CLSC 884: Institute for Intellectual Property Issues in Libraries and Information Centers

Summer, 2008
Graduate Syllabus
Library of Congress
Madison Building
LM 654
6th Floor
Classroom E

3 Credit Hours
No Prerequisites

Library of Congress, Madison Building, Classroom E
June 23 – June 28, 9:00 a.m. – 5:00 p.m. with online, Blackboard discussions and activities to supplement in-classroom meetings and visits

Instructor contact information:
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Email: kelleyk@cua.edu
Office Hours: By Appointment

Course Description

CLSC 884: The Institute for Intellectual Property Issues in Libraries and Information Centers

This Institute will cover the intellectual property issues facing libraries with particular emphasis on the emerging issues related to the creation, use, and dissemination of digital information. Topics for this course will include: 1) the basics of copyright, 2) electronic reserves, 3) Copyright Law and exemptions related to libraries, 4) the public domain, 5) licensing and digital rights and, 6) privacy issues management. The course will be delivered in an intensive, one-week format with select visits to relevant library and information organizations to provide students with the an opportunity to experience the application of the concepts learned in class from the perspective of an information organization. The visits planned will be in the local, D.C. area. Issues in the academic sphere, the non-profit, non-educational institution, and the for-profit organization will be analyzed. Current judicial interpretation of the fair-use concept will be discussed, as well as copyright application to computer programs and the use of online databases. There will be an overview of international developments and the federal legislative outlook. Participants will be asked to submit specific problems for discussion; maintain a journal of their reflections on the issues; and submit a final project.
Instructional Methods

In-classroom lecture format
Panel presentations
Student-participative panel discussions
Online discussions via Blackboard

Required Text:


Recommended Text:


Course Goals

The goals of this course are to:

1. Provide a conceptual foundation for understanding Copyright Law and its application in libraries and related information organizations,
2. Provide students an opportunity to critically examine the copyright challenges facing librarians and other information professionals,
3. Explore the role of libraries and information centers in creating, disseminating and managing intellectual property in society,
4. Examine the issues specific to digital information and copyright and libraries,
5. Promote reasoned thinking and problem solving skills related to copyright issues that arise in the information profession.

Goals for Student Learning

At the conclusion of the course, the student will be able to:

1. Articulate the major copyright issues that affect librarians and other information professionals
2. Explain the role of the information professional in creating, disseminating, licensing, and managing copyrighted works,
3. Demonstrate critical thinking skills through experiential and analytical experiences, exercises, and assignments
4. Explain the issues and approaches of the information profession when dealing with copyright and digital information,
5. Demonstrate communication skills through active participation through presentations and audience participation,
6. Gain an awareness of the roles of various local, regional, national and international organizations in the creation, dissemination, licensing and maintenance of copyrighted works and,
7. Articulate the principles of copyright management in libraries and information centers.

Professional Standards Addressed
The American Library Association Core Competencies addressed in this course are:

1. Knows the ethics, values and foundational principles of the library and information professions.
2. Understands the role of library and information professionals in the promotion of democratic principles, intellectual freedom, and diversity of thought.
3. Demonstrates oral and written communication skills necessary for group work, collaborations, and professional level presentations.
4. Knows the basic concepts, terminology, literature and issues related to the creation, evaluation, and selection of specific items or collections of information.

The SLIS Program Objectives Addressed in this course are as follows:

1. Are skilled in the use of information technologies and articulate the role of information technology in facilitating information management;
2. Demonstrate a commitment to the philosophy, principles and legal and ethical responsibilities of the field;
3. Are capable of serving information seekers in a global society;
4. Articulate the economic, political, cultural, and social importance of the information profession;
5. Are dedicated to professional growth, continuous learning, and applying new knowledge to improve information systems and services to meet the needs of information users in society.

Course Requirements

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<tr>
<th>Assignments</th>
<th>Weights:</th>
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<tr>
<td>Class Participation</td>
<td>25%</td>
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<tr>
<td>Daily Student Panel Presentation of Readings</td>
<td>15%</td>
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<tr>
<td>Student Journal</td>
<td>25%</td>
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<tr>
<td>Experiential Analysis Paper</td>
<td>25%</td>
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<tr>
<td>Student led Blackboard-based discussions</td>
<td>10%</td>
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Class Participation (25%):

Attendance: Attendance is mandatory, in keeping with university policy. All participants are expected to attend all classroom sessions and the field visits. The course is one week, Monday through Saturday, 9-5 p.m. Participation is essential to successful completion of the course.

Late work: This is an intensive course. Students are expected to be working on assignments before and after class sessions throughout the week. Late work will not be accepted unless it is made by prior arrangement.

Arrive on time: Chronic lateness will affect the overall class participation grade.

Behave respectfully. Students are expected behave respectfully while in class. Participation grades will reflect a student’s demonstrated maturity level and level of professionalism.

Participate Actively: This course is intended to foster discussion, develop communication skills, and participation is essential to being successful in learning and fostering learning in others. Participation
should be supported by reading the material before class, making an effort to be thoughtful in your remarks, and demonstrating professionalism in your manner in class discussions.

Appropriate Dress: This course is being held at the Library of Congress and we have a series of faculty experts providing their time, energy and expertise on our behalf. Dress for a professional environment to demonstrate your appreciation and respect for their work environment while we are there, and when we visit public and private organizations in D.C.

No phone calls during class: Turn of cell phones, silence pagers. Students leaving the room for calls may not return to the class session (unless it is a verifiable emergency). Participation and engagement with classmates is interrupted and diminished if cell phones or pagers are going off. Further, we have guests in the class who deserve respect and our attention during their presentations.

No grade discussion in class: The instructor will not discuss grades in class, including during travel to off-site locations. Questions regarding assignments can be discussed outside regular class hours at a mutually convenient time. Alternatively, questions will be allowed from 8:30 a.m. – 9:15 a.m., if time permits. Please be sure to consult the syllabus before asking questions about course requirements.

Daily Student Panel Presentation of Readings

Each day a panel of students (4-6) will work in a group and collectively lead a lunch time discussion on one of the topics from the assigned textbooks. First, each student will briefly present their interpretation of the material. Next, the group as a whole will lead an interactive panel discussion for the rest of the lunch hour. Finally, the group presenting will allow at least five (5) minutes for questions/comments from the class participants. The panel presentations should model professional behavior mimicking a presentation at a conference or for colleagues in a professional setting. Materials for the discussion must be placed in the Blackboard classroom one day prior to the presentation. Groups will be assigned by the instructor.

The topics for the daily luncheon panels are as follows:

Topic:
Part I: The Reach of Copyright

Topic:
Part II: Electronic Reserves, Libraries and the rights of ownership

Topic:
Part III: Working with Fair Use

Topic:
Part IV: Focus on Education and Libraries

Topic:
Part V: Digital information and libraries

Student Journal
Your journal will be a record of your reflections each day throughout the week of this course. You are asked to provide a reflection, posted as Word document as an assignment in the Blackboard classroom. The journal reflection each day should:

Reflect on the readings for the day and the topic(s) discussed during the class session. Reflect on the material discussed each day over the course of the week. You should include your reactions to how this material has affected you in your professional and educational life.

Be sure to have one, cumulative Word document. Each day add to the submission from the previous day. Each day has a separate entry but the entry should develop the previous day’s entry and include new material that is reflective of the day’s topics and areas of discussion. At the end of the week, you should have one, complete journal document to submit that I can assess as a whole as well as in parts. As you consider the journal entries, be sure to include references to the material for the day, the materials provided by the day’s instructor

**Experiential Analysis Paper**

The experiential analysis paper is an opportunity to reflect on the course as a whole. Students should develop a paper, selecting a topic from the list provided by the instructor, which discusses an area of copyright law and its impact on the library and information science profession. The paper should discuss how your understanding has evolved as a result of participating in the course and provide evidence of what you have learned about your selected topic in copyright as a result of this course. Develop the paper with the intended audience being a lay person who you seek to educate about the impact of some aspect of copyright on the library. Provide a reasoned argument that incorporates your personal view of copyright and its impact on the profession through the topic you select as the basis for your paper. Your paper should include references to the literature, the lectures, panel discussions, and student-led discussions (no citations required, however). Essays should be 5-8 pages in length, double-spaced, and must be submitted to the instructor no later than the end of the day (11:59 p.m.), June 28, 2008.

**Student-led Blackboard Discussions**

1. Students are expected to visit the Web sites of the instructor and/or visiting instructors or the host institutions in advance of the lecture or site visits planned for this course. Other Web sites of interest will be listed as well. Students are encouraged (but not required) to visit as many Web sites as possible to develop a foundation of knowledge to use to compare/contrast views for discussion purposes in-class.

2. Each group of students, the same group responsible for the daily presentation, will also be responsible for posting a discussion question, with references to Web sites and the literature, the day of their panel discussion in class. Select a topic of relevance to the course and your panel discussion and include at least one article and one Web site that is about the topic you select for the Blackboard discussion. Be sure to include a question for your colleagues to comment on. The discussion topic should be between 200 and 400 words.

3. Each student is expected to reply to the daily Blackboard discussion topic with at least one posting and the reply should answer the question posed and build on earlier answers posted by fellow students.

**Expectations and policies**

**Academic honesty:** Academic honesty is expected of all CUA students. Faculty are required to initiate the imposition of sanctions when they find violations of academic honesty, such as plagiarism, improper use of a student’s own work, cheating, and fabrication.
The following sanctions are presented in the University procedures related to Student Academic Dishonesty (from http://policies.cua.edu/academicundergrad/integrityprocedures.cfm): “The presumed sanction for undergraduate students for academic dishonesty will be failure for the course. There may be circumstances, however, where, perhaps because of an undergraduate student’s past record, a more serious sanction, such as suspension or expulsion, would be appropriate. In the context of graduate studies, the expectations for academic honesty are greater, and therefore the presumed sanction for dishonesty is likely to be more severe, e.g., expulsion. ...In the more unusual case, mitigating circumstances may exist that would warrant a lesser sanction than the presumed sanction.”

Please review the complete texts of the University policy and procedures regarding Student Academic Dishonesty, including requirements for appeals, at http://policies.cua.edu/academicundergrad/integrity.cfm and http://policies.cua.edu/academicundergrad/integrity.cfm.

Accommodations for students with disabilities: Any student who feels s/he may need an accommodation based on the impact of a disability should contact the instructor privately to discuss specific needs. Please contact Disability Support Services (at 202 319-5211, room 207 Pryzbyla Center) to coordinate reasonable accommodations for students with documented disabilities. To read about the services and policies, please visit the website: http://disabilitysupport.cua.edu.

University grades:
The University grading system is available at http://policies.cua.edu/academicundergrad//gradesfull.cfm#II for undergraduates and http://policies.cua.edu/academicgrad//gradesfull.cfm#iii for graduate students.

Reports of grades in courses are available at the end of each term on http://cardinalstation.cua.edu.

Point totals converted to letter grades:
A: 94 – 100 A-: 90 -93.99
B+: 86-89.99 B: 82-85.99 B-: 78-81.99
C: 70-77.99 F: Below 70

Course Schedule:

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©Monday June 23, 2008

Dr. Kenneth Crews, M.L.S., J.D., Ph.D.
The Basics of Copyright
8:30 a.m – 5 p.m.

Required Readings:

1. Relevant Statutes from the U.S. Copyright Act: http://www.copyright.gov/title17/
   (most of the statutes are in the appendix to the Crews textbook as well).
2. Section 108 Study Group Report:  

3. Text of “orphan works” bills introduced in April 2008 in the Senate  
(http://www.publicknowledge.org/pdf/110-s-ow-20080424.pdf) and House  
(http://www.publicknowledge.org/pdf/110-hr-ow-20080424.pdf)

Chicago: ALA.
   a. Part I: pp. 1-7
   b. How long do copyrights last? - pp. 15-20
   c. Who owns copyright? – pp. 21-27
   d. The rights of owners – pp. 28 – 32
   e. Exceptions to the rights of owners – pp. 33 - 36

Items due:
Group 1: Lunch Panel Discussion  
Journal Entry 1 due  
Topic for experiential paper due  
Blackboard discussion topic to be posted by 11:59pm by Group 1

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©Tuesday June 24, 2008  
Ms. Donna Ferullo, J.D., M.L.S  
Electronic Reserves, The TEACH Act and Author’s Rights  
9:00 a.m. – 5:00 p.m.

Readings from Required Text:

Chicago: ALA.
   a. Part II: 13 - 33
   b. Electronic reserves – pp. 62-63
   c. TEACH Act – pp. 67-73
   d. Author rights – pp. 28-32

Reading from the Recommended Text:

Readings:
Electronic reserves pp. 80-84, 209-211  
TEACH Act – pp. 46-54

Readings from the Web:

1. Georgia State Lawsuit  

Readings for TEACH Act:


Readings for Author rights:

4. Creative Commons licenses - www.creativecommons.org

5. SPARC brochure on Author rights
   http://www.arl.org/sparc/bm%7Edoc/SPARC_AuthorRights2006.pdf

6. Harvard and open access
   http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm#harvard

7. CIC author addendum
   http://www.cic.uiuc.edu/groups/CICMembers/archive/Report/authorsrightsfinalversion18March08.pdf

8. NIH mandate
   http://www.lib.berkeley.edu/scholarlycommunication/nih_mandate.html

Items Due:
Group II: Lunch Panel Discussion
Journal Entry 2 due
Blackboard discussion topic to be posted by 11:59pm by Group 2

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©Wednesday June 25, 2008
9:00 – 12:00 pm
Mary Beth Peters, Registrar of Copyrights
The Copyright Process at the Library of Congress

1:00 – 5:00 pm
Panel discussion of attorneys from CUA
Intellectual Property Issues: An Overview:
Moderator: Elizabeth Winston, Assistant Professor of Law, CUA
Panelists:
Scott Bain, Litigation Counsel, Software & Information Industry Association, Copyright
Seth Watkins, Of Counsel, Steptoe & Johnson, Patent
Cindy Weber, CUA Law, 1976, Managing Partner, Sughrue Mion, PLLC, Trademark

Required Readings:
   a. Part III, pp. 37 – 79
   b. The Digital Millennium Copyright Act, pp. 93 – 100
   http://www.copyright.gov/help/faq/
3. Copyright Registration
8. http://digital-law-online.info/lpdi1.0/treatise52.html
10. Duration of Copyright
11. Copyright Registration for Works of the Visual Arts
    http://www.copyright.gov/circs/circ40.pdf

Items Due:
Group III: Lunch Panel Discussion
Journal Entry 3 due
Blackboard discussion topic to be posted by 11:59pm by Group 3

Thursday, June 26, 2008
9:00 – 12:00 pm.
Ms. Georgia Harper, Esq., Scholarly Communications Advisor, UTexas
Ms. Margaret O'Donnell, Esq.,
Associate University Counsel, CUA Library Digitization Projects: Public Domain, Fair Use, Orphan
Works and the Roles of Counsel and Library Directors in Risk Assessment

1:30 – 5:00 p.m.
Dr. Kimberly Kelley
Digital Rights Management

Items Due:
Group IV: Lunch Panel Discussion
Journal Entry IV due
Blackboard discussion topic to be posted by 11:59 by Group 4

Required Readings:
1. Bridgeman Art Library v. Corel
2. Copyright Term and the Public Domain in the United States
3. Minow, Mary: From Red Light to Green Light: Copyright Issue in Digitizing Photographs in
   Library Collections (2008) Power Point and Handouts
4. Mary Minow interview with Peter Hirtle, his view of Section 108 Study Group, April 22, 2008
5. Zimmerman, Diane: Can our Culture be saved? The Future of Digital Archiving, 91
   Minnesota Law Review, April 2007

Supplemental Readings:
Library Archival Collections


Google Book Search

Microsoft Live Search (is this the link you meant?)
Open Content Alliance
American Memory Project
National Archives and Records Administration (NARA) draft digitization plan
NARA Online Exhibits
Google search: digital collections libraries -- nearly 70 million responsive results...
Future reading: Digitization and its discontents -- Anthony Grafton's New Yorker article, Nov. 5, 2007, about the history of books, libraries and the future of mass digitization projects
Adventures in wonderland -- Anthony Grafton's New Yorker article, Nov. 5, 2007, companion to Future reading, above, linking to dozens of digital library projects

Additional Archival Collections:

University of Utah Dramatis Personae Archive: A Web Resource of Rare Performance Texts

North Carolina Exploring Cultural Heritage Online

University of Wisconsin Digital Collections

The Lewis Walpole Library Digital Collection at Yale

Sheet Music Consortium

Minow, Mary (2002) Library Digitization Projects

Tushnet, Rebecca: My library: Copyright and the Role of Institutions in a Peer to Peer World, 53 UCLA Law Review 977, April 2006


Is the work in the public domain?

Copyright Renewal Database: Stanford University has created a database that makes searchable the copyright renewal records received by the US Copyright Office between 1950 and 1993 for books published in the US between 1923 and 1963. Note that the database includes ONLY US Class A (book) renewals. The period from 1923-1963 is of special interest for US copyrights, as works published after January 1, 1964 had their copyrights automatically renewed by the 1976 Copyright Act, and works published before 1923 have generally fallen into the public domain. Between those dates, a renewal registration was required to prevent the expiration of copyright, however determining whether a work's registration has been renewed is a challenge.
Is Section 108 of any help?

March 2008 Section 108 Study Group Report: An Independent Report sponsored by the United States Copyright Office and the National Digital Information Infrastructure and Preservation Program of the Library of Congress. Findings include suggestion that Section 108 of copyright law be revised to allow libraries and archives to capture and duplicate online material (if not password protected) for scholars and researchers, and extending the 108 exceptions to museums.

Section 108 Study Group: Copyright Exceptions for Libraries and Archives: Dec. 4, 2006

What role for fair use?

-- When there is no ready market for permission: Transactional market failure
G Harper 2007 paper on digital images online at _____(VRA article?: Will be online soon)

Kelly v. Arriba-Soft, 280 F.3d 934 (9th Cir. 2002) affirmed in part and reversed in part. Kelly v. Arriba Soft Corp., 336 Fd. 3d 811 (9th Cir. 2003) In this case (commonly referred to as the "ditto.com case" because the Defendant is now operating under that name), the court held that the Defendant did not infringe the copyright of a photographer (Plaintiff Kelly) when the Defendant’s visual search engine retrieved and catalogued Plaintiff’s digital photographs that were online. The court held that "the character of the thumbnail index is not esthetic, but functional; its purpose is not to be artistic, but to be comprehensive." Id. at 4. In this sense, use of a thumbnail image was not considered infringing, due to the "transformative nature of using reduced versions of images to organize and provide access to them." Id. at 5. In finding no violation of the Digital Millennium Copyright Act, which in part governs "integrity of copyright management information," the court noted in relevant part the following: “Defendant's users could obtain a full-sized version of a thumbnailed image by clicking on the thumbnail. A user who did this was given the name of the Web site from which Defendant obtained the image, where any associated copyright management information would be available, and an opportunity to link there. Users were also informed on Defendant's Web site that use restrictions and copyright limitations may apply to images retrieved by Defendant's search engine.” Id. at 6. It should be noted that this case concerned a commercial rather than educational context, but is likely to be applicable to both. The principles that can be extracted from the ditto.com case are the following:

- The use of thumbnail images is likely to be considered a fair use.
- Copyright warnings should be posted on all Web sites posting material that may be subject to copyright.
- The user should be able to obtain the relevant copyright management information that goes with the digital image.

Resolution of the image will also impact the question of fair use. Digitized images with low resolution are less likely to be considered substitutes for the original image itself, and less likely to impact the potential market of the original image.

In this case the court considered whether or not Google directly infringed (by publicly displaying, distributing, or reproducing) thumbnail images of Perfect 10's copyrighted images. Google does not store any Perfect 10 full size images. The court found that since the content of the images was stored on Google's server, even though not in full size, Google had violated the exclusive right of the copyright owner under Section 106 to display the copyrighted content. However, by merely framing and in line linking to third party web sites, Google had not distributed infringing copies of the photographs under disputed. Although Google's web crawler signals not to index Perfect 10 content from the Perfect 10 site, these images were from other sites,
without the metatag indicating to the crawler not to copy them. The court did not find that Google's display of the images was a fair use, in part because Google actually had some ads on the pages displayed on the images search pages that turned up these photos, and also in part because Perfect 10 argued there was a market for thumbnail images of the nude photographs of models, i.e. for download and use on cell phones. The case has a long discussion of what constitutes a display as to as to in line linking.

This case was really a set up against Google that backfired. The plaintiff Blake Field decided to quickly publish (51 works in three days) some documents on the internet on his personal website, www.blakeswritings.com.

The works were made available to the world for free. Field decided not to include the metatag that would have indicated to Google that the "literary works" should not be cached. Field admitted that he was aware of the "no archive" metatag and that would have prevented Google from caching his web pages. Field then filed a copyright infringement complaint against Google claiming that by allowing access to his work (from the Google cached repository) Google had violated his exclusive rights to reproduce and distribute copies of his works. As soon as the complaint was filed, Google removed the cached sites. The court granted Google's motion for summary judgment against the plaintiff on non-infringement, implied license to use, estoppel and fair use, so basically a clean sweep for Google. The case contains some very useful language on fair use, including a fifth fair use factor, comparison of equities.

**Transformational and creative uses**

Plaintiff students sued the company, iParadigms, that owns and operates Turnitin, a plagiarism detection service that uses technology to evaluate the originality of written works. Plaintiffs were required by their teachers to submit an electronic copy of their papers to Turnitin for an originality evaluation or accept a zero for credit. To use the service, plaintiffs had to click *I Agree* to the terms of the user agreement. Plaintiffs read and understood that Turnitin would archive their written work, but included a disclaimer on the face of the works that they did not consent to the Turnitin archive feature. The archive feature is what (in part) allows Turnitin to conduct an originality evaluation. Plaintiffs alleged copyright infringement by Turnitin,based on the digital archiving of their papers. The court rejected the plaintiff's claim, finding that the clickwrap agreement precluded liability. In dicta, the court went on to note that even if the agreement by plaintiffs to terms of use of the site did not preclude liability, the use by Turnitin was transformative and a fair use.

See Georgia Harper’s analysis of the case at: [http://chaucer.umuc.edu/blogcip/collectanea/2008/03/turnitin_wins_important_victor_1.html](http://chaucer.umuc.edu/blogcip/collectanea/2008/03/turnitin_wins_important_victor_1.html) Note that although this was not reported in the case, typically when Turnitin indicates an overlap with another source, the professor is given a source name (school and date). Upon selection of the source name, the following message appears: “Because submitted papers remain the intellectual property of their authors, instructors, and respective institutions, we are unable to show you the content of this paper at this time. If you would still like to view this paper, please use the button below to submit a permission request to the author's instructor. We will send the instructor an email detailing your request and include any information the instructor will need to respond if your request is accepted.”

**Graham v. Kindersley**, No. 05-2514 U.S. Court of Appeals, (2nd Circuit) decided May 9, 2006
Copyrighted images of Grateful Dead concert posters were reproduced in a biography of the musical group known as the Grateful Dead. The copyright holder of the images claimed infringement. The district court (Southern District of New York) found fair use, and the Second Circuit affirmed. The publisher, Dorling Kindersley (DK), had sought permission, but negotiations over the fees were not resolved. DK went ahead and used seven images of concert posters (but in significantly reduced form) as a way of illustrating the narrative. The court agreed with the District Court that the reproduction of the images is protected by the fair use exception to copyright infringement. Note that cases coming out of the SDNY are considered very important in the publishing world.

The court came down on the four factors as follows: 1) **Purpose and Character of the Use**: The Court noted that courts have frequently afforded fair use protection to the use of copyrighted material in biographies, recognizing such works as forms of historic scholarship, criticism and comment that require incorporation of original source material. Here, DK’s use of the images was different (transformative) from the original intended use of the images, favoring a finding of fair use. Also, the book publisher significantly reduced the size of the images, combined them with a timeline and text and original graphic artwork, and employed them only to enrich the cultural history of the book, not to exploit the posters for commercial gain. 2) **Nature of Copyrighted Work**: Here the use was to emphasize the images’ historical use, rather than their creative value, so even thought these are creative works, the second factor has limited weight in the analysis. 3) **Amount and Substantiality of Portion used**: Even though the images were copied in their entirety, the visual impact was limited due to reduced size, thus favoring a finding of fair use. Also, the court found the use to be an inconsequential portion of the biography. The book was 480 pages long, with posters appearing on only a portion of seven pages. 4) **Effect of use on Market**: The parties agreed use of the images in the book did not affect the primary market for sale of posters. Court did not buy argument of Graham that the book publisher had interfered with its market for licensing images for use in books. The court distinguished this case from the *Texaco* case, stating that when the use of images is transformatively different from their original expressive use, a copyright holder cannot prevent others from entering fair use markets merely by developing or licensing a market for parody, news reporting, or other transformative uses. The court also stated that being denied permission to use a work, or pay such fees, does not weigh against a finding of fair use, and that a publisher's willingness to pay license fees does not establish that the publisher may not, in the alternative, make fair use of those images.

**Recut, Reframe, Recycle**: by the Center for Social Media at American University
A study by Center director Pat Aufderheide and Peter Jaszi, co-director of the law school’s Program on Information Justice and Intellectual Property, shows that many uses of copyrighted material in today’s online videos are eligible for fair use consideration. The study points to a wide variety of practices—satire, parody, negative and positive commentary, discussion-triggers, illustration, diaries, archiving and of course, pastiche or collage (remixes and mashups)—all of which could be legal in some circumstances.

**Risk assessment: The orphan work**


Public Knowledge Commentary: [http://www.publicknowledge.org/node/1537#comments](http://www.publicknowledge.org/node/1537#comments).

**The roles of counsel and library in assessing risk and making decisions**
The University Counsel: A Roundtable Discussion:
http://findarticles.com/p/articles/mi_qa3860/is_200111/ai_n9006619/print.

Further readings/resources:

Copyright Endurance and Change
Explains the threat to fair use that is contained in the DMCA anticircumvention provisions.

NC State Office of the Provost Copyright Administration Site: A resource created by NACUA member Peggy Hoon, this is a comprehensive copyright web site. The page includes reference to new and pending legislation, sample permission forms, FAQs, TEACH Act info, and tutorials.

Copyright Advisory Network: For librarians who wish to discuss copyright issues with colleagues.

New Copyright Crash Course: Georgia Harper's new Copyright Crash Course: Posted November 2007. Excellent graphics and a very clean layout that makes the site easy to use. Also updated to include links to blogs and more. A key resource for faculty.

Vaidhyanathan, Siva, The Googlization of Everything and the Future of Copyright: Copyright, Creativity and Catalogs, Regents of the University of California, 2007

Mausner, Joshua, Copyright Orphan Works: A Multi-Pronged Solution to Solve a Harmful Market Inefficiency (on Westlaw)


Tushnet, Rebecca, My Library: Copyright and the Role of Institutions in a Peer-to-Peer World, 53 UCLA L. Review 977 (April 2006)


Friday, June 27, 2008
9-12 p.m.
Field Trip to the Institute for Museum and Library Services (IMLS) [meet at IMLS]
Ms. Joyce Ray, host

2:30 – 5:00 pm
Professor David Shumaker, Information Commons, Marist Hall

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Readings:

   a. Part V: Special Features, pp. 85 - 108

2. World Intellectual Property Organization (WIPO): WIPO currently has two major initiatives of special importance to cultural heritage institutions.

3. Traditional Knowledge and Cultural Expressions: Some communities have expressed concerns regarding misappropriation and possible gaps in existing IP protections with respect to traditional knowledge (“TK”) and traditional cultural expressions (“TCEs”). Museums, libraries, and archives that house indigenous and other traditional cultural collections play a prominent role in cataloguing, preserving, and providing access to these types of resources. The IP and related concerns present cultural institutions with complex legal and policy issues, which WIPO is helping to explore through its TK and TCE initiatives. In an attempt to explore fully these emerging IP issues, WIPO has commissioned surveys of existing national and institutional practices in the field, and has convened an Intergovernmental Committee of WIPO Member States to evaluate these issues and determine whether current law provides adequate protection or whether the negotiation of a legally binding treaty is necessary.


4. Education and Library Exemptions to Copyright Protections: WIPO has signaled its intention to review library and educational statutory exceptions to copyright protection. The WIPO Standing Committee on Copyright and Related Rights recently commissioned copyright scholar Kenneth Crews, of Columbia University, to survey special library and archive provisions throughout the world. Through case studies, the study will examine some of the specific challenges of cultural institutions in the digital environment. The study aims to help to identify policy issues related to, or affecting, copyright and related rights that Member States of WIPO may be called upon to address over the coming years.

   c. Other WIPO Initiatives on Creativity and Traditional Cultural Expression

   Creative Heritage Project – WIPO is developing best practices and guidelines for managing intellectual property issues when recording, digitizing, and disseminating intangible cultural heritage. It has compiled case studies, surveys, and a database of IP-related protocols, policies, and practices.

5. Organization for Economic Cooperation and Development (OECD): The OECD, which brings together democracies from throughout the world, is currently conducting follow-up activities to the United Nations World Summit on the Information Society, looking into the development of the information economy. Special foci of OECD attention are: (1) policy principles related to the development, preservation, and distribution of digital content; and (2) policy principles relating to public-sector information (which can encompass museum collections). Such initiatives are important because they can help museums demonstrate their value to society in more quantifiable terms. Moreover, as new policies and protocols are developed for the Internet and digital content, it is important to identify the interests and concerns of cultural institutions and the public. The work of the OECD’s Committee for Information, Computer, and Communications Policy (“ICCP”) and ICCP’s Working Party on the Information Economy (“WPIE”) are particularly relevant to museums.


6. Organization of American States (OAS): The Inter-American Committee on Culture, within the OAS (an intergovernmental organization of countries in the Western Hemisphere), meets regularly to pursue ways of carrying out OAS cultural priorities. Several of its cultural program initiatives relate specifically to cultural heritage institutions, including (1) preservation and presentation of cultural heritage; (2) culture and the enhancement of the dignity and identity of people; (3) culture and the creation of jobs and the overcoming of poverty; and (4) culture and the role of indigenous people. In addition, the Committee is focusing on youth development through cultural activities.


7. U.S. Library of Congress: The Library’s Section 108 Study Group is exploring ways, within the copyright system, to facilitate preservation, replacement, and patron access activities by libraries and archives (and museums) for all types of materials, including those that are “born digital.” The Study Group held public hearings in 2006 and 2007 and has posted a number of background papers on its website. The final report is now available.

See: [http://www.loc.gov/section108/about.html](http://www.loc.gov/section108/about.html).

II. Research Initiatives with Significant Implications for Cultural Institutions

- **Public Funding Mechanisms for Museums**: In 2008, the Urban Institute, a non-partisan economic and social policy research organization, working under a cooperative agreement with the Institute of Museum and Library Services, will publish a study of the mechanisms of public support for museums in the United States. The study will include survey findings, case studies, the expectations and needs of communities and the museum-going public, and the effectiveness of alternative models of financial support. The IMLS has announced regional hearings for March 2008, in Ohio, Missouri, and California, to explore these issues further, and will publish a report that consolidates all of the information collected.

- **A Public Trust at Risk: The Heritage Health Index Report on the State of America’s Collections** (2005). This study -- the first comprehensive review of the state of U.S. collections -- revealed that 80% of collecting institutions lack an emergency plan for their collections and trained staff to carry it out. Moreover, 40% of institutions have no funds allocated in their annual budgets for preservation or conservation. Finally, 65% of collecting institutions have damaged collections due to improper storage. These are important issues of public trust and effective management of collections. In response to the Report, the Institute of Museum and Library Services has launched *Connecting to Collections: A Call to Action*, a strategic initiative to help museums and other institutions address these challenges. See www.imls.gov/collections for both the report and information about the initiative.

- **Museum Data Collection Report and Analysis** (2005): This report surveyed a wide range of museum-related data compilations and studies, including case studies, strategic plans, benchmarking, and research on best practices. It included data from or synopses of 246 of the studies within the report itself. It reviews: (1) annual reports; (2) directories and surveys; (3) economic impact studies; (4) facilities; (5) finance (financial reports, cost analyses, salary surveys); (6) general topics; (7) programs; and (8) staff.


- José-Marie Griffiths and Donald W. King, *InterConnections: The IMLS National Study of the Use of Libraries, Museums, and the Internet* (2008). This study found that: Libraries and museums are the most trusted sources of online information among adults of all ages, education levels, races, and ethnicities. Libraries and museums rank higher in trustworthiness than all other information sources, including government, commercial, and private Web sites. The Internet is not replacing in-person visits to libraries and museums and may actually increase visits to libraries and museums. Because people want multiple sources of information, museums, libraries, and the Internet complement each other.

  See http://interconnectionsreport.org/

- Leigh Estabrook, Evans Witt, and Lee Rainie, *How People Use the Internet, Libraries, and Government Agencies When They Need Help* (Dec. 30, 2007): This study of how people go about finding information to address their personal and professional needs, reveals the primacy of the Internet in information seeking, and the added value of professional staff and resources.

- **Examples of IMLS-funded Research Projects With Adaptable Legal Models:**

  Civil Rights in Mississippi Digital Archive: In addition to creating an Internet-accessible, fully searchable database of digitized versions of rare library and archival resources, this IMLS grant-funded project also provided recommendations for handling copyright and privacy issues associated with digitizing archival collections.

See also: Copyright Resources Project: Working with Copyright-Protected Materials in a Digital Environment, [http://www.bampfa.berkeley.edu/copyright_project/index.php](http://www.bampfa.berkeley.edu/copyright_project/index.php) (researching and reporting on new approaches to securing copyright permissions for digital copies of film-related documentation); GATT Digital Archive, [http://gatt-archive.stanford.edu/](http://gatt-archive.stanford.edu/) (modeling digitization and provision of access to large-scale, multi-national, and complex digital content).

**Items due:**
**Group V: Lunch Panel Discussion**
**Journal Entry V due**
**Blackboard discussion topic to be posted by 11:59pm by Group 5**

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**Saturday, June 28th, 2008**

9:00 – 12:00 p.m.
Wrap up and open discussion.
Dr. Kelley

12:00 – 5:00 p.m.
Group work and Q&A

**Items due:**

1. Experiential paper due at 11:59 p.m. Posted on Blackboard in the Digital Drop box.
2. The completed Journal, in Word, with the entirety of the five journal entries combined and in chronological order, due at 11:59 p.m. Posted to Blackboard in the Digital Drop box.