Cinema Studies, Tisch School of the Arts  
New York University  
CINE-GT.1804: Copyright, Legal Issues, and Policy  
Instructor: Greg Cram  
Fall 2016

**Syllabus**

**Time and Place**  
Tisch School of the Arts, Main Building  
721 Broadway, Room 646, New York, N.Y. 10003  
Thursdays from 6:30-9:30 PM

**Instructor Contact Information**  
The New York Public Library  
Stephen A. Schwarzman Building  
476 Fifth Avenue  
New York, NY 10018  
Telephone: 212.621.0262  
Email: Greg.Cram@nyu.edu (always preferable to telephone)  
Gchat: GregCram@nypl.org

**Office Hours**  
By appointment

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

**Course Objectives**  
Upon completion of the course, the students will:  
- Be able to identify the types of content protected by copyright, trademark and patent law  
- Gain a firm grounding in the theory and language that underlies copyright law that affects preservation, restoration, exhibition and repurposing of works  
- Understand potential copyright reforms from different points of view  
- Be able to research and make high-confidence determinations of the copyright status of items in collections  
- Be able to make well-reasoned arguments as to whether a particular use is a fair use
Be able to make well-reasoned arguments as to whether a particular use falls within some other exception granted to users of copyrighted works
Comprehend copyright management as a function of collections management

Evaluation and Assessment
Students will be assigned three exercises and an intellectual property audit test their grasp of topics taught in class and covered in the readings. Technical aspects, logic, and demonstrations of critical thinking of these written assignments will be evaluated. For full credit, all assignments must be submitted in a timely manner and in a professionally appropriate form. All assignments should be submitted electronically through NYU 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 via computers or mobile devices during class. Interruptions will affect participation grades.

Exercises, the audit project and class participation will be weighed as follows:

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three copyright assignments/exercises</td>
<td>45%</td>
</tr>
<tr>
<td>Audit Project oral presentation</td>
<td>10%</td>
</tr>
<tr>
<td>Audit Project written report</td>
<td>25%</td>
</tr>
<tr>
<td>Class participation</td>
<td>20%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Course Credits
This is a four-credit course.
Grading Rubric
Written assignments in this class will be graded according to the following guidelines:

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

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, 2016. Failure to submit an assignment by 5:00 PM on December 15, 2016, will result in a forfeiture of credit for that assignment.

Required Texts
**PETER B. HIRTEL ET AL., COPYRIGHT AND CULTURAL INSTITUTIONS: GUIDELINES FOR U.S. LIBRARIES, ARCHIVES, AND MUSEUMS (2009), [http://ecommons.cornell.edu/handle/1813/14142](http://ecommons.cornell.edu/handle/1813/14142)** (hereinafter HIRTEL)

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.

**Incomplete**
Incomplete will only be given in the case of a dire emergency and only then if the majority of the class is completed and completed successfully. The awarding of a grade of incomplete is at the discretion of the instructor and not guaranteed. Before the last class meeting, the student must meet with the professor and MIAP staff to discuss the proposed incomplete grade.
Accommodations for Students with Documented Disabilities
Academic accommodations are available for students with documented disabilities. Please contact the Moses Center for Students with Disabilities at 212-998-4980 for more information.

Digital Archive of Student Work
All student projects are to be collected and made accessible on the MIAP website. Certain types of assignments will be password-protected and made accessible only to MIAP faculty. Students are required to submit all of their work for each class to their professor in a digital format (.pdf is encouraged for cross-platform compatibility) via email or other available digital medium. Students are asked to include a statement about the permissible use of their work. When students submit digital files of their work, the file names should conform to MIAP’s standard format: 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 2016 course CINE-GT 1800: 16f_1800_Smith_a1.pdf Please note that your WNET project is exempt from this archive because of the terms of our non-disclosure agreement with WNET.

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.

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

September 15 (Class 2): Scope of Copyright Protection

September 22 (Class 3): Exclusive Rights Granted by Copyright Law; Copyright Ownership

Assignment 1 (Copyright Registration) Due

TBD (Class 4): WNET Audit Project Introduction – Class to be held at WNET

September 29 (Class 5): Contracts Introduction; Is it Still in Copyright?

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

October 13 (Class 7): Section 108—The Library Exceptions

October 20 (Class 8): Section 107—Fair Use

October 27 (Class 9): Section 107—Fair Use (cont’d)

Assignment 2 (Fair Use in the News) Due

November 3: *No Class*

November 10 (Class 10): *AMIA Conference*

November 17 (Class 11): Orphan Works; Licensing and Donor Agreements

Assignment 3 (Copyright Reform) Due

November 24: *No Class: Thanksgiving*

December 1 (Class 12): International Copyright Issues

December 8 (Class 13): Class Presentations of WNET Audit Project (Group 1); IP Policy for Libraries, Archives and Museums

Assignment 4 (WNET Audit Project Written) Due

December 15 (Class 14): Class Presentations of WNET Audit Project (Group 2)
Class Schedule

September 8 (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. HIRTEL, 173-191.
2. HIRTEL, 1-38.
Optional: Browse Chillingeffects.org for copyright, trademark and patent cease and desist letters.

September 15 (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)


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.


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**September 22 (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)**
2. HITTLE, 55-86.
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.

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**TBD (Class 4): WNET Audit Project Introduction**

Class will be held at WNET

**Readings (to be read in advance of class)**
September 29 (Class 5): 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; Published v. Unpublished works
Copyright formalities and the impact of failure to follow formalities
Copyright renewal under 1909 Copyright Act
Researching copyright status of published works using available information/databases
How international works fit into US copyright law
Federal copyright protection of sound recordings
Discuss proposal by Copyright Office to federalize protection of all sound recording copyrights

Readings (to be read in advance of class)
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 2016).
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.


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

Topics
Complex works that have multiple layers of copyrights (e.g., movies, dramatic works, music)
Section 109—First Sale Doctrine
What is the first sale doctrine?
How does the first sale doctrine protect library lending?
How does the first sale doctrine function with digital objects?

Readings (to be read in advance of class)

October 13 (Class 7): Section 108—The Library Exceptions

Topics
What is section 108?
What does it cover?
What rules are set forth in section 108 regarding the making copies in response to patron requests?
What rules are set forth in section 108 regarding personal photography in reading rooms?
How does section 108 enable cultural institutions to make copies for preservation purposes?
Potential issues with section 108

Readings (to be read in advance of class)
2. HIRTLE, 107-128.
4. HOWARD BESSER ET AL., VIDEO AT RISK: STRATEGIES FOR PRESERVING COMMERCIAL VIDEO COLLECTIONS IN LIBRARIES (2012), available at
October 20 (Class 8): Section 107–Fair Use

Topics
Historical background of the principal of fair use
Discuss the four statutory factors of fair use
Discuss disputes that highlight each fair use factor
How fair use can help libraries and cultural institutions satisfy their mission

Readings (to be read in advance of class)
7. 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.

Optional: Poke around Columbia’s Copyright Advisory Office’s Website: http://copyright.columbia.edu/copyright/fair-use (last visited Sept. 8, 2016).

October 27 (Class 9): Section 107–Fair Use (cont’d)

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
Assignment 2 (Fair Use in the News) Due

Readings (to be read in advance of class)
5. The Authors Guild, Inc. v. Hathitrust, 755 F.3d 87 (2d Cir. 2014). An abridged version will be made available on NYU Classes.

November 3: *Class Does Not Meet*

November 10 (Class 10): *AMIA Conference*
Class does not meet

November 17 (Class 11): Orphan Works; Licensing and Donor Agreements
Topics
- Orphan works
  - What are orphan works?
  - What are some potential solutions to the orphan works problems?
- If no exceptions or limitations protect our desired use, what’s next?
- Relationship between private agreement and copyright law
  - Deeds of gift
- Major collective rights organizations (VAGA, ARS, CCC, Sound Exchange, ASCAP, etc.)
- What are Creative Commons licenses?
  - Why are they important?
  - How can they be used to solve copyright issues?
- Social media terms of service

Assignment 3 (Copyright Reform) Due

Readings (to be read in advance of class)
5. HIRTL, 129-172.
7. Sample deeds of gift from NYPL, available on NYU Classes.
Optional: Welcome to the LIBLICENSE Project, CTR. FOR RESEARCH LIBRARIES, http://liblicense.crl.edu (last visited Sept. 8, 2016). You should poke around this site, especially the “Resources” section.

November 24: *Thanksgiving Break*

December 1 (Class 12): 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
**Readings (to be read in advance of class)**


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**December 8 (Class 13): Class Presentations of WNET Audit Project (Group 1); IP Policy for Libraries, Archives and Museums**

**Topics**

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

**Assignment 4 (WNET Audit Project Written) Due**

**Readings (to be read in advance of class)**

6. HIRTL, 193-212

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**December 15 (Class 14): Class Presentations of WNET Audit Project**

Complete Class Presentations of WNET Audit Project
Case Studies
Closing Thoughts
Cinema Studies, Tisch School of the Arts  
New York University  
*CINE-GT.1804: Copyright, Legal Issues, and Policy*  
Instructor: Greg Cram  
Fall 2016

**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

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Excellent (3)</th>
<th>Competent (2)</th>
<th>Needs Work (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>Plays an active role in discussions.</td>
<td>Participates in some discussions.</td>
<td>Participates in few or no class discussions.</td>
</tr>
<tr>
<td>Content Contribution (x 2, max of 6 points)</td>
<td>Discussion contributions are factually correct, clear, reflective, and substantive; advances discussion.</td>
<td>Discussion contributions are factually correct and clear but sometimes lack full development of concept or thought.</td>
<td>Discussion contributions are frequently off-topic, incorrect, or irrelevant.</td>
</tr>
<tr>
<td>Level of Preparation</td>
<td>Arrives fully prepared at every session.</td>
<td>Arrives mostly, if not fully, prepared.</td>
<td>Preparation, and therefore level of participation, are both inconsistent.</td>
</tr>
<tr>
<td>Peer Interaction and Level of Discussion</td>
<td>Actively supports, engages and listens to peers; group dynamic and level of discussion are often better because of the student’s presence.</td>
<td>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.</td>
<td>Virtually no interaction with peers; group dynamic and level of discussion are harmed by the student’s presence.</td>
</tr>
</tbody>
</table>


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.