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

Summer, 2009
Graduate Syllabus
Library of Congress
Madison Building
6th Floor
Classroom A/B and the Information Commons, Marist Hall

3 Credit Hours
No Prerequisites

Location:
Library of Congress, Madison Building, Classroom A/B and on July 3, 2009, Room 132A
Information Commons, Marist Hall. Various trips to visit local copyright locations are also planned on the course schedule.

Dates:

June 29 – July 3, 8:30 a.m. – 5:00 p.m. with online, Blackboard discussions and activities to supplement in-classroom meetings and visits.

Instructor contact information:
Dr. Kimberly B. Kelley
Marist Hall 228
Telephone: 202-319-5085
Email: kelleyk@cua.edu
Office Hours: 5:00 PM daily or 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) and licensing and digital rights.
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 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. 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 recent developments and the federal legislative outlook. Participants will be asked to submit specific problems for discussion; work in a group to deliver a discussion for the class and submit an experiential paper.

**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. Articulate an understanding of Copyright Law and its application in libraries and related information organizations,
2. Demonstrate an ability to critically examine the copyright challenges facing librarians and other information professionals,
3. Explain the role of libraries and information centers in creating, disseminating and managing intellectual property in society,
4. Explore 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, audience participation, and online discussion,
6. Demonstrate an understanding 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:

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

<table>
<thead>
<tr>
<th>Assignments:</th>
<th>Weights:</th>
<th>Due Dates:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class and Online Participation</td>
<td>10%</td>
<td>On-going</td>
</tr>
<tr>
<td>Student Panel Presentations on</td>
<td>25%</td>
<td></td>
</tr>
</tbody>
</table>
| Readings                          |          | • Topic proposal due: Tuesday June 30th, at 10:00 PM in the Blackboard Group Collaboration space  
|                                   |          | • PowerPoint slides and/or any accompanying materials for the presentation should be posted by 10:00 PM |
| **Student led Blackboard-based discussions** | **25%** | **Thursday July 2, 2009 in the Discussion Board section of the Blackboard classroom**  
- Presentations due: Friday, July 3, 2009 at 12:00 PM in-person in the Information Commons  
- Topic proposed on Monday, June 29th by 10:00 PM in the Group collaboration space in Blackboard;  
- The instructor-approved discussion question, and any related materials, should be placed on Blackboard on Wednesday the 1st of July for Group 1. On Thursday the 2nd of July for Group 2 and Group 3 should post their instructor-approved discussion questions by 10:00 PM in the Discussion Board of the Blackboard classroom |
| **Experiential Analysis Paper** | **40%** | **June 30th, 2009 submit proposed topic for the paper by 10:00 PM in the Blackboard Digital Dropbox**  
- **Thursday, July 2nd**, submit an outline of the paper for instructor feedback  
- **Sunday July 5th, 2009** by 10:00 PM submit the paper in the Blackboard Digital Dropbox in Blackboard |
Class and Online Participation (10% of grade):

**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 Friday, 8:30-5 p.m. Participation is essential to successful completion of the course. Missing one class will reduce the participation grade by 10%.

**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. Missing one class will reduce the participation grade by 10%.

**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. Respond to discussion assignments and student-led Blackboard discussions promptly, and respectfully. Be responsive to colleagues in the course by replying to their postings in the online classroom and asking pertinent questions in the course of the speakers and in response to student presentations for the course.

**Contribute actively:** Students are expected to visit the Web sites of the instructor, visiting instructors, or the organizations we visit 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 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. When you find relevant Web sites, share them with your colleagues, provide some background on the sites you select and explain their relevance to our course or our profession.

**Appropriate Dress:** This course is being held at the Library of Congress and we have a series of experts providing their time, energy and expertise on our behalf. Dress for a professional environment to show your appreciation and respect for their work while they visit with us. When we visit public and private organizations in D.C., be sure to dress professionally.

**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 class mates 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 discussions 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.
Student Panel Presentation of Readings (25% of grade)

Student groups of 4-6 will work collectively to lead a classroom discussion on one of the topics from the assigned textbook (topics are listed below). As part of the student-led discussions, each student will briefly present his/her interpretation of the material as discussed and decided by the group. Next, the group as a whole will lead an interactive panel discussion for the rest of the class. Finally, the group presenting will allow at least ten (10) 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.

The presentations should be approximately 30 minutes long. Potential discussion questions, taken from the list below, must be submitted to the instructor for approval on Tuesday June 30th by 10:00 PM. Please place your topic requests in your group’s work space in the Blackboard classroom.

Materials in support of the presentation, and any PowerPoint slides to accompany the presentation, must be placed in the Blackboard classroom, on the Discussion Board, by 10:00 PM on Thursday the 2nd of July.

Presentations will be given on the 3rd of July beginning at 12:00 PM (noon) in the Information Commons, Room 132A, Marist Hall.

Groups will be assigned by the instructor.

The potential topics (selected from the textbook) the groups may select for their presentations are as follows:

I: The Reach of Copyright

II: Electronic Reserves, Libraries and the rights of ownership

III: Fair Use

IV: Copyright: a focus on education and libraries

V: Digital information, libraries, and copyright

Only one group may have any one of the above five (5) topics. It is first come, first serve. You should provide Dr. Kelley with your proposed topic by Tuesday June 30th by 10:00 PM in your group’s workspace in the Blackboard classroom. The topics will be assigned by the end of class day on Wednesday the 1st of July.

Student-led Blackboard Discussions (25%)

1. Each group of students preparing for the student-led panel discussion of the readings will also be responsible for posting a discussion question, with references to Web sites and the literature, to enhance their presentation in class. Select a topic of relevance to the course and your panel discussion. Be sure to include at least one article and one Web site that is about the topic you
choose for the Blackboard discussion. Be sure to include at least one question for your colleagues to comment on. The discussion topic posting for this assignment should be between 200 and 400 words.

2. Each student is expected to reply to the Blackboard discussion topic with at least one posting of his/her own, including a Web or literature resource. The reply should answer the question posed and build on earlier answers posted by fellow students.

3. The student-led discussions must be approved by the instructor. Proposed topics must be placed in the Blackboard classroom, in the group collaboration space, for approval by the instructor by 10:00 PM Monday June 29th.

4. The discussion question for Group 1 should be posted on Wednesday July 2nd. The discussion question for Groups 2 and 3 should be posted on Thursday July 3rd by 10:00 PM.

Experiential Analysis Paper (40% of grade)

The experiential analysis paper is an opportunity to reflect on the course and the course content 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 policy and its impact on the library and information science profession. The paper should discuss the history of the issue selected from the list and its importance to the library and information science field. The paper should also include your understanding of the issue and its impact on libraries, how you see the issue evolving in the future, and how your perspective on the issue has evolved as a result of participating in the course. The paper should provide evidence of what you have learned about your selected topic in copyright as a result of this course, your research and readings from the course, and what you have learned from the speakers for the course. Try to provide both sides of the issue/policy/law you selected and give the differing perspectives of the various constituencies involved in discussing or debating the issue.

Provide a reasoned argument that incorporates your view of copyright, the issue, and its impact on the field and on librarians who are faced with managing this issue.

Your paper should include references to the literature, the lectures/visits, readings, for class, and student-led discussions (citations are required for any works used EXCEPT for the panel discussions or lectures/visits). Essays should be 10-15 pages in length, double-spaced, and must be submitted to the instructor no later than 10:00 p.m., July 5th, 2009. Use the American Psychological Association’s Manual of Style to develop your paper, provide citations within the paper, and as a means to provide a list of references at the end of the paper. I suggest you familiarize yourself with RefWorks, which is an excellent resource for preparing citations in APA or any other style for a research paper. You can access RefWorks, and register to use it, at: https://www.aladin.wrlc.org/Z-WEB/Aladin?req=list&key=TOPICS

On Tuesday June 30, 2009 submit your proposed paper topic for feedback and approval to the instructor. Submit your proposal via Blackboard in the Digital Dropbox by 10:00 PM.

On Thursday July 2, 2009 submit an outline of the paper for instructor feedback via the Digital Dropbox in Blackboard by 10:00 PM.

On Sunday July 5th, 2009 submit the final paper to the instructor in the Digital Dropbox in Blackboard by 10:00 PM.

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](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](http://policies.cua.edu/academicundergrad/integrity.cfm) and [http://policies.cua.edu/academicundergrad/integrity.cfm](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](http://disabilitysupport.cua.edu).

**University grades:**
The University grading system is available at [http://policies.cua.edu/academicgrad//gradesfull.cfm#iii](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](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 29, 2009 |                                                                                                                                      |
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**Guest Instructor:** Dr. Kenneth Crews, M.L.S., J.D., Ph.D.
**Topic:** The Basics of Copyright

**Required Readings:**

1. Relevant Statutes from the U.S. Copyright Act:  [http://www.copyright.gov/title17/](http://www.copyright.gov/title17/)
   (most of the statutes are in the appendix to the Crews textbook as well).

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)

   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

5. United States Copyright Office. Copyright Basics. Available at:
http://www.copyright.gov/circs/circ01.pdf

Items due:
- Topic for student-led Blackboard-based discussions by 10:00 PM in the Group Collaboration Space in Blackboard

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©Tuesday June 30, 2009
Guest Instructor: Ms. Donna Ferullo, J.D., M.L.S
Topic: Electronic Reserves, The TEACH Act and Author’s Rights

Required Readings:

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

   a. Electronic reserves pp. 80-84, 209-211
   b. TEACH Act – pp. 46-54

Readings from the Web:

1. Georgia State Lawsuit

Readings for TEACH Act:


Readings for Author rights:


5. Creative Commons licenses [www.creativecommons.org](http://www.creativecommons.org)


7. Harvard and open access [http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm](http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm)

8. CIC author addendum [http://www.cic.net/Libraries/Library/authorsrights.sflb](http://www.cic.net/Libraries/Library/authorsrights.sflb)

9. NIH mandate [http://www.lib.berkeley.edu/scholarlycommunication/nih_mandate.html](http://www.lib.berkeley.edu/scholarlycommunication/nih_mandate.html)

Items Due:

- Experiential Analysis Paper Proposal Topic by 10:00 PM in the Digital Dropbox
- Student-led panel presentation topic proposal due in the Blackboard group collaboration space by 10:00 PM

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© Wednesday July 1, 2009
9:00 – 12:00 pm
Guest Instructor: Ms. Georgia Harper, J.D., M.L.S.,
Topic: Public Domain, Fair Use, Orphan Works and the Roles of Librarians in Risk Assessment

1:30 – 3:00 p.m.
Guest Instructor: Clifford Lynch, Ph.D.
Topic: Digital rights management, fair use and trends in pay-per-view

3:00 – 5:00 p.m.
Dr. Kim Kelley, M.L.S., Ph.D.
Topic: Libraries and the Special Provisions of Copyright

Required Readings:

1. Bridgeman Art Library v. Corel
2. Copyright Term and the Public Domain in the United States
4. Mary Minow interview with Peter Hirtle, his view of Section 108 Study Group, April 22, 2008

Supplemental Readings:

Library Archival Collections

Google Book Search
Microsoft Live Search
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

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 compliant 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*

**A.V. et al. v. iParadigms, LLC. Civil Action # 07-0293 (U.S. Dist. Ct. For the E.D. Virginia) March 11, 2008**
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 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**


**Commentary in the Library Journal:**

**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](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 anti-circumvention 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.
[http://provost.ncsu.edu/copyright/](http://provost.ncsu.edu/copyright/)

**Copyright Advisory Network:** For librarians who wish to discuss copyright issues with colleagues.
[http://librarycopyright.net](http://librarycopyright.net)

**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.
[http://copyright.lib.utexas.edu/](http://copyright.lib.utexas.edu/)

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.** *Available in the Blackboard classroom under Course Documents.*


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


Item Due:
• Student-led Blackboard discussion question for Group 1 in the Discussion Board of the Blackboard classroom

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©Thursday, July 3, 2009

9:00 – 12:00 pm. (at the ALA Washington Office)
Guest Lecturers: Ms. Emily Sheketoff, Associate Executive Director, Ms. Carrie Russell and select staff of The American Library Association’s Washington Office
Topic: Copyright and the American Library Association’s Role

1:30 P.M. – 5:00 P.M. (At the Association for Research Libraries’ Offices)
Guest Lecturers: Ms. Heather Joseph and staff
Scholarly Publishing and Academic Resources Coalition (SPARC)
Topic: Alternatives for Scholarly Communication: The Role of SPARC

Required Readings:


3. ARL. SPARC (2008). Open doors and open minds: What faculty authors can do to ensure open access to their work through their institution. Available at: http://www.arl.org/sparc/bm~doc/opendoors_v1.pdf


5. Copyright Advisory Network. Available at: http://librarycopyright.net

6. Digital Copyright Slider http://www.librarycopyright.net/digitalslider/


11. Traditional Cultural Expression and Libraries. Available at: http://wo.ala.org/tce/

Items Due:
- PowerPoint slides and any accompanying materials for the student panel discussions in the Discussion Board of the Blackboard classroom in support of the student group presentations scheduled for Friday the 3rd
- The outline for the experiential analysis paper in the Digital Dropbox in Blackboard
- The Student-led Blackboard discussion question for Group 2 and Group 3 in the Discussion Board of the online classroom

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©Friday, July 3rd, 2009
9:00 – 12:00 PM
Information Commons, Marist Hall, CUA
Instructor: Dr. Kim Kelley
Topic: Special Features and Licensing

12:00 PM – 2:00 PM
Lunch and group presentations

2:00 PM – 5:00 PM
Finish discussion and Wrap-up

Readings:

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


**Item due:**
- Group Presentations by 12:00 PM for presentation to your colleagues

© Sunday, July 5\textsuperscript{th}, 2009

**Item due:**
Experiential Analysis Paper, in the Digital Dropbox in Blackboard, by 10:00 PM