

Cinema Studies, Tisch School of the Arts
New York University
CINE-GT.1804: Copyright, Legal Issues, and Policy
Instructor: Greg Cram
Fall 2015

Syllabus

Time and Place

Tisch School of the Arts, Main Building
721 Broadway, Room 670, New York, N.Y. 10003
Thursdays from 6:30-9:30 PM

Instructor Contact Information

The New York Public Library
Stephen A. Schwarzman Building
476 Fifth Avenue
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Office Hours

By appointment

Course Description

With the advent of new technologies, film producers, distributors and managers of film and video collections are faced with myriad legal and ethical issues concerning the use of their works or the works found in various collections. The answers to legal questions are not always apparent and can be complex, particularly where different types of media are encompassed in one production. When the law remains unclear, a risk assessment, often fraught with ethical considerations, is required to determine whether a production can be reproduced, distributed or exhibited without infringing the rights of others. What are the various legal rights that may encumber moving image material? What are the complex layers of rights and who holds them? Does one have to clear before attempting to preserve or restore a work? How do these rights affect downstream exhibition and distribution of a preserved work? And finally, what steps can be taken in managing moving image collections so that decisions affecting copyrights can be taken consistently? This course will help students make intelligent decisions and develop appropriate policies for their institution.

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 that affects preservation, restoration, exhibition and repurposing of works
- 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
- Comprehend copyright management as a function of collections management

Evaluation and Assessment

Students will be assigned three exercises and an intellectual property audit 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 through NYU Courses. 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 to regularly share their thoughts and contribute to classroom discussion. Because critical thinking and analytical reasoning are essential skills to future employment, 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 audit project and class participation will be weighed as follows:

Three copyright assignments/exercises	45%
Audit Project oral presentation	10%
Audit Project written report	25%
<u>Class participation</u>	<u>20%</u>
Total	100%

Course Credits

This is a four-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 assignments 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 December 10, 2015. Failure to submit an assignment by 5:00 PM on December 10, 2015, 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. NYU Tisch's Academic Integrity Policy can be found at http://students.tisch.nyu.edu/object/acad_integrity.html.

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. The awarding of a grade of incomplete is at the discretion of the instructor and not guaranteed. Before the last class meeting, the student must meet with the professor and MIAP staff to discuss the proposed incomplete grade.

Accommodations for Students with Documented Disabilities

Academic accommodations are available for students with documented disabilities. Please contact the Moses Center for Students with Disabilities at 212-998-4980 for more information.

Digital Archive of Student Work

All student projects are to be collected and made accessible on the MIAP Resources Page. Certain types of assignments will be password protected and made accessible only to MIAP faculty. Students are required to submit all of their work for each class to their professor in a digital format (.rtf is encouraged for cross-platform compatibility) via email or other available digital medium. Students are asked to include a statement about the permissible use of their work. Please note that your WNET project is exempt from this archive because of the terms of our non-disclosure agreement with WNET.

Syllabus Subject to Revision

Because of the ever-changing nature of copyright law, this syllabus is subject to revision during the semester. Please check NYU Classes for the most recent version.

Overview of Class Schedule

September 3 (Class 1): Overview of Intellectual Property; Copyright Background

September 10 (Class 2): Scope of Copyright Protection

September 16 or 23 (Class 3): WNET Audit Project Introduction – Class to be held at WNET

September 17 (Class 4): Exclusive Rights Granted by Copyright Law; Copyright Ownership
Assignment 1 (Copyright Registration) Due

September 24 (Class 5): Is it Still in Copyright?

October 1 (Class 6): Advanced Copyright Issues; First Sale

October 8 (Class 7): Section 108—The Library Exceptions

October 15 (Class 8): Section 107—Fair Use

October 22 (Class 9): Section 107—Fair Use (cont'd)
Assignment 2 (Fair Use in the News) Due

October 29: *No Class*

November 5 (Class 10): Orphan Works; Licensing and Donor Agreements

November 12 (Class 11): International Copyright Issues
Assignment 3 (Copyright Reform) Due

November 19 (Class 12): *AMIA Conference*

November 26: *No Class: Thanksgiving*

December 3 (Class 13): IP Policy for Libraries, Archives and Museums

December 10 (Class 14): Class Presentations of WNET Audit Project
Assignment 4 (WNET Audit Project Written) Due

Class Schedule

September 3 (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. HIRTLE, 173-191.
 2. HIRTLE, 1-38.
 3. 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.
 4. *Right of Publicity of Internet Law Treatise*, ELECTRONIC FRONTIER FOUND., https://ilt.eff.org/index.php/Right_of_Publicity (last modified April 7, 2010).
 5. 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>.
 6. William Fisher, *Introduction to Copyright for Librarians*, BERKMAN CTR FOR INTERNET & SOC'Y, <http://cyber.law.harvard.edu/copyrightforlibrarians/Introduction> (last visited Sept. 2, 2015).
 7. 17 U.S.C. § 101 (2006), available at <http://www.copyright.gov/title17/92chap1.html#101>.
 8. 17 U.S.C. §§ 501-506 (2006), available at <http://www.copyright.gov/title17/92chap5.html#501>.
- Optional: Browse Chillingeffects.org for copyright, trademark and patent cease and desist letters.

September 10 (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

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 NYU Classes.

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 NYU Classes.
9. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884). An abridged version will be made available on NYU Classes.
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 NYU Classes.
12. U.S. COPYRIGHT OFFICE, CIRCULAR 14: COPYRIGHT REGISTRATION FOR DERIVATIVE WORKS (2012), *available at* <http://www.copyright.gov/circs/circ14.pdf>.

September 16 or 23 (Class 3): WNET Audit Project Introduction

Class will be held at WNET

Readings (to be read in advance of class)

Copyright for Music Librarians, MUSIC LIBRARY ASS'N, <http://copyright.musiclibraryassoc.org> (last visited Jan. 5, 2014).

1. *About WNET*, WNET, <http://www.wnet.org/about/> (last visited Sept. 2, 2015).
2. RINA ELSTER PANTALONY, *MANAGING INTELLECTUAL PROPERTY FOR MUSEUMS* (2013), *available at* http://www.wipo.int/edocs/pubdocs/en/copyright/1001/wipo_pub_1001.pdf. Read pages 22-25.

September 17 (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

Joint works in film

Assignment 1 (Copyright Registration) 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>.
5. *Garcia v. Google, Inc.*, No. 12-57302 (9th Cir. 2015). An abridged version will be made available on NYU Classes.

September 24 (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)

[will be updated in future versions of the syllabus]

October 1 (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?

Readings (to be read in advance of class)

[will be updated in future versions of the syllabus]

October 8 (Class 7): Section 108--The Library Exceptions

Topics

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?
Potential issues with section 108

Readings (to be read in advance of class)

[will be updated in future versions of the syllabus]

October 15 (Class 8): 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)

[will be updated in future versions of the syllabus]

October 22 (Class 9): 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 2 (Fair Use in the News) Due

Readings (to be read in advance of class)

[will be updated in future versions of the syllabus]

October 29: *Class Does Not Meet*

November 5 (Class 10): 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)

[will be updated in future versions of the syllabus]

November 12 (Class 11): International Copyright Issues

Topics

Calculating copyright status of works outside United States

Section 104A, the restoration of certain foreign works

Moral rights

Resale rights

International copyright agreements and their effect on domestic copyright law

Assignment 3 (Copyright Reform) Due

Readings (to be read in advance of class)

[will be updated in future versions of the syllabus]

November 19 (Class 12): *AMIA Conference*

Class does not meet

November 26: *Thanksgiving Break*

December 3 (Class 13): IP Policy for Libraries, Archives and Museums

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

Licensing practices and commercialization of collections

Readings (to be read in advance of class)

[will be updated in future versions of the syllabus]

December 10 (Class 14): Class Presentations of WNET Audit Projects

Readings (to be read in advance of class)

None

Assignment 4 (WNET Audit Project Written) Due

Cinema Studies, Tisch School of the Arts
New York University
CINE-GT.1804: Copyright, Legal Issues, and Policy
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Grading Rubric for Class Participation
(20% of Final Grade)

Objective

Understand copyright issues from different points of view
Work collaboratively with peers to solve problems
Refine public speaking skills necessary to become a leader

Criteria	Excellent (3)	Competent (2)	Needs Work (1)
Frequency	Plays an active role in discussions.	Participates in some discussions.	Participates in few or no class discussions.
Content Contribution (x 2, max of 6 points)	Discussion contributions are factually correct, clear, reflective, and substantive; advances discussion.	Discussion contributions are factually correct and clear but sometimes lack full development of concept or thought.	Discussion contributions are frequently off-topic, incorrect, or irrelevant.
Level of Preparation	Arrives full prepared at every session.	Arrives mostly, if not fully, prepared.	Preparation, and therefore level of participation, are both inconsistent.
Peer Interaction and Level of Discussion	Actively supports, engages and listens to peers; group dynamic and level of discussion are often better because of the student's presence.	Makes a sincere effort to interact with peers; group dynamic and level of discussion are occasionally better (never worse) because of the student's presence.	Virtually no interaction with peers; group dynamic and level of discussion are harmed by the student's presence.

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Written Assignments/Exercises Overview

1) Copyright Registration. To familiarize students with the copyright registration process and the terms commonly used, students will (nearly) register a work of their own creation, stopping just short of actually registering the work to avoid the registration fee. Students will also locate the copyright registration of a film created after 1978.

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) 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.

4) WNET Audit Report. To measure the result of student learning throughout the semester, students will be required to submit an audit report of a WNET item. The audit report will demonstrate an understanding of copyright law based on the fields of information selected by the students in the spreadsheet and in the written summary submitted to WNET.