

Cinema Studies, Tisch School of the Arts
New York University
CINE-GT.1804: Copyright, Legal Issues, and Policy
Instructor: Greg Cram
Fall 2017

Syllabus

Time and Place

25 West 4th Street, Room C-15
New York, NY 10012
Thursdays from 6:30-9:30 PM

Instructor Contact Information

The New York Public Library
Stephen A. Schwarzman Building
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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 project to 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 Classes. 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 using 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.

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 15, 2017. Failure to submit an assignment by 5:00 PM on December 15, 2017, will result in a forfeiture of credit for that assignment.

Assignment Submission

Assignments should be submitted through NYU Classes. Written comments will be delivered to students no later than three weeks after the assignment has been turned in.

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.

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.

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.

Tisch Policy on Academic Integrity

The core of the educational experience at the Tisch School of the Arts is the creation of original work by students for the critical review of faculty members. Any attempt to evade that essential transaction through plagiarism or cheating is educationally self-defeating and a grave violation of Tisch's community standards. Plagiarism is presenting someone else's original work as if it were your own; cheating is an attempt to deceive a faculty member into believing that your mastery of a subject or discipline is greater than it really is. Penalties for violations of [Tisch's Academic Integrity Policy](#) may range from being required to redo an assignment to dismissal from the School. For more information on the policy—including academic integrity resources, investigation procedures, and penalties—please refer to the [Policies and Procedures Handbook](#) on the website of the Tisch Office of Student Affairs.

Non-Discrimination and Anti-Harassment Policy

NYU is committed to equal treatment and opportunity for its students and to maintaining an environment that is free of bias, prejudice, discrimination, and harassment. Prohibited discrimination includes adverse treatment of any student based on race, gender and/or gender identity or expression, color, religion, age, national origin, ethnicity, disability, veteran or military status, sexual orientation, marital status, or citizenship status, rather than on the basis of his/her individual merit. Prohibited harassment is unwelcome verbal or physical conduct based on race, gender and/or gender identity or expression, color, religion, age, national origin, ethnicity, disability, veteran or military status, sexual orientation, marital status, or citizenship status. Prohibited discrimination and harassment undermine the character and purpose of NYU and may violate the law. They will not be tolerated. NYU strongly encourages members of the University Community who have been victims of prohibited discrimination or prohibited harassment to report the conduct. MIAP students may make such reports to MIAP Associate Director, Scott Statland, or directly to Marc Wais, Senior Vice President for Student Affairs.

Sexual Misconduct, Relationship Violence, and Stalking Policy

NYU seeks to maintain a safe learning, living, and working environment. To that end, sexual misconduct, including sexual or gender-based harassment, sexual assault, and sexual exploitation, are prohibited. Relationship violence, stalking, and retaliation against an individual for making a good faith report of sexual misconduct are also prohibited. These prohibited forms of conduct are emotionally and physically traumatic and a violation of one's rights. They are unlawful, undermine the character and purpose of NYU, and will not be tolerated. A student or employee determined by NYU to have committed an act of prohibited conduct is subject to disciplinary action, up to and including separation from NYU. Students should refer to the online [Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Students](#) for detailed information about on-campus and community support services, resources, and reporting procedures.

Student Health and Wellness Resources

Your health and safety are a priority at NYU. If you experience any health or mental health issues during this course, we encourage you to utilize the support services of the 24/7 NYU Wellness Exchange 212-443-9999. Also, all students who may require an academic accommodation due to a qualified disability, physical or mental, please register with the Moses Center 212-998-4980. Please let your instructor know if you need help connecting to these resources.

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

When students submit digital files of their work, the file names should conform to MIAP's standard format, with *f* used to indicate fall semester and *s* used to indicate spring semester:

YYsemester_course number_author's last name_assignment number.file extension. Here is an example of a student with the surname Smith, submitting the first assignment in the fall 2017 course CINE-GT 1800: *17f_1800_Smith_a1.pdf*

For multiple authors, the two initials of each author will be used, separated from each other by underscores. An underscore and the assignment number will follow this. Assignment numbers are determined by the order in which the assignments are given. They begin with an "a," followed by a number between one and ten. For assignments with multiple files, a letter can be added after the number. Thus, one could have "a1b," meaning that this is the second of multiple files from one student for one particular assignment.

As the goal of MIAP is to be useful to the archival field, the default status of student works will be public. Students, in consultation with the course professor, can make a case for why their paper should be restricted. Proprietary information, confidential information or copyright issues may lead to this decision, not a general unwillingness to make work public. In this case the student would add a "_x" to the end of the file name indicating the file's restricted status: *17f_1800_Smith_a1_x.pdf*. Otherwise, permission shall be implicitly granted for the student's work to be posted on the MIAP website.

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

September 14 (Class 2): Scope of Copyright Protection

September 21 (Class 3): Exclusive Rights Granted by Copyright Law; Copyright Ownership
Assignment 1 (Copyright Registration) Due

September 28 (Class 4): Contracts Introduction; Is it Still in Copyright?

October 5 (Class 5): Advanced Copyright Issues

October 10 (Tuesday) (Class 6): First Sale

October 12: *No Class*

TBD (Class 7): WNET Audit Project Introduction – Class to be held at WNET

October 19: *No Class*

October 26 (Class 8): Section 108—The Library Exceptions

November 2 (Class 9): Section 107—Fair Use
Assignment 2 (Fair Use in the News) Due

November 9 (Class 10): Section 107—Fair Use (cont'd); Orphan Works

November 16 (Class 11): Licensing and Donor Agreements
Assignment 3 (Copyright Reform) Due

November 23: *No Class: Thanksgiving*

November 30: *No Class: AMIA Conference*

December 7 (Class 12): Class Presentations of WNET Audit Project (Group 1); International Copyright Issues
Assignment 4 (WNET Audit Project Written) Due

December 14 (Class 13): Class Presentations of WNET Audit Project (Group 2); IP Policy for Libraries, Archives and Museums

Class Schedule

September 7 (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. *Right of Publicity of Internet Law Treatise*, ELECTRONIC FRONTIER FOUND., https://ilt.eff.org/index.php/Right_of_Publicity (last modified April 7, 2010).
 4. 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>.
 5. William Fisher, *Introduction to Copyright for Librarians*, BERKMAN CTR FOR INTERNET & SOC'Y, <http://cyber.law.harvard.edu/copyrightforlibrarians/Introduction> (last visited Sept. 6, 2017).
 6. 17 U.S.C. § 101 (2006), available at <http://www.copyright.gov/title17/92chap1.html#101>.
 7. 17 U.S.C. §§ 501-506 (2006), available at <http://www.copyright.gov/title17/92chap5.html#501>.
- Optional: 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.
- Optional: Browse Chillingeffects.org for copyright, trademark and patent cease and desist letters.

September 14 (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. *Bleistein v. Donaldson Lithographing Company*, 188 U.S. 239 (1903). An abridged version will be made available on NYU Classes.
 6. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884). An abridged version will be made available on NYU Classes.
 7. 17 U.S.C. § 103 (2006), available at <http://www.copyright.gov/title17/92chap1.html#103>.
 8. *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511 (9th Cir. 1993). An abridged version will be made available on NYU Classes.
 9. U.S. COPYRIGHT OFFICE, CIRCULAR 14: COPYRIGHT REGISTRATION FOR DERIVATIVE WORKS (2012), available at <http://www.copyright.gov/circs/circ14.pdf>.
- Optional: U.S. COPYRIGHT OFFICE, FACT SHEET 122: RECIPES (2011), <http://www.copyright.gov/fls/fl122.html>.
- Optional: U.S. COPYRIGHT OFFICE, CIRCULAR 31: IDEAS, METHODS, OR SYSTEMS (2012), available at <http://www.copyright.gov/circs/circ31.pdf>.
- Optional: 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>.

September 21 (Class 3): 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.*, 786 F.3d 733 (9th Cir. 2015) (en banc). An abridged version will be made available on NYU Classes.
- Optional: *Garcia v. Google, Inc.*, 766 F.3d 929 (9th Cir. 2014). An abridged version will be made available on NYU Classes.

September 28 (Class 4): Contracts Introduction; Is it Still in Copyright?

Topics

- Fundamentals to Contracts and Agreements
- Common elements of an agreement
- Common terms found in agreements
- Duration of copyright protection
- Comparing term of published and 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 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 2017).
 5. 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 NYU Classes.
 6. 17 U.S.C. § 104A (2006), available at <http://www.copyright.gov/title17/92chap1.html#104A>.
 7. 17 U.S.C. § 301(c) (2006), available at <http://www.copyright.gov/title17/92chap3.html#301>.
 8. 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>.
- Poke around: *Copyright for Music Librarians*, MUSIC LIBRARY ASS'N, <http://copyright.musiclibraryassoc.org> (last visited Sept. 6, 2017).
- Poke around: *Stanford Copyright Renewal Database*, <http://collections.stanford.edu/copyrightrenewals/bin/search/simple> (last visited Sept. 6, 2017).
- Poke around: *Welcome to Copyright Records*, INTERNET ARCHIVE, <https://archive.org/details/copyrightrecords> (last visited Sept. 6, 2017).
- Poke around: *Federal Copyright Protection for Pre-1972 Sound Recordings*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/docs/sound/> (last visited Sept. 6, 2017).
- Optional: Golan v. Holder, 565 U.S. 302 (2012), available at <http://www.supremecourt.gov/opinions/11pdf/10-545.pdf>.
- Optional: Review: *Digitization and Public Access*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/digitization/> (last visited Sept. 6, 2017). Be sure to read the *Project Goals* section.
- Optional: Menesha A. Mannapperuma et al., *Is it in the Public Domain?* (2014), available at [https://www.law.berkeley.edu/files/FINAL_PublicDomain_Handbook_FINAL\(1\).pdf](https://www.law.berkeley.edu/files/FINAL_PublicDomain_Handbook_FINAL(1).pdf).
- Optional: Eric Schaefer & Dan Streible, *Archival News*, 42 Cinema J. 139, Autumn 2002, available at www.jstor.org/stable/1225546.

October 5 (Class 5): Advanced Copyright Issues

Topics

Complex works that have multiple layers of copyrights (e.g., movies, dramatic works, music)

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., <https://www.cni.org/resources/historical-resources/technological-strategies-for-protecting-intellectual-property-in-the-networked-multimedia-environment/the-operating-dynamics-behind-ascap-bmi-and-sesac-the-u-s-performing-rights-societies/> (last visited Sept. 6, 2017).

Optional: Chapter 2 of EDWARD SAMUELS, MUSIC AND SOUND RECORDINGS 31-56 (2000), *available at* <http://www.edwardsamuels.com/illustratedstory/isc2.htm>.

Optional: Chapter 3 of EDWARD SAMUELS, MUSIC AND SOUND RECORDINGS 57-73 (2000), *available at* <http://www.edwardsamuels.com/illustratedstory/isc3.htm>.

October 10 (Class 6): First Sale

Topics

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)

1. 17 U.S.C. § 109 (2006), *available at* <http://www.copyright.gov/title17/92chap1.html#109>.
2. *Bobbs-Merrill Co. v. Straus*, 210 U.S. 339 (1908). An abridged version will be made available on NYU Classes.
3. 17 U.S.C. § 602 (2006), *available at* <http://www.copyright.gov/title17/92chap6.html#602>.
4. *Quality King Distributors, Inc. v. L'anza Research Int'l, Inc.*, 523 U.S. 135 (1998). An abridged version will be made available on NYU Classes.
5. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013). An abridged version will be made available on NYU Classes.
6. 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>.
7. *Capitol Records, LLC v. ReDigi Inc.*, No. 12-0095 (S.D.N.Y. March 30, 2013). An abridged version will be made available on NYU Classes.

*October 12: *Class Does Not Meet**

TBD (Class 7): WNET Audit Project Introduction

Class will be held at WNET

Readings (to be read in advance of class)

1. *About WNET*, WNET, <http://www.wnet.org/about/> (last visited Sept. 6, 2017).
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.

*October 19: *Class Does Not Meet**

October 26 (Class 8): 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)

1. 17 U.S.C. § 108 (2006), available at <http://www.copyright.gov/title17/92chap1.html#108>.
2. HIRTLE, 107-128.
3. “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>.
4. HOWARD BESSER ET AL., VIDEO AT RISK: STRATEGIES FOR PRESERVING COMMERCIAL VIDEO COLLECTIONS IN LIBRARIES (2012), available at http://guides.nyu.edu/ld.php?content_id=24818036.
5. The Executive Summary of SECTION 108 STUDY GROUP, THE SECTION 108 STUDY GROUP REPORT (2008), available at <http://www.section108.gov/docs/Sec108StudyGroupReport.pdf>.
6. U.S. COPYRIGHT OFFICE, SECTION 108: DRAFT REVISION OF THE LIBRARY AND ARCHIVES EXCEPTIONS IN U.S. COPYRIGHT LAW (2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-07/pdf/2016-13426.pdf>.

November 2 (Class 9): 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

Assignment 2 (Fair Use in the News) Due

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. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984). An abridged copy will be made available on NYU Classes.
 4. 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>.
 5. Campbell v. Acuff-Rose, 510 U.S. 569 (1994). An abridged copy will be made available on NYU Classes.
- Optional: Copyright Advisory Office, *Fair Use Checklist*, <https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html> (last visited Sept. 6, 2017).
- Optional: Poke around Rich Stim, *Fair Use*, COPYRIGHT AND FAIR USE, <http://fairuse.stanford.edu/overview/fair-use> (last visited Sept. 6, 2017).
- Optional: 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>.
- Optional: Poke around Columbia’s Copyright Advisory Office’s Website: <http://copyright.columbia.edu/copyright/fair-use> (last visited Sept. 6, 2017).

November 9 (Class 10): Section 107—Fair Use (cont'd); Orphan Works

Topics

Continue fair use review

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

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

Fair use best practices for documentary filmmakers

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?

Readings (to be read in advance of class)

1. 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.
2. Castle Rock Entertainment, Inc. v. Carol Publishing Group, 150 F.3d 132 (2d Cir.1998). An abridged copy will be made available on NYU Classes.
3. Matthew Sag, *Predicting Fair Use*, 73 OHIO ST. L.J. 47 (2012), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1769130.
4. 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>.
5. 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.
6. ASS’N OF INDEP. VIDEO & FILMMAKERS, ET AL., DOCUMENTARY FILMMAKERS’ STATEMENT OF BEST PRACTICES IN FAIR USE (2005), *available at* http://www.cmsimpact.org/sites/default/files/fair_use_final.pdf.
7. The Authors Guild, Inc. v. Hathitrust, 755 F.3d 87 (2d Cir. 2014). An abridged version will be made available on NYU Classes.
8. The Authors Guild, Inc. v. Google, Inc., 804 F.3d 202 (2015). An abridged version will be made available on NYU Classes.
9. Jennifer M. Urban, *How Fair Use Can Help Solve the Orphan Works Problem*, 27 BERKELEY TECH. L.J. 1379 (2012), *available at* <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3200&context=facpubs>.
10. 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>.
11. 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.
12. 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.
13. HIRTLE, 129-172.
14. The Executive Summary of: U.S. COPYRIGHT OFFICE, ORPHAN WORKS AND MASS DIGITIZATION (2015), *available at* <http://copyright.gov/orphan/reports/orphan-works2015.pdf>.

November 16 (Class 11): Licensing and Donor Agreements

Topics

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?

Social media terms of service

Assignment 3 (Copyright Reform) Due

Readings (to be read in advance of class)

1. Sample deeds of gift from NYPL, available on NYU Classes.
 2. *A Guide to Deeds of Gift*, SOC'Y OF AM. ARCHIVISTS, <http://www2.archivists.org/publications/brochures/deeds-of-gift> (last visited Sept. 6, 2017).
 3. Poke around: VAGA RIGHTS, <http://vagarights.com> (last visited Sept. 6, 2017).
 4. *About Artist's Rights Society*, ARTISTS RIGHTS SOCIETY, <http://www.arsny.com/about/> (last visited Sept. 6, 2017).
 5. *About Us*, COPYRIGHT CLEARANCE CENTER, <http://www.copyright.com/about/> (last visited Sept. 6, 2017).
 6. *About*, SOUND EXCHANGE, <http://www.soundexchange.com/about> (last visited Sept. 6, 2017).
 7. Poke around: CREATIVE COMMONS, <http://creativecommons.org> (last visited Sept. 6, 2017). In particular, read "About CC."
 8. Watch: *Wanna Work Together?*, CREATIVE COMMONS, <https://creativecommons.org/about/videos/wanna-work-together/> (last visited Sept. 6, 2017).
 9. *Statement of Rights and Responsibilities*, FACEBOOK, <http://www.facebook.com/legal/terms> (last revised Jan. 30, 2015).
 10. *Terms of Use*, INSTAGRAM, <https://help.instagram.com/478745558852511> (effective Jan. 19, 2013).
 11. *Terms of Service*, PINTEREST, <https://about.pinterest.com/en/terms-service> (last visited Sept. 6, 2017).
- Optional: Peter B. Hirtle, Anne R. Kenney & Judy Ruttenberg, *Digitization of Special Collections and Archives: Legal and Contractual Issues*, RESEARCH LIBRARY ISSUES, June 2012, available at <http://publications.arl.org/rli279>.
- Optional: *Welcome to the LIBLICENSE Project*, CTR. FOR RESEARCH LIBRARIES, <http://liblicense.crl.edu> (last visited Sept. 6, 2017). You should poke around this site, especially the "Resources" section.

November 23: *No Class: Thanksgiving*

December 7 (Class 12): Class Presentations of WNET Audit Project (Group 1); 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 4 (WNET Audit Project Written) Due

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>.
[More TBD]

December 14 (Class 13): Class Presentations of WNET Audit Project; IP Policy for Libraries, Archives and Museums

Complete Class Presentations of WNET Audit Project
Class Presentations of WNET Audit Project
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
Case Studies
Closing Thoughts

Readings (to be read in advance of class)

1. 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>.
2. *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, U.S. COPYRIGHT OFFICE (Oct. 28, 2015), <http://www.copyright.gov/fedreg/2015/80fr65944.pdf>.
Skim the Section III to get a sense of the exceptions requested.
3. *Unintended Consequences: Twelve Years under the DMCA*, ELECTRONIC FRONTIER FOUND. (Mar. 3, 2010), <https://www.eff.org/wp/unintended-consequences-under-dmca>.
4. *Copyright on YouTube*, YOUTUBE, <http://www.youtube.com/yt/copyright/index.html> (last visited Sept. 6, 2017).
5. *Policy on Patron-Generated Web Content*, N.Y. PUB. LIBRARY, <https://www.nypl.org/policy-patron-generated-web-content> (last visited Sept. 6, 2017).
6. HIRTLE, 193-212

**Cinema Studies, Tisch School of the Arts
New York University
CINE-GT.1804: Copyright, Legal Issues, and Policy
Instructor: Greg Cram
Fall 2017**

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.

Cinema Studies, Tisch School of the Arts
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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) 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.

3) 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.

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.