jan. 19, 2013).
 18. Terms of Service, PINTEREST, <http://about.pinterest.com/terms> (last visited Jan. 5, 2014).
 19. Kenneth D. Crews and Melissa A. Brown, *Control of Museum Art Images: The Reach and Limits of Copyright and Licensing* (Jan. 20, 2010), <http://ssrn.com/abstract=1542070>.
- 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)

1. Jonathan Band, *A User Guide To The Marrakesh Treaty*, LIBRARY COPYRIGHT ALLIANCE (Sep. 9, 2013), <http://www.librarycopyrightalliance.org/bm~doc/user-guide-marrakesh-treaty-0913final.pdf>.
 2. U.S. COPYRIGHT OFFICE, LEGAL ISSUES IN MASS DIGITIZATION: A PRELIMINARY ANALYSIS AND DISCUSSION DOCUMENT (Oct. 2011), *available at* http://www.copyright.gov/docs/massdigitization/USCOMassDigitization_October2011.pdf.
 3. Robert Darnton, *A Digital Library Better Than Google's*, N.Y. TIMES, March 24, 2011, at A31, *available at* <http://www.nytimes.com/2011/03/24/opinion/24darnton.html>.
 4. About, DIGITAL PUB. LIBRARY OF AM., <http://dp.la/info> (last visited Jan. 5, 2014).
 5. [Google Books overview – To be announced]
 6. *Welcome to the Shared Digital Future*, HATHITRUST, <http://www.hathitrust.org/about> (last visited Jan. 5, 2014).
- 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)

1. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, U.S. COPYRIGHT OFFICE (Dec. 1, 2011), <http://www.copyright.gov/1201/2011/initial>. Read the “Proposed Classes of Works” to get a sense of the exceptions requested.
2. *Unintended Consequences: Twelve Years under the DMCA*, ELECTRONIC FRONTIER FOUND. (Mar. 3, 2010), <https://www.eff.org/wp/unintended-consequences-under-dmca>.
3. *Copyright on YouTube*, YOUTUBE, <http://www.youtube.com/yt/copyright/index.html> (last visited Jan. 5, 2014).
4. *Policy on Patron-Generated Web Content*, N.Y. PUB. LIBRARY, <http://www.nypl.org/policy-patron-generated-web-content> (last visited Jan. 5, 2014).
5. HIRTLE, 193-212

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

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.